

ACTION

DATE

COMMITTEE

Derby P.C.

M.A.P.C.

Approved subject to meeting at 3-22-87
Approved subject to meeting at 3-22-87
Approved subject to meeting at 3-22-87

P.C.P./B. CO. C. Denied 3-10 4-20-87
District Court sent back to BGC for rehearing
By G. L. M. Approved subject 4-15-87
to conditions

closed

DR 86-4 Larry Iusk requests Special Use Permit to establish a demolition construction landfill site south of 91st St. S. in an area between K-15 Hwy. & Arkansas River.

POSTED 3-05-86 KY

OK

13

ACTION

COMMITTEE

DATE

Derby P.C.

Approved subject to modified conditions

3-30-86

M.A.P.C.

Approved subject to conditions

4-2-86

B.C.C./B. CO. C.

Denial 3-0

4-30-86

District Court sent back to BCoC for rehearing

Bdy Co Com

approved subject to conditions 4-15-87

closed

DR 86-4 Larry Insk requests Special Use Permit to establish a Demolition Construction Landfill at the south of 91st St. S. in an area between K-15 Hwy. & Arkansas River.

DATA SHEET

Z- _____
 SCZ- _____
 CU- _____
 DR- 86-4
 DP- _____

Amend _____
 Case Filed: 2-13-86
 Associated Case: SCZ-0559

APPLICATION DATA: Map No. 5836C (or G)

1. General Location: South of 91st Street South in an area between K-15
Highway and the Arkansas River

2. From _____ to _____

3. Proposed Use: Special Use Permit to Establish a Demolition Construction
Landfill Site on Property to be zoned "F" Heavy Industrial

4. DP Name: _____

5. Applicant: Larry Lusk

Address 5001 E. 71st Street South, Derby, KS. 67037 Phone 788-2295

6. Agent: Lowell D. High

Address 1542 S. St. Francis, Wichita, KS. 67211 Phone 264-0341

Attorney: Richard Rumsey, Rumsey, Richey & Plummer, 1041 N. Waco 67203

AREA DATA:

1. Acres: 13.5 (_____) ft. by 262-4481 ft.)

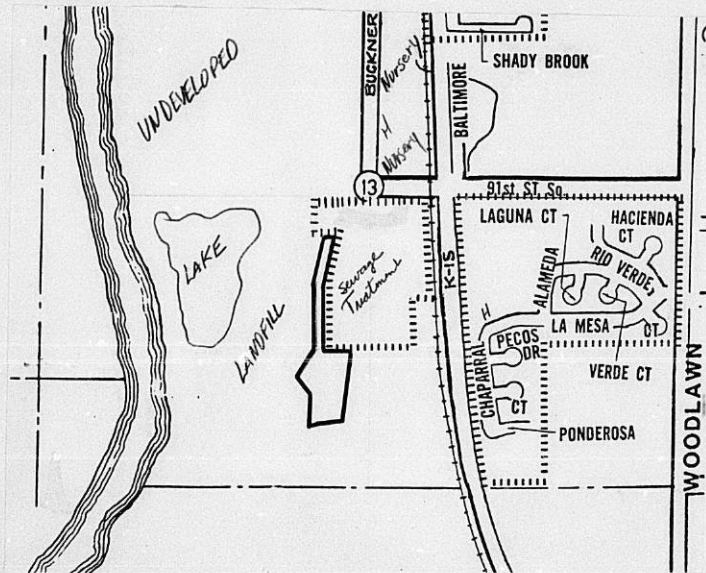
2. Adjoining Zoning: N "R" & "M-1" S "R" E "R" & "M-1" W "R"

3. Land Use: North _____ East _____
 South _____ West _____

PICTURE SHEET

PHOTO DATA:

Taken by _____ Date _____ Time _____



NOTES:



Sales • Rental • Construction

Larry Lusk Realty

316-788-6875
 Home 788-3905

7224 Nelson Drive • Derby, Kansas 67037

Mrs Norma Woods
 777-0258

LOS ANGELES, CALIFORNIA, OR
 MOBILE, ALABAMA, U.S.A.

Standard
 No. 2-153C

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

May 5, 1987


TO: Ron Worley, County Zoning Administrator
FROM: Louise Olivarez, Senior Planner, Current Plans Division
SUBJECT: DR 86-4 - Special Use Permit for demolition construction land-
fill site (SW $\frac{1}{4}$, 13-29-1E).

On April 15, 1987, the Board of County Commissioners approved the above-referenced special use permit, subject to a number of conditions (see copy of resolution attached). Item F pertaining to the access easement has been complied with. Items D, G, H, J, K, L, M and N must be complied with prior to commencing the landfill operation.

Attached for your files is one copy of the approved Grading and Drainage Plan dated April 15, 1986. Jim Weber in the County Engineer's office also has one copy of this plan.

Attached to the applicant's copy and the applicant's attorney's copy of this memorandum is the Floodway Reserve Agreement form which, when properly executed and returned to Jim Weber, will satisfy the requirement in item D.

If anyone receiving a copy of this memorandum has any questions about this matter, please call me, or Jack Galbraith, at 268-4421.


Louise Olivarez
Senior Planner, Current Plans

LO:blw
Attachments

cc: Larry Lusk, 5001 E. 71st Street South, Derby, KS. 67037
Richard Rumsey, Attorney, 1041 N. Waco, Wichita, KS. 67203
Richard Hunter, Director, Environmental Health Division,
Wichita-Sedgwick County Health Department
Jack Brown, Chief, Environmental Quality, Wichita-Sedgwick County
Health Department
Douglas Hahn, Director, Sedgwick County Environmental Resources
Department

PL/0291/4

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

May 5, 1987

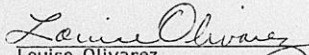
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PL/0291/4

RESOLUTION NO. *R#170-1987*

A RESOLUTION AUTHORIZING A SPECIAL USE PERMIT FOR CERTAIN LANDS LOCATED IN SEDGWICK COUNTY KANSAS, UNDER THE AUTHORITY GRANTED BY SECTION 13.F. OF THE ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS.

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

SECTION 1. That after being ordered by the Eighteenth Judicial District Court in Sedgwick County, Kansas, to reconsider a certain special use permit request (DR 86-4), and proper notice having been given and hearing held and under authority of and subject to the provisions of Section 13.F of the Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas, a Special Use Permit to establish a demolition/construction landfill site on property zoned the "F" Heavy Industrial District is hereby approved on lands legally described as follows:

CASE NO. DR 86-4

Commencing at a point 418 feet west and 1330 feet south of the NE corner of the SW $\frac{1}{4}$ of Section 13, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east parallel to the north line of said SW $\frac{1}{4}$, 323 feet; thence southwesterly 1010 feet, more or less, to the centerline of Spring Creek, said point being 190 feet west of the east line of said SW $\frac{1}{4}$; thence southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, south and 640 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly, 550 feet to a point 2010 feet south and 642 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly 315 feet to a point 850 feet west of the east line of said SW $\frac{1}{4}$; thence northeasterly to a point 1330 feet south and 498 feet west of the northeast corner of said SW $\frac{1}{4}$; thence east parallel to the north line of said SW $\frac{1}{4}$, 80 feet to the point of beginning; AND

Commencing at a point 418 feet west and 1330 feet south of the northeast corner of said SW $\frac{1}{4}$; thence S90°00'W parallel to the north line of said SW $\frac{1}{4}$, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the southeast corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning. Generally located south of 91st Street South in an area between between K-15 Highway and the Arkansas River.

CONDITIONS OF APPROVAL:

- A. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of the Kansas Department of Health and Environment Bulletin No. 4-4 "Guidelines for Operation of Solid Waste Management Systems" shall be the only landfill material permitted. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, or putrescible wastes, shall be permitted for disposal at the site.
- B. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- C. The deposit of material on site shall cease and cover material, grading, and seeding shall be completed no later than 36 months from the day the landfill permit is issued by KDHE. Grading shall be in accordance with the Grading Plan dated April 15, 1986. Cover material shall be applied daily.

- D. Prior to the commencing of the operation, the applicant shall execute a Floodway Agreement covering the floodway on the south 100 feet of the application area, as shown on the Grading and Drainage Plan dated April 15, 1986.
- E. The landfill shall only be open to solid waste collection vehicles licensed under the Sedgwick County Health and Sanitation Code No. 7. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- F. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording prior to commencing the landfill operation.
- G. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
- H. An 8-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation. The fence shall be constructed of welded or woven wire with openings no larger than one-inch.
- I. Upon written notice of any violation by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation and subsequent action taken by the board.
- J. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing that cover material, final grading, and seeding are performed as detailed in the Grading Plan dated April 15, 1986, and in the Operating Manual referenced in condition B. This bond shall be in the amount of \$10,000 for each acre, or portion thereof, on which waste is being deposited.
- K. Prior to the commencing of the operation, the applicant/owner shall provide for installation and monitoring of a network of at least 4 wells which draw water from the uppermost permanent aquifer. One of these wells will monitor groundwater upslope of the site, the other three wells will monitor groundwater downslope from the site. These wells will be installed, constructed, operated, and sampled to comply with EPA Publication Number OSWER-9950.1 titled "RCRA Groundwater Monitoring Technical Enforcement Guidance Document" dated September, 1986, and shall remain in operation for 15 years from the date of landfill closure. Collection and analyses of samples from the wells will be accomplished by the County Health Officer and the actual costs of that monitoring shall be reimbursed by the applicant/owner.
- L. The applicant/owner shall pay a yearly fee to Sedgwick County to offset the cost of landfill inspection by the County Health Department. The fee shall be paid prior to operation of the landfill, and shall be \$6,000 for the first 12 months' operation. The fee for subsequent periods shall be established after review and recommendation by the County Health Officer to the Board of County Commissioners. The maximum increase in the fee shall be limited to 100% for any 12-month period. In no event shall said fee exceed the actual direct and indirect cost of such inspection.
- M. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall file a restrictive covenant for the application area which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit construction of structures which penetrate the final cap or cover, and

require approval of the Health Officer for use of the land for production of food crops. The covenant shall be in such form as may be approved by the County Counselor.

- N. The applicant/owner shall provide a sign prior to landfill operation. This sign shall be a minimum of 8 feet wide and 4 feet high and be prominently displayed at the site entrance. The sign shall display the following message in 4 inch or larger letters that contrast with the background:

NO TRESPASSING - NOT A PUBLIC FACILITY


THIS LANDFILL MAY ONLY ACCEPT DEMOLITION WASTES TRANSPORTED BY LICENSED SOLID WASTE TRANSPORT VEHICLES. GARBAGE, HAZARDOUS WASTE AND MATERIAL TRANSPORTED BY PRIVATE OR UNLICENSED VEHICLE IS NOT ALLOWED.

LANDFILL OPERATES 8 AM TO 6 PM MONDAY THROUGH SATURDAY.

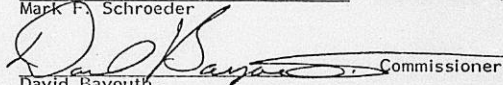
In addition to the above information, the sign shall contain all information required by State agencies. The sign shall be maintained in good repair and be clearly visible.

SECTION II. That this Resolution shall take effect and be in force from and after its adoption.

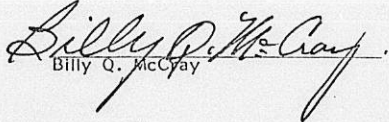
ADOPTED AT WICHITA, KANSAS, this 15th day of April, 1987.

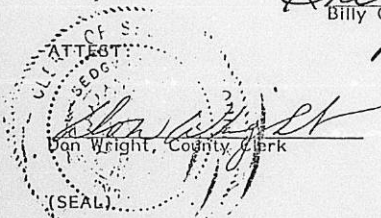

Tom Scott, Chairman

_____, Commissioner pro tem
Mark F. Schroeder

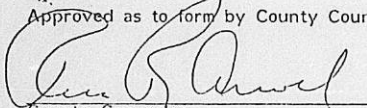

David Bayouth, Commissioner

_____, Commissioner
Bernard A. Hentzen


Billy Q. McCray, Commissioner



Approved as to form by County Counselor


County Counselor

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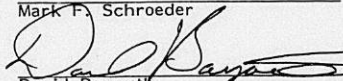
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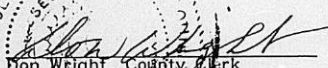

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Mark F. Schroeder, Commissioner pro tem

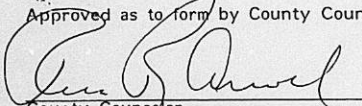

David Bayouth, Commissioner

Bernard A. Hentzen, Commissioner


Billy Q. McCray, Commissioner

ATTEST:
FILED
APR 15 1987

Don Wright, County Clerk
(SEAL)

Approved as to form by County Counselor


County Counselor

Leah

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

May 5, 1987

TO: Dale Rea, Deputy City Clerk
FROM: Louise Olivarez, Senior Planner, Current Plans *LO.*
SUBJECT: Recording of document associated with DR 86-4.

On April 15, 1987, the Board of County Commissioners approved the above-referenced special use request. One of the conditions of approval was the granting of a private access easement. Attached is the appropriate easement which has been submitted to us for recording. Please record this document with the Register of Deeds and bill Planning Department account number 755-68-360-50000-295-000-000. I would like to have the recorded document returned to me for our files.

Thank you.

LO:blw
Attachment

RECEIVED
OFFICE OF CITY CLERK
MAY 6 1987
 DO
 APPROVE
 FILE

RECEIVED
JUN 04 1987
METROPOLITAN PLANNING
ROUTE

PL/0292/4

INGRESS AND EGRESS EASEMENT

FILM 890 PAGE 1315

The undersigned, / Larry Lusk , being owners of the following described property, to wit:

Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas.

hereby grant to the owners of the following described property, to wit:

See Exhibit A

and to their successors in title forever, an Ingress and Egress Easement for the purpose of access to serve the second above described property, over and across the following described property:

See Exhibit B

WITNESS OUR HANDS this 18th day of April , 1986 .

[Signature]
Larry Lusk

STATE OF KANSAS }
SEDGWICK COUNTY } SS
FILED FOR RECORD AT
8:00 AM

State of Kansas)
Sedgwick County) SS

MICROFILMED
OF RECORD

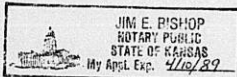
Ed Pessal
Deputy

MAY 19 1987
8 82483

NO. PAT KETTLER
REGISTER OF DEEDS

BE IT REMEMBERED, that on this 18th day of APRIL 1986, before me a Notary Public in and for said County and State, came LARRY LUSK and _____, to me personally known to be the same persons who executed the foregoing document and duly acknowledged the execution of the same.

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



[Signature]
Notary Public

My commission expires: April 10, 1989

6.00

city clerk

EXHIBIT A

Commencing at the Northeast Corner of the Southwest Quarter of Section 13, T29S, R1E of the Sixth Principal Meridian, Sedgwick County, Kansas; thence West 285 feet along the north line of said Southwest Quarter; thence South 270 feet, at right angles from said North line; thence Southwest 614.57 feet, with a deflection of 12 degrees, 30 minutes right from the preceding course; thence South 460 feet, with a deflection of 12 degrees 30 minutes left from preceding course, to a point of beginning said point being 418 feet West and 1330 feet South of said Northeast corner of the Southwest Quarter; thence parallel to the North line of said SW 1/4, 323 feet; thence Southwesterly 1010 feet, more or less, to the center line of Spring Creek, said point being 190 feet West of the NE corner of said SW 1/4; thence Southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, South and 640 feet West of the NE corner of said SW 1/4; thence Northwesterly, 550 feet to a point 2010 feet South and 642 feet West of the NE corner of said SW 1/4; thence Northwesterly 315 feet to a point 850 feet West of the NE corner of said SW 1/4; thence Northeasterly to a point 1330 feet South and 498 feet West of the NE corner of said SW 1/4; thence East parallel to the North line of said SW 1/4, 80 feet to the point of beginning.

AND

Beginning at a point 1330 feet South and 418 feet West of the NE corner of the SW 1/4 of Section 13, T29S, R1E of the 6th P.M., Sedgwick County, Kansas; thence S90°00'W parallel to the North line of said SW 1/4, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the South line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E 40.97 feet to the SE corner of said Lot 1; thence S12°30'W, 389.23 feet, thence S0°00'E, 460 feet to the point of beginning.

EXHIBIT B

Beginning at the Southeastern most corner of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence S90°00'W along the South line of said Lot 1, 40.97 feet; thence N12°30'E, 501.90 feet to the north line of said Lot 1; thence N90°00'E along the north line of said Lot 1 and along the north line of said SW 1/4, 283.14 feet; thence S49°06'19"E, 61.10 feet; thence S90°00'W, 297.23 feet; thence S12°30'W, 460.92 feet to the point of beginning.

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

May 5, 1987

TO: Ron Worley, County Zoning Administrator
FROM: Louise Olivarez, Senior Planner, Current Plans Division
SUBJECT: DR 86-4 - Special Use Permit for demolition construction landfill site (SW $\frac{1}{4}$, 13-29-1E).

On April 15, 1987, the Board of County Commissioners approved the above-referenced special use permit, subject to a number of conditions (see copy of resolution attached). Item F pertaining to the access easement has been complied with. Items D, G, H, J, K, L, M and N must be complied with prior to commencing the landfill operation.

Attached for your files is one copy of the approved Grading and Drainage Plan dated April 15, 1986. Jim Weber in the County Engineer's office also has one copy of this plan.

Attached to the applicant's copy and the applicant's attorney's copy of this memorandum is the Floodway Reserve Agreement form which, when properly executed and returned to Jim Weber, will satisfy the requirement in item D.

If anyone receiving a copy of this memorandum has any questions about this matter, please call me, or Jack Galbraith, at 268-4421.

Louise Olivarez
Senior Planner, Current Plans

LO:blw
Attachments

cc: Larry Lusk, 5001 East 71st Street South, Derby, KS. 67037
Richard Rumsey, Attorney, 1041 North Waco, Wichita, KS. 67203
Richard Hunter, Director, Environmental Health Division,
Wichita-Sedgwick County Health Department
Jack Brown, Chief, Environmental Quality, Wichita-Sedgwick County
Health Department
Douglas Hahn, Director, Sedgwick County Environmental Resources
Department

bcc: Norma Moore, 9339 Southeast Boulevard, Derby, KS. 67037

PL/0291/4

Sedgwick County, Kansas
FLOODWAY RESERVE AGREEMENT

WHEREAS, to assure protection of the interests and safety of the public, it becomes necessary that Sedgwick County, State of Kansas, Party of the Second Part, provide flood protection and preserve the natural drainageway through the establishment of a "FLOODWAY RESERVE" within the property below described.

AND WHEREAS, _____, Party of the First Part, is the rightful owner of, or legal agent for, the above property;

THE PARTIES HERETO AGREE as follows: That the Party of the First Part, for himself, his heirs, executors, administrators, and assigns for mutual considerations and covenants hereby agrees with the Party of the Second Part and its successors that a FLOODWAY RESERVE over and across the following described portion of the above described tract is necessary for the protection of the health and welfare of the county. The Party of the First Part hereby places the following described portion of the above described tract in the FLOODWAY RESERVE and state that he fully understands that by placing this portion of the tract in said Floodway Reserve no human habitat may be built therein and that any other obstruction to be placed therein shall be permitted only with the approval of the Kansas State Board of Agriculture, Division of Water Resources in accordance with KSA 24-126 or the appropriate governing body:

FURTHER, the "FLOODWAY RESERVE" shall be the responsibility of the owners of the property, Party of the First Part, until such time as the governing body exercising jurisdiction under K.S.A. 82a-301 elects to assume the responsibility for maintenance of, and improvement of drainage. Provided further that no building shall be constructed on, or within said "FLOODWAY RESERVE" nor shall any fill, change of grade, creation of channels or other work be carried on without the permission granted under K.S.A. 24-126, the Sedgwick County Engineer, or his successor.

Grantor _____, their heirs or assigns, to have full use and enjoy the premises except for, and subject to the right of the Grantee for the purpose herein granted.

DATED THIS _____ DAY OF _____, 19 _____.

PARTY OF THE FIRST PART

STATE OF KANSAS)
SEDGWICK COUNTY) SS

I hereby certify that on this _____ day of _____, 19____, before
me the undersigned, a Notary Public in and for the County and State aforesaid, came _____

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

WITNESS my hand and Notary Seal on the day and date last above written.

NOTARY PUBLIC

My appointment expires _____

SUBMITTED TO THE OFFICE OF COUNTY ENGINEER AND THE BOARD OF COUNTY
COMMISSIONERS FOR APPROVAL ON _____

APPROVED BY:

PARTY OF THE SECOND PART
SEDGWICK COUNTY COMMISSIONERS

DIRECTOR, BUREAU OF PUBLIC SERVICES/
COUNTY ENGINEER

CHAIRMAN

ATTEST:

COUNTY CLERK

APPROVED AS TO FORM ONLY:

ASSISTANT COUNTY COUNSELOR

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

May 5, 1987

TO: Dale Rea, Deputy City Clerk

FROM: Louise Olivarez, Senior Planner, Current Plans

SUBJECT: Recording of document associated with DR 86-4.

On April 15, 1987, the Board of County Commissioners approved the above-referenced special use request. One of the conditions of approval was the granting of a private access easement. Attached is the appropriate easement which has been submitted to us for recording. Please record this document with the Register of Deeds and bill Planning Department account number 755-68-360-50000-295-000-000. I would like to have the recorded document returned to me for our files.

Thank you.

LO:blw
Attachment

PL/0292/4

INGRESS AND EGRESS EASEMENT

The undersigned, / Larry Lusk , being owners of the following described property, to wit:

Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas.

hereby grant to the owners, of the following described property, to wit:

See Exhibit A

and to their successors in title forever, an Ingress and Egress Easement for the purpose of access to serve the second above described property, over and across the following described property:

See Exhibit B

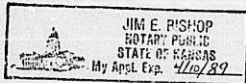
WITNESS OUR HANDS this 18th day of April , 1986 .

[Signature]
Larry Lusk

State of Kansas)
Sedgwick County) SS

BE IT REMEMBERED, that on this 18th day of APRIL , 1986, before me a Notary Public in and for said County and State, came LARRY LUSK and _____, to me personally known to be the same persons who executed the foregoing document and duly acknowledged the execution of the same.

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



[Signature]
Notary Public

My commission expires: April 10, 1989

EXHIBIT A

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BOARD OF SEDGWICK COUNTY COMMISSIONERS
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Ms. Barbara Mehl, a member of the Screening Committee, asked to ask a question. "The County Commission has asked for...is keeping the authority to fire and hire the seven department heads...but you have stated the authority to direct them is to go to the County Manager? Is each of these seven departments...are they supposed to go to the five of you for any questions...just so...?"

Chairman Scott replied, "No, no; they'll go to the County Manager. I think he explained it in this letter that he read...what the...who they would answer to and what..."

Ms. Mehl stated, "But if you're keeping the authority for his job—to hire and fire—if he doesn't particularly like what the County Manager says and he comes to the Commission..."

Chairman Scott replied, "No, no; I think he'd go through Personnel, which is directly under the County Manager."

Mr. Bayouth asked Mr. Arnold to read the part of the letter pertaining to the question.

Mr. Arnold read, 'Likewise, the 1987 organizational chart for Sedgwick County, Kansas, will remain the same regarding day-to-day operating procedures. The Commission's authority over the seven bureau directors does not affect the operational structure of the County.'

Chairman Scott added, "And you'll be getting a copy of this just as soon as he gets it."

THERE WAS A FIVE-MINUTE RECESS.

I. METROPOLITAN AREA PLANNING DEPARTMENT

DR 86-4. Request for Special Use Permit to establish a demolition construction landfill site on property zoned "F" Heavy Industrial District, located south of 91st Street South in an area between K-15 Highway and the Arkansas River.

Mr. Marvin S. Krout, Director, Metropolitan Area Planning Department, stepped to the podium and greeted the Commissioners. "We have one Planning item this morning; it's a request for a Special Use Permit to establish a landfill site for the disposal of demolition and construction waste materials on a 14-acre property located between K-15 and the Arkansas River.

SLIDES WERE SHOWN.

"It's the area outlined in heavy black tape in the map in front of you. The area is generally in the vicinity of K-15 to the east...on the right...the Arkansas River... on the west...south of 91st Street South and south of the City Limits of Derby. This request was heard by the County Commission in April of 1986 along with a request for Heavy Industrial "F" zoning. The landfill site requires both Heavy

BOARD OF SEDGWICK COUNTY COMMISSIONERS
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"Commercial zoning—"F" zoning—and a Special Permit to be approved in the County. Current zoning on the tract had been "R," which is the zoning in most of the surrounding area, the exceptions being the area immediately to the north of the City of Derby, which is the Derby Sewage Treatment Plant, zoned Light Industrial and land above that in the County is zoned Light Industrial also.

"The Derby Planning Commission and the Metropolitan Area Planning Commission back in 1986 had reviewed both cases and recommended approval, subject to a series of conditions for the Special Permit. The County Commission, however, voted 3-0 to deny both the "F" zoning—the Heavy Industrial Zoning—and the Special Permit. The applicant appealed that denial to District Court. In January of this year, the Court ruled that the Commission's action in denying the zone change to Heavy Industrial was arbitrary and capricious and ordered that the zoning be changed from Rural to "F" Heavy Industrial on the 14 acres outlined in the black tape. So that zoning today on our zoning maps is Heavy Industrial.

"With regard to the Special Permit for the landfill operation, however, the Court indicated that the Commission should have stated the factors which it was considering in arriving at its decision to deny the case, did not approve the Special Permit for the landfill but remanded the case back to the County Commission for an additional hearing, which was scheduled for this morning at which time, additional evidence should be presented by both sides—those in favor and opposed to the Special Permit for the landfill.

"This property is part of a sanitary landfill site that was approved by the State Department of Health and operated until 1984 when it was closed. Most of the filling operations, however, occurred to the west...or to the left on this map of this 14 acres in question today. The applicant today is desiring the Special Permit from the County Commission and will also need subsequent state permit approval to bring this area, which is depressed in relation to his surrounding property, back up to the grades of that surrounding property. He agrees to restrict the landfill material to only waste from demolition and construction activity and no other kinds of waste materials.

"The area immediately to the north is, as I said, the Derby Sewage Treatment Plant; that property and the other area on the east of K-15 outlined in brown tape is in the Derby City Limits. Most of the remaining area is in the County zoned Rural Residential...aerial photograph which gives you an idea of the character of the area...the area in heavy black tape is the 14 acres in question. The area to the west is the former sanitary landfill site; the dark area is an old sandpit. To the north is the sewage treatment plant outlined in black and red tape; the area to the right of the area and request is the floodplain of Spring Creek and between Spring Creek and the railroad and K-15, there are...I believe three homes that are approximate to the proposed landfill site...another photograph taken at more distance showing the site in relation to the surrounding land uses.

"This is the grading plan...one of the conditions for approval would require the final grading and drainage be in conformance with this plan and that a floodway along the southern boundary, which is part of the Spring Creek Flood Plan, a floodway agreement be submitted for the approval of the County Engineer to keep that area clear for floodway purposes.

"I will go through quickly some of the slides of the area. This is taken from west of the Derby Sewage Treatment Plant and north of the old landfill site looking south into the old landfill site—not the 14 acres we're looking at today. This is north of the 14 acres from the old sanitary landfill site looking east into the Derby Sewage Treatment Plant."

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Mr. Schroeder asked, "What are we looking at in that slide?"

Mr. Krout replied, "That's the Derby Sewage Treatment Plant in the background."

Mr. Schroeder asked, "And that right in front?"

Mr. Krout replied, "That's a roadway that has been used to get access into the south of the..."

Mr. Schroeder asked, "But standing water, is that what that is?"

Mr. Krout replied, "It's sludge."

Mr. Bayouth asked, "Is that snow?"

Mr. Krout replied in the negative.

Mr. Schroeder asked, "What kind of sludge?"

Mr. Bayouth asked, "Are you saying the white is sludge?"

Mr. Schroeder asked, "And that's on this proposed site?"

Mr. Krout replied, "No, this is off the site but in the area that would provide access to the 14 acres."

Mr. Schroeder asked, "That's an open sludge area?"

Mr. Krout replied, "The applicant will have to indicate to you, but I think this area has not been totally cleaned up—the old sanitary landfill site—in accordance with all the state requirements.

"These slides are a year old but I was out there last week, and it reflects a pretty accurate indication of what is out there today."

Mr. Bayouth asked, "It's not on this site?"

Mr. Krout replied, "This is looking at the proposed 14 acres, which is, you know...over this fill area is the depressed area that would be filled from zero to six feet. The 14 acres all the way to the wooded area, which is the eastern boundary of the proposed tract—this was taken from the old sanitary landfill site that's off the 14 acres looking at the 14 acres...this is looking at that site again looking southeast this time.

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"This is looking away from the 14 acres...old sanitary landfill site...some abandoned vehicles that are on the sanitary landfill site today...not on the 14 acres in question."

Mr. Hentzen asked, "Can you tell me...you referred to the old sanitary landfill, and this is an additional 14 acres that are not part of the old sanitary landfill?"

Mr. Krout replied, "My understanding...and County Health Officials will probably have to confirm this...is that the old sanitary landfill permit had included the 14 acres, and some filling had occurred on the 14 acres but not very much; that's why it's in the depressed...the grades are depressed relative to the remainder of the site which has been filled."

Mr. Hentzen asked, "Who owns the old sanitary landfill?"

Mr. Krout replied, "I believe that Mr. Lusk, the applicant, and this request on the 14 acres also, owns the remainder of that tract."

Mr. Hentzen asked, "And that's a picture of what the old landfill looks like?"

Mr. Krout replied in the affirmative and added, "And most of those vehicles are still there at this time."

Mr. Schroeder asked, "Is he in charge of this? There's no operations on that land right now. He's not leased that land to anybody?"

Mr. Krout replied, "None that I'm aware of."

Mr. Bayouth stated, "Question...the old landfill...they put everything in there; right?"

Mr. Krout replied, "It was a sanitary landfill so was allowed...not hazardous waste but allowed most municipal wastes."

Mr. Bayouth stated, "There's a difference in what he has been putting in against only building materials, solid waste, and no trash."

Mr. Krout continued, "...looking north of that area with the abandoned vehicles again at the old sanitary landfill site. This is taken from K-15 looking west across the railroad to one home that is between the railroad and Spring Creek nearby to this proposed landfill site...this is another home further to the north. This shot is taken again from the entrance to the landfill site; the landfill site would be beyond—in the background beyond the Derby Sewage Treatment Plant, which is shown in the background on this slide."

Mr. Bayouth asked, "How old is the landfill itself?"

BOARD OF SEDGWICK COUNTY COMMISSIONERS
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Mr. Krout asked if County Health could say when it was permitted by the state. It was closed in '84. The applicant says 1975 is when it was opened.

"After word of the District Court's decision, Planning Department convened a meeting with the staff from the Health Department, Environmental Resources, and law office to review this case again, and specifically to go over the conditions of approval for the Special Permit to see if there were any conditions that ought to be added or modified that would provide better safeguards for the County and for nearby property owners.

"We have reviewed the conditions and have recommended a revised set of conditions to you which were in your packet and your memorandum that was dated April 6. We have added five new conditions to the ones that were recommended by the Planning Commission and that you heard last year; we have modified five additional conditions out of the total of 13 that are before you today. Let me just try to highlight some of those items in terms of the existing and the conditions and modifications.

"Condition A would limit the type of material to demolition or construction waste as defined by the state.

"Condition B would require that the operation be in compliance with all state-imposed conditions. They will have to apply for a state permit even after receiving approval from this body for a Special Permit.

"Condition Three requires completion within 36 months of their obtaining the state permit...requires that they grade the property in conformance with the grading plan that you saw...that they apply cover material on a daily basis to cover the fill material.

"Condition D would execute the Floodway Agreement along Spring Creek that I talked to you about per the request of the County Engineer.

"Condition E clarifies that this landfill site will be open only to licensed trash haulers...in addition requires that there be an on-site operator on the site to monitor by the applicant during the time of the operation. The operation is being limited to Monday through Saturday, 8 a.m., to 6 p.m.

"Sections F and G require the access road from 91st Street South to the site.

Condition I requires that on written notice of a violation from the Zoning Administrator or the Health Department, the operation must cease and the violation needs to be corrected within 48 hours and cannot begin again until a hearing by this body—by the County Commissioners—is held to make sure that the violation has been corrected.

"Section J is a new condition; it would require a bond of \$10,000 per acre that's being filled to ensure that the cover material, the grading, and the seeding after the operation is completed is in accordance with the proposed plan. That's a new condition; it is normally a state requirement, but we're putting this in there to make sure that the state would understand that that's what the local government is looking for."

Mr. Bayouth asked, "Are you joking...or am I reading this right? This bond shall be in the amount of \$10,000 for each acre..."

Mr. Krout added, "...that is opened up. That doesn't mean that he would pay \$10,000, but he would have to get a bond that would guarantee \$10,000 be

BOARD OF SEDGWICK COUNTY COMMISSIONERS
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"available for each acre that opens up. He would have the choice of being able to open up one acre at a time or any number of acres at a time. So if he wanted to only fill one acre at a time, he would only have to take out the one \$10,000 bond."

Mr. Bayouth asked, "Does the City do this on their landfill that isn't..."

Mr. Krout replied, "The City is responsible totally for the landfill so, no, we don't have a bond."

Mr. Bayouth stated, "But this is strictly solid waste and not hazardous..."

Mr. Krout replied, "That's right. This is the amount of money that the staff feels is necessary to make sure that the site is properly covered, graded, and seeded after the fill goes in. If someone walks off that property and the County needs to take care of that problem and bring it to the condition that was guaranteed by the grading plan, this guarantees there will be money available."

Mr. Schroeder asked, "Mr. Krout, isn't this also guaranteeing that if somehow hazardous wastes were dumped into that facility, that they could be removed?"

Mr. Krout replied, "No; this bond would not do that. That was addressed in Item L, and I will speak to you on that. This just assures that the site will be put back into a reusable condition—a better condition than you've seen in some of the photographs on the old landfill and that it will be done at no cost to the County. In fact, my understanding is...County Health, I think, can give you some more information about it...that this is a normal requirement—a bond like this—not necessarily in the amount of \$10,000—but a bond like this is a normal requirement today at the state and their permitting of landfills, including one limited to demolition and brush.

"Item K requires the installation of monitoring wells to monitor the groundwater for a period of 15 years after the site is closed...monitor the groundwater upstream and downstream of this 14 acres...so that the County can be assured that nothing has been put in that shouldn't be put in...that it has, in fact, been confined to construction and waste material. This is a way to monitor the water quality in the area and to make sure over the long term that in fact that has been done. The costs of monitoring will be borne by the applicant/owner over that period.

"Let me skip over Item L; that has to do with bonding to take materials away.

"Item M requires that the applicant file a restrictive covenant on the property that would prohibit the use for residential purposes...would prohibit the construction with structures that would have piers that would break into the final cover...penetrate the final cover of the cover material that goes over the landfill site and would require Health Department approval in order to use this land in the future for any food crops.

"Item L was a suggestion to...what we needed also was not a bond just to make sure the site was clean but that what if, by mistake, hazardous wastes went into the site; what assurance do we have; how can we get that material out? Item L was intended to be a bond to pay for the cost of excavating and disposing of any wastes that were found on the site to be hazardous and needed to be removed. It

BOARD OF SEDGWICK COUNTY COMMISSIONERS
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"was recommended to be in the amount of \$100 per cubic yard of waste; that's approximately the cost of removing and disposing of wastes like this if they were found.

"Since we developed that recommendation, we've been in contact with the applicant and also with bonding agencies. We verified the applicant's claim that this would be very costly...I mean very costly. The cost of a bond like that, if it were obtainable, and there's some question as to whether or not this owner or anyone else would really be able to obtain a bond like this on this site, would require a premium of \$300,000 per year. It would have to run every year for the three years of the operation and for 15 years after the operation to make sure that over that long period of time, there were no hazardous wastes detected by the groundwater wells.

"The Planning staff would suggest to you that maybe the ultimate guarantee, but that that kind of condition would be very difficult to comply with, and it would not be a reasonable condition for the County Commissioners to impose. We think there ought to be an economically feasible way to fill a depressed site like this and there also ought to be a way to dispose of construction wastes that are occurring in the urbanized area. We suggested an alternate condition which I passed out to you when this hearing began. The purpose of this condition is rather than try to deal with the problem after the fact, to try to provide for more effective enforcement and monitoring during the operation itself.

"This applicant is going to require a burden on the County Health staff in terms of proper monitoring of the site to make sure that the right materials are going in, the hours are being complied with, and all those other conditions that we talked to you about. Then that...County Health and Planning feel that that is going to require more manpower than you currently have on staff to do an adequate job of monitoring and that it would be appropriate to require the applicant as a condition of this approval to pay for the part-time expenses of the additional staff resources that would be necessary to properly monitor the site. The Health Department suggests that at least in the first year that that amount would be about 20 percent of a person year or \$6,000.

"I think it would probably be appropriate for me to read this substitute condition for Condition L into the Record. The applicant/owner shall pay a yearly fee to Sedgwick County to offset the cost of landfill inspection by the County Health Department. The fee shall be paid prior to operation of the landfill, and shall be \$6,000 for the first 12 months of operation. The fee for subsequent periods shall be established after review and recommendation by the County Health Officer to the Board of County Commissioners. The maximum increase in the fee shall be limited to 100 percent for any 12-month period. In no event shall said fee exceed the actual direct and indirect cost of such inspection.

"We are suggesting that you substitute that condition to provide for additional staff inspection, resources for the condition on bonding to remove wastes. The Director of Environmental Resources has addressed some reservation about that substitution; he's available to address any concerns you have...as well as representatives of the County Health Department."

Mr. Bayouth asked if this had been done before in Sedgwick County—the fees.

Mr. Krout replied, "No; not to my knowledge and not to the County Health's knowledge."

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Mr. Richard Rumsey, representative of the applicant, stepped to the podium. "This area apparently has been used as a dump of one sort or another since 1962. Mr. Lusk acquired the property in 1969, operated it at that time under no license whence none was required as I understand it at that time. He leased the property in 1975 and in the early 80s, instituted litigation against the then tenant to comply with certain regulations, to cancel the lease, and to close the landfill. He subsequently was given a 10 percent interest in the tenant's corporation and he lost, in my opinion, his control—his lever—and it was not operated, as I think has been emphasized before, in a manner maybe that it should be.

"The landfill closed in 1984. He, in the ensuing months, worked with the Planning Department...not only of Sedgwick County but also of Derby...he worked with the Commissions in both Derby and Sedgwick County—the Planning Commissions, and they came up with a list of regulations that have been read to you in part today that you had before...some of you had before you the last time this came up. Some of them were extremely prohibitive, I thought, but Mr. Lusk was willing to comply with them.

"In any event, after these were for the most part adopted and approved by Mr. Lusk and also the Planning people that were at least helping to formulate these requirements and regulations, he went before the Derby Planning Commission. He was a member. He sat in the audience, and they passed and adopted this proposal 5-0. It then came before the Sedgwick County Planning Commission, and it was approved 5-2; one of the people that voted against it at that time thought that Mr. Lusk should post a \$10,000 or \$5,000 bond to cover each acre as he developed it. Mr. Lusk at that time was unwilling to do so; he since has agreed to do that and agreed to do it at the last hearing in front of this body. As you know, it was denied 3-0 the last time we were in this position.

"The District Court, in addition to the findings that have been read to you, made several others. They found that the highest and best use of this property was Heavy Industrial. They made a finding that the character of the neighborhood...the zoning and uses of nearby property, the suitability of the subject property for the use to which it has been restricted, the extent to which the removal of the restrictions were detrimental to nearby property, the length of time the subject property has remained vacant as zoned, and the relative gain to the public health, safety, and welfare all dictate that the property should be zoned "F" Heavy Industrial District...that was the ruling of the District Court.

"Right now, without a permit...and we're certainly not saying we're going to do these things, but I think it might be interesting to know what can be put in that area right now without a permit. I'm not going to read all of them. Mr. Lusk could put in an acetylene gas manufacturing plant; he could put in an alcoholic beverage manufacturing plant; he could put in asphalt manufacturing or refining; he could put in blast furnaces; he could put in boiler works; he could put in tar-asphalt roofing or waterproofing manufacturing; he could put in a vinegar manufacturing plant; he could put in salt works; he could put in a rubber manufacturing company, rock crushers; rolling mills...all of these are allowed presently on this particular piece of land. Again, Mr. Lusk isn't doing that, but you should know what...at least the Court felt...could be put in this particular area.

"Now I've asked Mr. Jack Brown of the Health Department to come up here today. The requirements and regulations that have been imposed on Mr. Lusk...he's willing to comply with anything that's reasonable, anything that's fair, and anything that you would impose on anybody else asking for a landfill operation utilizing construction and demolition materials, and that's what it's limited to now.

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"They've included in these requirements a clause that reads like this: If you are in any way in violation, you've got 48 hours to correct; he can live with that. I presume those would be working hours. Then it says, even if you correct it, you have to appear before the County Commission; that doesn't seem fair and it doesn't seem reasonable if he corrects it that he would have to appear before the County Commission. I don't mean to be facetious but if you were told to build a jail and the restrictions and the regulations were set out and you built according to the plans, specifications, and restrictions...would you expect to be called back before the District Court and questioned on your compliance with those regulations? This is what you're asking Mr. Lusk to do. It seems a little bit unreasonable.

"You've put in a clause, and I don't know whether it's fair or not fair, but all of the trucks are supposed to be licensed by the County. I don't know and some of you, I'm sure, are more familiar than I with this...whether all contractors who haul construction materials are licensed by the County. We're not talking about trash here; we're talking about demolition and construction materials. I don't know whether that's reasonable or not...maybe it is, maybe construction people should become licensed.

"Then they're talking about imposing a \$6,000 fee on Mr. Lusk so that they can come out and inspect him. I've asked Mr. Brown to bring up with him today...I talked a couple of days ago with the Assistant County Counselor...to bring up with him any requirements that have been imposed at any time on any other landfills, whether it's for trash or whether it's for construction material requiring a \$6,000 or any fee for that matter for the County to come out and monitor or view the landfill. I just ask Jack, 'Has there ever been such a requirement?'

Mr. Jack Brown of the Health Department replied from the audience in the negative.

Mr. Rumsey continued, "Maybe Mr. Lusk should pay something, but I don't know whether he ought to pay 20 percent of a County employee's wages to come up and do what nobody else is paying anything for.

"I sometimes wonder that if these requirements and restrictions that were placed on him in April of 1986 were sufficient, why are we having to extend them; why today do we need more? I don't know. Maybe they're necessary, and I'm not saying that we aren't going to comply or will comply at this point, but I think the Commission has an obligation to be reasonable...even if you think Mr. Lusk is in the minority. I think you...and it's been emphasized today about sound government; I think it's a good point, and I'm sure you're all interested in it. But sound government means, I think, being fair and reasonable...not only to the majority but also to the minority. Mr. Lusk, I suppose, could leave this property maybe the way it is; he doesn't want to do that.

"We have an engineer with us that will state that this landfill operation will eliminate some pollution. The rock, the dirt covering...you've got 48 hours' notice if he makes a mistake...you've got a cover that's guaranteed and bonded by \$10,000 bond; the state requires \$5,000 as I understand it...and also the drainage, as I understand it, is away from the creek and will be into the river—the groundwater drainage, which I think some people have expressed some concern about.

"The only thing I'm saying at this point is that Mr. Lusk has been arguing and fighting and trying to cooperate, really, with at least the administrative bodies since sometime in 1985 when he first applied for a permit and a zoning change in Derby. They now want...they're putting roadways in...and a lot of these requirements are reasonable, and I don't mean to say they aren't. Maybe the ones

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"I've talked about are reasonable. It doesn't seem like maybe they are. As long as you treat him evenhandedly, fairly, and reasonably, then I think he ought to comply with whatever regulations or requirements that you've got.

"At least one of these arrows that you had on your screen that somebody was calling sludge is the City of Derby property; it's located on the City of Derby. I don't know...there was at least one other arrow that was pointed toward City of Derby property. Certainly the property has not been used since 1984, and I'm sure it's in a run-down condition. But we'd certainly emphasize and urge you to consider granting this permit. Thank you."

Chairman Scott asked for questions.

Mr. Hentzen stated, "Mr. Chairman, just a word of clarification...Mr. Rumsey, contractors, of course, have to have a license to operate here in Wichita and if they haul their own trash, they have to have a trash permit on that truck. I'm not sure that's what the requirements said, but I imagine why the suggestion came forward was so that that is a method of control of what's dumped there.

"The other point about the fee for inspections...it may not...you implied that it might be unfair because we hadn't done it before. I'm going to suggest that we make new improvements in our operation all the time, and this just might be the first time we made this improvement if that is determined to be necessary. So I don't want to let you imply that we shouldn't do it or can't do it; I just want to tell you that if it's a good idea, we probably will do it. That's all I had to say."

Mr. Bayouth asked, "How much is a trash hauling permit? I have no problem living with the control, but for a small independent contractor that may haul one load of solid waste to a fill site...which we still have to find a place to dump it...I don't think he should pay the same as a trash collector that goes door to door collecting everything from garbage to hazardous waste and everything else. There can be a hardship there somewhere, and L..."

Mr. Richard Hunter, Environmental Health Director, City-County Health Department, stepped to the podium. "As Mr. Hentzen indicated, this is a method of control. Right now, a hauler that operates entirely within the City of Derby would not be subject to the County licensing requirements, and this would require then that any vehicle, even one originating within the City of Derby."

Mr. Bayouth asked, "What about the City of Wichita?"

Mr. Hunter replied, "They would be required to have one because then they would be operating outside the County or outside the City limits."

Mr. Bayouth stated, "Again, it's back to the fees for a small contractor to haul concrete or whatever; it reaches a point where it's prohibitive. You know, I can understand the control, but I think they should be licensed in a different manner with a lower rate...and they're not in the trash hauling business; they're not making a living off that trash or solid waste."

Mr. Hunter stated, "We use the fees to provide for inspection of the vehicles, and there are certain costs associated with that that the fees are an

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"attempt to recover: they vary according to the type of vehicle that's involved...a packer truck costs more than a flatbed type truck or dump truck."

Mr. Bayouth asked, "Do they use packer trucks to haul solid waste?"

Mr. Hunter replied, "They would not for this demolition waste, but these types of trucks would fall then in the lowest license fee category."

Mr. Schroeder asked, "If one of the large trash hauling firms—BFI or somebody like that—were to use one of their large containers to fill with demolition to put into that dump, do they not come under the same restrictions then?"

Mr. Hunter replied in the affirmative.

Mr. Schroeder continued, "Then they are making a living at that because that's their business; is that right—demolition materials?"

Mr. Hunter replied, "That's correct."

Mr. Schroeder continued, "...just because a contractor tears down his own building and builds a new one doesn't mean that's the only kind of people you're going to have dumping into that facility; isn't that right?"

Mr. Hunter replied in the affirmative.

Chairman Scott asked for the next speaker.

Mr. Delamater, with Delamater Engineers, stepped to the podium. "I'm a consulting engineer and licensed professional engineer in several states with about 50 years of experience in construction and engineering work. I might say, incidentally, regardless of what some people think, I'm probably about as rabid an environmentalist as you'll find anywhere around the country because I don't like jobs which destroy the environment. As a civil engineer, I think that's basically a fact of life because civil engineering, in fact, is an environmental protective profession; it involves clean water, sewage treatment, flood control, water conservation—the whole range of protecting natural environments.

"My first job was with the Corps of Engineers up on the Missouri River where we were doing a bank stabilization to protect the banks. The river had been washing out whole farms and destroying country a half mile wide until we put in the levees and jetties which control it. Beyond that, I might note, I've had about 12 years of experience with public agencies all the way from the City, County, State, and a couple Federal agencies; I'm probably the only one in captivity with that record. So I do understand the problem for public agencies and their need for control of such activities. I went through the saltwater deal up in the Burton Oil Field and I went through the manure dumping for cattle feeding operations, etc.

"When I set up as a consultant, it naturally followed that a good part of the work I would do would be in water resources—design watershed dams, did a lot of stream maintenance, bank protection, and that sort of thing.

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"When the landfill situation arose and the bill was passed to provide control over landfill operations and require plans, the firm in which I was a partner immediately went into that work, and we designed landfills for several counties in this area, and also, of course, for Mr. Lusk as a private operator. It was not Mr. Lusk; we did not work for him; we worked for the operator to whom he had leased this ground. We did design a landfill which was designed to supplement that which had already been built which came partway across the property; our landfill was to extend that same slope out to the riverbank and, therefore, build up the entire area so that it could drain off towards the river and not allow ponding of water on top of this garbage.

"We did do the plans; they were adequate, and they would have worked had they been followed. Unfortunately, they weren't followed; they weren't inspected...as near as I can find, with all due respects to the public agencies involved. Neither the City nor the County evidently paid any attention to it. The plan called for two monitoring wells, which I understand were never even installed; they never were monitored, apparently. So the man doing the work went out there and did what he cotton-well picking pleased, and he wound up by dumping trash about eight feet higher than the plan called for and went beyond the limits of the plan...didn't put in any monitoring wells. So now we wind up with a mess out there which is definitely a hazard to the environment.

CHARTS WERE SHOWN.

"Part of this...you've already seen. This entire area that Mr. Lusk owns...this being the riverbank...the sandpits...the road leading over to K-15...Sewage Disposal Plant in this area. The original landfill before the first permit was in here...the other landfill, which we designed which was not complied with, was this area here which you can see from the contour, wound up with a mountain about eight feet high...to show a little more clearly...an enlargement of the specific areas involved. We show on there the existing contours...to demonstrate what they mean...put the red arrows to indicate where the water is draining right now—this way off the high fill down into the low spot in the middle; part of it draining off back to the creek. It winds up with a trough right down through the middle which is six or seven feet below—about eight or ten feet—below the high spot. This is just the perfect bowl sitting in there to collect rainwater and no place for it to go except to drain down through that old landfill. From where I sit, that's probably a perfect invitation to carry contamination down through that old fill to contaminate the groundwater.

"There's only two ways to stop that that I know of; one is to cover the whole thing with a rubber sheet and that's probably kind of expensive for 14 acres. The other way is to build it up with inert material high enough to form a roof over it so that you can drain off the water that falls to where it won't be harmful; that's exactly what the plan is that we're proposing here. If we put fill in here...fill it up high enough so that all will drain off this direction, basically, down over across the other several acres of ground...eventually would reach the river or would soak into the ground. The main thing was to drain away; it would eliminate the hump and make this a solid continuous slope all the way down across the entire 14 acres. That would pretty well eliminate any seepage down through the fill especially when you've got eight or ten feet of material compacted in there with a solid cover on it.

"There's two or three ways to fill this. I think one suggestion made by one of the neighbors, I understand, was to fill it with dirt; that would be fine except for two or three things. In the first place if you put dirt in there, it's going to settle too...come right back to the same thing unless it is totally compacted, foot by foot, all the way up to the top just as you were doing a highway fill. Even then, you will have 14 acres of dust blowing across the neighborhood. We did some figuring and came up with 80,000 yards of dirt, and that's a lot of dirt. Figuring

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"\$5 a yard, probably a pretty good guess, I think a minimum of \$3 for contractors furnish fill compacted in place—more likely about \$5. You're talking about anywhere from \$250,000 to \$400,000 to fill this with dirt and pack it so it would drain. I don't think anyone in his right mind is going to spend \$400,000 or even \$250,000, which is about \$16,000 an acre to correct this situation; in addition, dirt is a valuable commodity here. You pay \$10 a load to put it in your backyard; we need it every time we build a bridge or highway—dirt for compaction. I think it would be an economic stupidity to take 80,000 yards of dirt out there...bury it in a hole and cover it up, so it isn't even reasonable.

"Another way and the better way to do it is to fill this with totally inert, insoluble material which can be compacted to form a solid, inert base and then put soil on it. I might note, incidentally, that if we're talking about construction material—this is bricks, concrete, maybe chunks of lumber, wallboard, you name it—that kind of stuff if packed down heavily with a heavy packing machine, can be packed and will stay solid. It will make a base which is not going to move probably ever; whereas compared with trash and regular landfill...that stuff you can pack it all you want to but it's still going to spring back. You can't pack garbage, tin cans, and bottles. This kind of material can be packed and can be made a solid...even water runs through it. You're not going to dissolve anything which will damage the environment underneath. As far as we're concerned, it's the perfect way to do the job.

"There is another method that's been done, which would probably be the easiest and fastest, especially if you've got a sand pump, and that would be to pump that full of sand; that's been done one or two places around here...pump 80,000 yards of sand in there, you'll also have several million gallons of water soaking down through that landfill. I don't think anybody is going to tolerate that.

"I could go back in again in my checkered experience...one of my jobs was with the County Engineering Department; I was Acting Engineer for some time. At that point, the County Engineering Department was the only agency that had anything to do with control of drainage and stream maintenance and that sort of thing; in fact I was also Chief Engineer for the North Wichita Drainage District. We did any work that was done on the riverbanks. In '43 or '44, we ran into a situation on the Big Arkansas River north of MacArthur where the River makes a big sweeping bend...Broadway here, Hydraulic down there...MacArthur Road here, Rock Island tracks...Interstate coming up here...somewhere in this area, we had a big area bigger than this Courthouse which had washed back into the bank which was simply a mudhole filled with weeds and trash and no good to anybody. We decided the only way to take care of that would be to fill it with suitable material.

"We went down along the bank and put in a row of jetties to establish a bankline and actually separate the river from the opening...then we started a fill using dry trash—rock, sand, demolition material...at that time, trash haulers in Wichita hauled only dry trash; there was no garbage involved. We filled that thing, and we put a pump in and pumped sand and used a bulldozer and mixed that stuff constantly...kept a constant mixture going of rocks, sand, lumber, you name it...to fill that whole area up to the bank level...put the brush along the banks so it would give us some bank protection...filled it up to completely take care of that wash-out. I've looked at this aerial photo to see if I can figure out where that was, and I can't even find out where that was...lines where I can kind of vaguely make out where it might have been, but I'll defy anybody to find out where it is or where it's any different from the land next to it. I think that is a case where this precise sort of thing did work very satisfactorily to no one's objection whatsoever, and it proves rather conclusively that this system will work."

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Chairman Scott asked how much more time Mr. Delamater would need.

Mr. Delamater replied, "Well, about another five minutes, I suspect. I have some slides I'd like to show."

Chairman Scott asked, "Do I have a motion to give him another five minutes?"

MOTION

Mr. McCray moved to extend five more minutes to Mr. Delamater.

Mr. Bayouth seconded the Motion.

Chairman Scott asked for discussion; there being none, the vote was called.

VOTE

Chairman Tom Scott	Aye
Chairman Pro Tem Mark F. Schroeder	Aye
Commissioner David Bayouth	Aye
Commissioner Bernard A. Hentzen	Aye
Commissioner Billy Q. McCray	Aye

Chairman Scott announced, "You have five more minutes, sir."

Mr. Delamater continued, "I would like to have time to complete the presentation.

"I'm not even sure myself that this kind of fill comes under the landfill provisions because it does not involve household garbage, trash, or anything of that sort. I have gone through these requirements that are set up and to me, they're a little extreme. They're conditions which were not made, as said before here, even for a trash and garbage dump. But there is a need for this kind of fill to get rid of construction materials, and I don't know of any better way to solve the problem. Of course, the attorney mentioned he could do a lot of other things with that ground down there.

"As to future use of this ground...again, with this sort of fill I see no problem with it at all; I wouldn't be afraid to set my house on top of this fill outside the possible fact there's some gas up through it. It is an excellent way to build a roof over this area and provide for drainage.

"These slides...I checked...a little bit of junk..."

Mr. Schroeder asked, "What are we looking at?"

Mr. Delamater replied, "This is looking out across this area we're talking about today...a hole down here that needs to be filled...more trash...private bunch of junk...then I went over and took pictures of the completed fill right next to it.

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"That's the kind of thing we're talking about winding up with that you can plant that...do anything you want to with it. It's a good use of the ground."

Mr. Schroeder asked, "Is that a recreation area?"

Mr. Delamater replied, "No; it could be. A lot of landfills are used for that; that's one of the best uses for them. This right now is simply a vacant area with grass and weeds on it. I went down and took another picture of that...again I can't find where that fill was so it's completely covered up.

"I stand before you strictly as an engineer, and I'm not going to argue law. I think this is unquestionably the best possible solution to this problem. As to requirements, I'm baffled at some of them...will say from the Health Department's...and this is probably the most important one...they didn't mention maintaining the finished grade on this job, which should be done in order to make it work.

"The whole purpose to this is to get a cover over the solid waste which will be impenetrable, which will drain off the water, and which will do the job economically and quickly as possible and without any possible threat to the environment in the area...in fact, it will solve a problem I don't think people even recognize they have. Thank you."

Mr. Schroeder asked, "What do you consider construction materials...demolition materials...what would..."

Mr. Delamater replied, "Anything you would haul off a construction site."

Mr. Schroeder asked, "Would that include things like insulation, Styrofoam, tar paper, asbestos...if they're not checked and balanced by..."

Mr. Delamater replied, "No, no; don't say asbestos; that's a dirty word. You'd have to get a permit from the President of the United States on asbestos."

Mr. Schroeder asked, "Will there be somebody at that gate to check each load to make sure there's no asbestos?"

Mr. Delamater replied, "There's no one in his right mind...I think Mr. Hentzen will agree, that's going to touch it with asbestos..."

Mr. Schroeder stated, "We hope everybody's in their right mind then."

Mr. Delamater stated, "That's controlled...that's a federal regulation..."

Mr. Schroeder stated, "I realize that."

Mr. Delamater continued, "...packed up and sealed in bags and hauled out to a special..."

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Mr. Schroeder stated, "O.K. Let's take the asbestos off there. Styrofoam, tar paper, and insulation...do you think that would be a contaminant to groundwater?"

Mr. Delamater replied, "I don't know how...pretty inert. None of it will dissolve in water that I know of."

"Of course what may happen...we do a lot of basement inspections and I get around some of them before they backfill the basement. If they don't want to haul it off, they just dump all the stuff next to the house to feed the termites and bury it...make it too tough on them. I think you need to encourage contractors to take the stuff down there and fill it...incidentally it would include also pavement."

Mr. Rumsey returned to the podium and asked, "Mr. Delamater, do you feel that a permanent restrictive covenant covering that property prohibiting residences or any type of break to the cap is unreasonable?"

Mr. Delamater replied, "I think that's kind of stretching it a little bit. I said a while ago, I wouldn't be a bit afraid of setting my mobile home on top of that thing. The only reason you wouldn't...if you had a shallow dump, it will generate gas and you would not want to go out and sit on top of an ordinary...as Mr. Hentzen says, a trash dump. But this is not a trash dump; this is a landfill of solid material. I see no reason for these super-duper restrictions. I don't know of any purpose that you couldn't use it for."

Mr. Schroeder asked, "I don't know who can answer this...once this project is completed, what can be built on top of that? Can any structure be placed, built, or erected on that property?"

Mr. Rumsey asked, "May I? As I understand the restriction at this time and would be for all time...it would eliminate any human habitation so nobody's house could ever be put on there—not five years, not ten years after it was completed. Further, they have a requirement where apparently no pilings could even be put in the ground so apparently...I don't know what requires pilings. The only thing that I understand could be put there could be a floating foundation. You probably know more about that than I do. But what it amounts to is almost...again putting the property back to no constructive use."

"We can understand where no crops should be grown on the land without first obtaining the Health Department's permission and if those requirements are reasonable, then it's all right. That's the reason I asked Mr. Delamater if he had an opinion along those lines because it didn't appear to me to have an everlasting restriction that prohibits, really, maybe use that could be on there according to Mr. Delamater after it was completed."

Mr. Schroeder stated, "So you're saying that no housing quarters of any kind—mobile, permanent—could be put on that property."

Mr. Rumsey responded, "No. You could probably put...well, as long as you didn't break the cap..."

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Mr. Schroeder asked, "...so you could put mobile homes on that property?"

Mr. Rumsey continued, "...that would be possible, apparently. Well, no; they also...excuse me...they also have a clause that no human habitation can exist on the property so you could not put mobile homes on unless they were used for something other than humans."

Mr. Richard Hunter returned to the podium. "We strongly support that portion of the clause that would require that no human habitation be on that property. That surrounding area and area beneath that property still was at one time a municipal dump and would be subject to things like gas generation, perhaps contaminants in the soil that people should not be in long-term, day-round contact with. The purpose of the provision that they not install footings or other foundation structures that penetrate that cap is that cap is there to prevent the very percolation of water down through the waste that Mr. Delamater mentioned. So we would not want it breached once it was in place and vegetation established."

Chairman Scott asked for anyone else in favor of the Permit.

Mr. Delamater returned to the podium. "I see no possible excuse for the requirement for a permit to grow crops on this. There are places in the country where we irrigate crops with sewage effluent. I think that would probably be one of the very best uses of it. I can't conceive of any way that there could be any problem with growing crops out there."

Chairman Scott for asked persons who opposed the item to speak.

Mr. Russ Davisson, Attorney retained by various landowners surrounding the property which is the subject of this request, stepped to the podium. "I asked to appear for them this morning and discuss with you their opposition to the Special Use Permit. Before I make my remarks, there are a few of them who have some remarks they themselves would like to make, and I would like to give them that opportunity at this time."

Ms. Norma Moore, resident in the area, stepped to the podium. "My family, which also includes my parents, Roscoe and Carol Warren, live south of Derby along Spring Creek, a small creek that borders our entire property line from north to south on the west side. Our property is also across the creek from the proposed dump site.

"At this time, I have a couple of pictures I'd like you to look at of the landfill as it is; they were taken this weekend. Some of the pictures Mr. Delamater showed you where he said there was water is actually sewage sludge from the Derby Sewage Plant on Mr. Lusk's property.

"We've lived in this area since the early 1970s, and we're sadly familiar with Larry Lusk's past involvement with the operation of the former Derby Dump. He was not only the landowner but was also part owner and operator, along with Jerry Ingstran. This dump was a health hazard and a travesty and as much as Mr. Lusk would like to distance himself from it, he was a very involved player in that troubled, shoddy operation.

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"Today we, as neighbors, are being asked once more to endure three more years at the very least of a similar operation. I'm well aware there's a difference between solid waste, municipal trash, and demolition construction trash but in some respects, it's negligible. You're still going to have some blowing; you're going to have papers from construction materials, but it's a similar operation. But trash is trash, and the operator hasn't changed. The location has shifted only slightly; it's closer now to Spring Creek than it was to the Arkansas River as it was in the past.

"Since 1983 we have attended meetings, wrote letters, signed petitions, and spoke with state and local health agencies and/or administrators on almost a daily basis. We have followed every rule to try to bring some relief to our property and our peace of mind. Here we are in 1987, still facing this same possibility. I hope we can learn from our past, and I hope we won't continue this and won't let history repeat itself.

"Please Commissioners, particularly Mr. Schroeder who is our representative, be our strong voice and put an end to this once and for all. Thank you."

Mr. Bayouth asked, "You moved there obviously, but the dump had been there prior to your building or moving in?"

Ms. Moore replied, "My parents bought that land in 1968; Mr. Lusk bought his about 1969 I believe he said."

Mr. Bayouth asked, "You built there after the dump...the dump was started in '62?"

Ms. Moore replied, "I can't give you exact dates..."

Mr. Bayouth stated, "You've got Derby Sewage; you've got a dump site; we have an opportunity to clean it up with these regulations that God would have a tough time living by. I'm sure Mr. Lusk is...he hasn't exactly made this the garden spot of Derby in the past, but we have an opportunity to clean it up, well monitored and supervised by the County. Three years isn't very long. If it remains the same, I wouldn't want it the same either...so what I'm saying is...there has to be a fair compromise. Solid waste and trash are still two different things.

"If it's a well managed fill site, I think we can make everybody happy and clean it up within a reasonable time...and not to exceed a certain time. So we have the power to do that. I just don't...I want to be open-minded; I still haven't made a decision as of yet. I want to be fair to everyone, even you...and we have an opportunity to clean this mess up. That's where I stand."

Ms. Moore stated, "I guess what I would say to you is, 'Yes, I want the mess cleaned up as well, but I feel like we had that opportunity when it was closed out the first time, and it wasn't.'"

Mr. Bayouth stated, "Obviously we didn't have the Environmental Protection, research, and everything else we do today. Again, no matter what anyone says or thinks, we have to have a place to dump solid waste, no matter...somebody...and we're certainly not introducing anything new and different into the area. I would have an easier time living with this than trying

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"to find a new location, believe me, because we're not introducing anything new and different. So, that's where I come from on this. I think overall, if we follow the guidelines and recommendations of the Planning Department, I think we can be proud of what we finish out there...and well supervised and monitored."

Ms. Moore remarked, "That's been part of the problem in the past."

Mr. Bayouth added, "Because you may wait 20 years to get it done any other way."

Mr. Schroeder stated, "Mr. Chairman, if you please..I think there was a statement made by the attorney though that they had a problem with the \$6,000 a year because this isn't something that's been done in the past, so who's going to monitor that if they want that stricken?"

Mr. Bayouth responded, "Again, we have provided services before at the cost to the County, and there's an area that we're going to have to look into. Maybe we can charge an inspection fee for every time they go out and inspect it; I don't know. There must be an answer to this, and I'm sure we can get it done."

Chairman Scott asked for the next speaker.

Mr. Clarence Cherry, owner of the property to the south, stepped to the podium. "In the previous one, we had a lot of trash blow over and a lot of it came down the creek, as you could see by the high bank that it has built on the west side of the creek. And I believe that this has kind of bottle-necked the water that comes down the creek and as they build on up, they're going to force the water in quicker with the cement and the roads they're putting...I don't know whether this is going to do anything to Derby; that's their concern. But if it does, I think maybe that could be looked at.

"I'm like Norma...that if you take care of it, fine; but if it's not, somebody's going to have to take care of it...is the Commission here going to do it, if we have the same existing problem at the end of it? Are you personally...have you gone down and looked at it...walked over it? I think before you make a decision, you ought to walk over it. Thank you."

Mr. Bayouth stated, "Mr. Chairman...the only thing I can say is if they comply with their drainage plan...and again, that's going to drain toward the river...and they comply with all of these requirements, again, the whole neighborhood's going to benefit from it. I think you have a great opportunity to clean it up at Mr. Lusk or whoever...I don't know who they are...at their expense, and I'm sure that now that he sees there are these requirements...I think we can get the job done, and I think you'll be happy when it's completed. The way it is, certainly no one's happy."

Mr. Bob McHenry, representing the McHenry land immediately to the north of the dump, stepped to the podium. "We operate a nursery and a farming operation north of the area.

"I would like to state that I've had an experience with this since the early 50s with the dump inception in the early 60s, and there were no regulations at that

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"time. About everything went in there that was possible. Over the years, we've had continual trouble with smoke from unmet fires, and we've had to keep our crews out to pick up trash. But this is all past history. It's closed down now; it was ordered to be closed and filled, and we're at peace with everything.

"We did establish in the late 50s or early 60s...Soil Conservation established a drainway and drained our lands for nursery production. When the dump came in, they diked it over, and it's no longer in effect. It's ruined this aspect of the drainage plan. In the 40s the Corps of Engineers put a dike along the Arkansas River; this dike is still in place on our property. On the dump property, it's been used for fill. They used it to close out the previous landfill.

"As I see it, our water table down there is very high; we're only about six feet to water. We have a vested water right just to the property to the north, and we're concerned about the pollution of the water. I would say...and not to keep you unduly long on this matter, but we're at peace with it now; it's been a long standing thing of aggravation. We'd like to protect our land by the permanent closing of this site. Also, we have neighborhoods developing to the east; there's probably five houses under construction at the present time. They have to look into this area all the while.

"I'm surprised that the City of Derby isn't here because they are an adjacent landowner to this area as well. Thank you."

Mr. Bayouth stated, "Excuse me, the City of Derby also has a vested interest; they have a Sewage Disposal Plant there."

Mr. Davisson returned to the podium. "Thank you. I will try to be as brief as I can. There are, however, a number of things that we have to cover if we're going to address those questions that the Kansas Supreme Court says that we must address as we consider whether to either grant or deny a Special Use Permit. We need to understand, I think, the position that we are presently in. We are in a very unusual position in that this matter has previously been considered by the Commission; the Special Use Permit was denied 3-0.

"The matter was taken to District Court, and we have an unusual order out of the District Court that finds that the Commission was arbitrary and capricious in denying the zoning request. But it also specifically provides that the Sedgwick County Commission's denying the Special Use Permit was not arbitrary and capricious; what the Court found was that there was not a sufficient recording of those things that the Commission relied upon in coming to its conclusion—that it should deny the Special Use Permit. Whether the Commission would choose to approve this Permit or deny it—in either case, I think that it's clear that the Commission is going to have to make specific findings of fact...and those findings are going to be judged against a standard of reasonableness. If they're reasonable, the District Court is not going to substitute its judgment for the judgment of the Commission. So I think it's clear that legally the Commission has the authority to make the decision that it sees is the proper decision to make in this instance and is not in a situation where they are being forced to do something by the District Court that they don't want to do or don't think they ought to do.

"It's helpful to have Mr. Delamater here, and it's helpful because I think as we look at the history of this project, we find that it starts after the landfill was started back with the original work he did when they sought authorization to begin an approved landfill project with an operating manual and design details that he prepared that were submitted in January of 1976. That operating manual and those design details were submitted for Derby Landfill Refuse Service, Larry

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"Lusk, Owner. What's interesting about that is that many of the requirements that we are seeing in the document that's been presented to you by the Planning people are requirements that Mr. Delamater set out for the operation of this landfill back in 1976 and throughout the period of time from 1976 to the present, those conditions have never been met.

"Now Mr. Delamater recalled that there was provision for two monitoring wells; if he'd look closely, there were requirements for four monitoring wells in his initial design. None of those wells have ever been drilled and you find in the conditions that are being proposed...that we go in and create the four monitoring wells.

"You'll find requirements for grading...that we cover daily and that we close out the landfill with a two-foot cover. As I understand it from talking to the people who work in this area, the top foot of that is supposed to be top soil and not simply the sand. All of these things have been set out; none of these things are a surprise; none of these things have happened.

"We go back to 1969...a complaint to the Wichita-Sedgwick County Department of Public Health about this landfill—accidental burning on the place; the burning became a problem and eventually...the Fire Department was sent out so many times...enough pressure was put on, the problem was stopped. The person that they contacted was Larry Lusk.

"A letter in 1970 that was sent from William Cross, Assistant Environmental Health Director, to Mr. Lusk: 'Preliminary notice is hereby given to cease burning in open dump activities; otherwise we're going to shut it down.'

"We come along to March of 1979, and Mr. Delamater was asked by Mr. Lusk to go out and again review the operation of the dump. He identified for Mr. Lusk the problems—the ways in which the landfill was not being operated in compliance with the original design that he had set out. The dike was not constructed, the monitoring wells were not installed, the road..."

The five-minute timer sounded and Chairman Scott asked how much additional time would be needed for the presentation.

Mr. Davisson asked for seven more minutes.

MOTION

Mr. Bayouth moved to extend the additional time for the presentation.

Mr. McCray seconded the Motion.

VOTE

Chairman Tom Scott	Aye
Chairman Pro Tem Mark F. Schroeder	Aye
Commissioner David Bayouth	Aye
Commissioner Bernard A. Hentzen	Aye
Commissioner Billy Q. McCray	Aye

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Mr. Davisson thanked the Commissioners and continued, "Before the 1979 or 1978 report found the same thing. Interestingly enough, what he found that Mr. Lusk was doing is...instead of using the top soil that was available to cover the landfill, he was selling the top soil. Mr. Delamater suggested to him that would create a problem on down the line, and we find that it did. What they ended up covering the landfill with was sand—just the thing that Mr. Delamater suggested a few moments ago would not be the appropriate thing to have happen. We're supposed to have a top soil cover, and we simply don't have it.

"There was, in fact, at some point a problem that developed between Mr. Lusk and the person who operated the site with whom he had the lease. Mr. Rumsey got involved in that, and one of Mr. Rumsey's letters to a Mr. Charles Lind, who was with KDHE, indicated that it would appear that there is sufficient materials available to allow for the filling in of the site and the appropriate grading of the site so that the site could in fact be closed down, but that didn't happen. We have this grossly disproportional situation where we built up one area, one area so low, and now...well, golly, we're six or eight feet over where we were supposed to be; we want to come up the six or eight feet to make it match.

"As we consider these things, there are eight factors that have been specifically identified by the Kansas Supreme Court as those factors which are supposed to be addressed, particularly as to zoning requests, but the Supreme Court has held that those also apply to Special Use Permits. I think one factor is a non-factor here, but all of the other factors...it appears to me weigh against approving the Special Use Permit. The first is the character of the neighborhood. If we look at this neighborhood and if we were proposing to you today that we would create a landfill there, I think it's clear that we would not. It's in the 100 year Floodplain; it's got adjacent to it two surface water sources, and the groundwater source is within six feet. It's simply not a site that would be approved for a landfill. But consider the character of the property itself and the way it's been treated. It was not covered properly; it was not covered on a regular basis; it was not compacted. The site does not appear to be appropriate. The neighborhood does not appear to be appropriate for this kind of activity.

"What about the zoning and the use that's given to the property that's nearby? It's largely Rural Residential but in addition to that, we have Derby growing out that way, and it's becoming increasingly Urban Residential...I think again, mitigating against the suitability of this property to be used in this fashion. The suitability of the property as it is restricted...can it be used as it is restricted? Mr. Lusk has continually told people that it's going to be used as a park; it's going to become a recreation area. That's, in fact, what it can be used for. What he did is he sold out all of his fill dirt so he's got a problem. But I would suggest to you it's his problem, and he's the one that ought to have to solve it.

"The detrimental effect on the neighbors...they have talked about that. The problems have been legion and go on and on. The public health, safety, and welfare aspects...clearly it creates a hazard. You've got operational problems. I think we've got problems impinging on health, on safety, and we also have financial problems. If we take out the requirement for an environmental bond and our regular monitoring doesn't solve the problem, doesn't catch the wastes that are coming in there, accidentally though it may be...if you'll look, I think, at the memorandum that Dr. Hahn prepared, the expense can be enormous. The kind of bond that's proposed is not out of line with the kind of expense that you can be expected to face if we do in fact end up with hazardous waste in the site.

"The recommendations of Staff are an issue we need to look at. I think clearly...if you'll look at that...the kind of requirements they're feeling necessary to place upon this if it's going to be in operation, it's clear that we've got in essence a negative recommendation coming from Staff.

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"Finally, the long-range or master plan...how does all of this fit into that? I think it's clear that what has happened over the years...that nationwide, we have tightened down on regulations of landfills...that the regulations have become increasingly severe. The reason for that is because of the problems that have been experienced; it's in reaction to something that's real; it's something that is a danger. Given that, it would appear that it's not appropriate to reopen this site, which in and of itself, all of the factors being equal, would not be an appropriate place to open a landfill.

"It seems to me, for all these reasons, that we ought to deny the Special Use Permit, and that's what we ask you to do."

THERE WAS A FIVE-MINUTE RECESS.

Mr. Bayouth stated, "Again, we're talking about different material going in, not the usual trash; let's go back to that for a moment. I think again...I hate to say this, but I'm trying to make a decision that's going to be beneficial to the neighborhood in the long range. The Supreme Court says that the highest and best use for this land, they feel, is Heavy Industrial; is that not true?"

Mr. Davisson replied, "No, it's not the Supreme Court; it was..."

Mr. Bayouth stated, "...or whatever the Court that ruled. O.K.? I'm just trying to make a point. If nothing is done on this site and he came in for a zone request for Heavy Industrial based on the surrounding uses...and again, we're not introducing anything new and different...he could probably win that in Court. If we could take this fill site...fill it, drain it properly, well managed and if not, he pays the consequence...and it's a little different ballgame than it was in '79 and '82...this land cannot be used for any of that, and it's going to be restored back to whatever we grow on it, whether it's wheat, corn, marijuana, whatever...the fact that it cannot be zoned Heavy Industrial after we fill it and drain it properly, and we do it within a reasonable time...I think the neighborhood will benefit more than if we leave it as it is and he comes in for Heavy Industrial Use.

"So I think there's a compromise between you all and Mr. Lusk or whoever owns the property now...and try to reach some type of agreement to seal this thing up as fast as possible...clean it up, plant it in whatever vegetation, you know, is required...and get it done once and for all. I think we have an opportunity here to get everyone involved—the County, the Health Department—get this thing cleaned up as fast as we can."

Mr. Davisson stated, "I think it's fair to say that many of the requirements that have been set forth by the Planning people are things that, I think, to the landowners would appear to be very appropriate, very helpful things to have happen. I, however, would also have to say that our perception is not that we have a different ballgame right now. We don't have different agencies involved; we have the same agencies; we have the same requirements; we're saying the same thing...and what we are saying is, 'Why do we have to go through it again?' We finally...if you'll look at the record, it was not an easy process to get it stopped the first time; it took...there was a lot of delay, a lot of problems just getting it shut down the first time...so we don't have confidence that it is a new ballgame and that we are in a position where we can confidently feel that we can reclaim the land and put it back into a better condition by allowing it to be used in this fashion."

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Mr. Bayouth stated, "I think you have a more responsible Commission right now, and I think we'll follow through with everything that the Health Department and the Planning Department is asking this applicant to do. I think we can get it cleaned up, but again I would rather see it continue, filled properly, drained properly, and go back to the natural whatever grows on it instead of it then coming back in with an Industrial or Heavy Commercial Use. I think you can put it to bed for how many years...how many did you say if it's filled, and sealed and everything...no longer can be used for any human..."

A gentleman from the audience replied, "Perpetuity."

Chairman Scott asked for other questions; there were none, and he thanked Mr. Davisson. "We're at a point where we've got to..."

Mr. Delamater asked to comment. "I was quoted as seeing this site in '69...making an in...I am not aware that I ever saw the site before. Our company did the plans, and it was up to the Board of Health to police it. I did not see the site...was never down there; I did not make any recommendations, and I want that on the Record. Thank you."

Chairman Scott asked, "Since...do we still want to go into this Executive Session?"

Mr. Robert Arnold, County Counselor, responded, "I would recommend that we've had litigation over this matter once before, and you're entitled to do this under the Statute, and I think that it's helpful to go into Executive Session, as you're entitled to do, for quasi judicial purposes or for conferring with the County Counselor and Staff to be able to articulate the reasons for your ruling either approving it or denying it."

MOTION

Mr. Schroeder moved to recess into Executive Session, the purpose of deliberating matters relating to a decision involving Quasi Judicial Function in Zoning Case Number DR 86-4, and to consult with an attorney, which would be deemed privileged in the Attorney/Client Relationship, and resume in the Commission Meeting Room at 12:10.

Mr. Bayouth seconded the Motion.

Chairman Scott asked for discussion; there being none, the vote was called.

VOTE

Chairman Tom Scott	Aye
Chairman Pro Tem Mark F. Schroeder	Aye
Commissioner David Bayouth	Aye
Commissioner Bernard A. Hentzen	Aye
Commissioner Billy Q. McCray	Aye

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EXECUTIVE SESSION

Chairman Scott stated, "We are back from Executive Session; let the Record show that no action was taken.

"Do the Board Members have any questions for any of the Staff on any action they are going to take?"

There were no questions, and Chairman Scott asked the Commission's pleasure.

Mr. McCray stated, "Mr. Chairman, I think I should make a statement. I've listened to the testimony of the people that have...and I've also listened to the attorney. It seems to me the most important thing that's come out is that they don't have confidence in the individual that's doing the work...that he will do it...or the person who owns the property...that that will be carried out. It doesn't seem to me that they are necessarily opposed to trying to do something to clean up the dump. And I merely make that statement because that seemed to be the strong impression that I got from what the people were saying who live in the community. That's all I have to say, Mr. Chairman."

Chairman Scott asked for other comments; there being none, a motion was made.

MOTION

Mr. Bayouth stated, "Having considered the information presented by the proponents and the opponents and taking into consideration the existing "F" Heavy Industrial Zoning, and the former use of the adjacent properties to the west as the Derby Municipal Landfill and the current use adjacent to the northeast for the Derby Sewage Treatment Plant, the suitability of the subject property for the proposed use due to this site need for landfill and materials and its proximity to the industrial type use and the recommendation of Staff as to the condition of the approval which will provide as much protection as possible for the environmental and for the adjacent properties, I move that the Request for the Special Use Permit be established a landfill site for demolition and construction wastes only be approved, subject to the following conditions: Those conditions are what the Planning Director, Marvin Krout has read into the Record of all the requirements from A to M with the exception of L...and he did read the Condition about the \$6,000 fees for 12 months' operations...that one other item be added, and that is that a large sign be erected that simply states, 'No Trespassing, Not a Public Facility...this landfill may only accept demolition wastes transported by licensed solid waste transport vehicles. Garbage, hazardous waste, and other materials transported by private or unlicensed vehicle is not allowed. Landfill operates 8 a.m. to 6 p.m., Monday through Saturday.'

Mr. McCray seconded the Motion.

Chairman Scott asked for further discussion; there being none, the vote was called.

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VOTE

Chairman Tom Scott	Aye
Chairman Pro Tem Mark F. Schroeder	No
Commissioner David Bayouth	Aye
Commissioner Bernard A. Hentzen	No
Commissioner Billy Q. McCray	Aye

Chairman Scott announced, "Motion carries. Thank you very much, folks.

"Next item."

J. THREE HEARINGS ON PETITIONS TO ANNEX LANDS INTO THE OAKLAWN IMPROVEMENT DISTRICT.

1. Hearing on the Keeler Petition
2. Hearing on the Hardison Petition
3. Hearing on the Kirtley Petition

Chairman Scott asked, "Who's going to present the petition?"

Mr. Robert Arnold stated, "Mr. Heibert was here earlier; he's the attorney."

Mr. Russ Davisson, appearing for Dave Heibert, returned to the podium. "It's my understanding that you have three items before you...all of these are to annex lands into the Oaklawn Improvement District, and all of them are at the request of the landowners. I'm aware of no objections."

Chairman Scott opened for public hearing for the annexation into the Oaklawn Improvement District.

"Would it be all right if we take all three of these, Legal?"

Mr. Robert Arnold, County Counselor, responded, "Mr. Chairman, I would recommend on this particular item that we separate those into three separate hearings since they involve three petitions. Legal has approved those petitions."

Chairman Scott asked again for anyone to be heard on the Keeler Petition; there being no one, the public hearing was closed. "Do the Board members have any questions on it?" There were no questions, and Chairman Scott asked the Commission's pleasure.

RESOLUTION NO. *R#170-1987*

A RESOLUTION AUTHORIZING A SPECIAL USE PERMIT FOR CERTAIN LANDS LOCATED IN SEDGWICK COUNTY KANSAS, UNDER THE AUTHORITY GRANTED BY SECTION 13.F OF THE ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS.

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

SECTION 1. That after being ordered by the Eighteenth Judicial District Court in Sedgwick County, Kansas, to reconsider a certain special use permit request (DR 86-4), and proper notice having been given and hearing held and under authority of and subject to the provisions of Section 13.F of the Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas, a Special Use Permit to establish a demolition/construction landfill site on property zoned the "F" Heavy Industrial District is hereby approved on lands legally described as follows:

CASE NO. DR 86-4

Commencing at a point 418 feet west and 1330 feet south of the NE corner of the SW $\frac{1}{4}$ of Section 13, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east parallel to the north line of said SW $\frac{1}{4}$, 323 feet; thence southwesterly 1010 feet, more or less, to the centerline of Spring Creek, said point being 190 feet west of the east line of said SW $\frac{1}{4}$; thence southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, south and 640 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly, 550 feet to a point 2010 feet south and 642 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly 315 feet to a point 850 feet west of the east line of said SW $\frac{1}{4}$; thence northeasterly to a point 1330 feet south and 498 feet west of the northeast corner of said SW $\frac{1}{4}$; thence east parallel to the north line of said SW $\frac{1}{4}$, 80 feet to the point of beginning; AND

Commencing at a point 418 feet west and 1330 feet south of the northeast corner of said SW $\frac{1}{4}$; thence S90°00'W parallel to the north line of said SW $\frac{1}{4}$, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the southeast corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning. Generally located south of 91st Street South in an area between between K-15 Highway and the Arkansas River.

CONDITIONS OF APPROVAL:

- A. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of the Kansas Department of Health and Environment Bulletin No. 4-4 "Guidelines for Operation of Solid Waste Management Systems" shall be the only landfill material permitted. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, or putrescible wastes, shall be permitted for disposal at the site.
- B. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- C. The deposit of material on site shall cease and cover material, grading, and seeding shall be completed no later than 36 months from the day the landfill permit is issued by KDHE. Grading shall be in accordance with the Grading Plan dated April 15, 1986. Cover material shall be applied daily.

- D. Prior to the commencing of the operation, the applicant shall execute a Floodway Agreement covering the floodway on the south 100 feet of the application area, as shown on the Grading and Drainage Plan dated April 15, 1986.
- E. The landfill shall only be open to solid waste collection vehicles licensed under the Sedgwick County Health and Sanitation Code No. 7. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- F. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording prior to commencing the landfill operation.
- G. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
- H. An 8-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation. The fence shall be constructed of welded or woven wire with openings no larger than one-inch.
- I. Upon written notice of any violation by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation and subsequent action taken by the board.
- J. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing that cover material, final grading, and seeding are performed as detailed in the Grading Plan dated April 15, 1986, and in the Operating Manual referenced in condition B. This bond shall be in the amount of \$10,000 for each acre, or portion thereof, on which waste is being deposited.
- K. Prior to the commencing of the operation, the applicant/owner shall provide for installation and monitoring of a network of at least 4 wells which draw water from the uppermost permanent aquifer. One of these wells will monitor groundwater upslope of the site, the other three wells will monitor groundwater downslope from the site. These wells will be installed, constructed, operated, and sampled to comply with EPA Publication Number OSWER-9950.1 titled "RCRA Groundwater Monitoring Technical Enforcement Guidance Document" dated September, 1986, and shall remain in operation for 15 years from the date of landfill closure. Collection and analyses of samples from the wells will be accomplished by the County Health Officer and the actual costs of that monitoring shall be reimbursed by the applicant/owner.
- L. The applicant/owner shall pay a yearly fee to Sedgwick County to offset the cost of landfill inspection by the County Health Department. The fee shall be paid prior to operation of the landfill, and shall be \$6,000 for the first 12 months' operation. The fee for subsequent periods shall be established after review and recommendation by the County Health Officer to the Board of County Commissioners. The maximum increase in the fee shall be limited to 100% for any 12-month period. In no event shall said fee exceed the actual direct and indirect cost of such inspection.
- M. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall file a restrictive covenant for the application area which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit construction of structures which penetrate the final cap or cover, and

require approval of the Health Officer for use of the land for production of food crops. The covenant shall be in such form as may be approved by the County Counselor.

- N. The applicant/owner shall provide a sign prior to landfill operation. This sign shall be a minimum of 8 feet wide and 4 feet high and be prominently displayed at the site entrance. The sign shall display the following message in 4 inch or larger letters that contrast with the background:

NO TRESPASSING - NOT A PUBLIC FACILITY

THIS LANDFILL MAY ONLY ACCEPT DEMOLITION WASTES TRANSPORTED BY LICENSED SOLID WASTE TRANSPORT VEHICLES. GARBAGE, HAZARDOUS WASTE AND MATERIAL TRANSPORTED BY PRIVATE OR UNLICENSED VEHICLE IS NOT ALLOWED.

LANDFILL OPERATES 8 AM TO 6 PM MONDAY THROUGH SATURDAY.

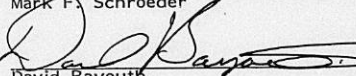
In addition to the above information, the sign shall contain all information required by State agencies. The sign shall be maintained in good repair and be clearly visible.

SECTION II. That this Resolution shall take effect and be in force from and after its adoption.


ADOPTED AT WICHITA, KANSAS, this 15th day of April, 1987.

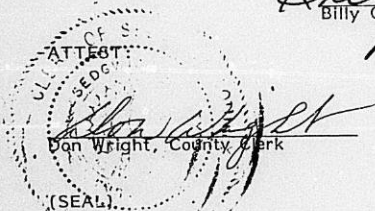

Tom Scott, Chairman

Mark F. Schroeder, Commissioner pro tem

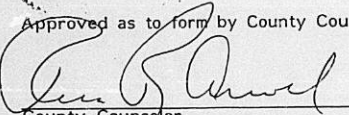

David Bayouth, Commissioner

Bernard A. Hentzen, Commissioner


Billy Q. McCray, Commissioner



Approved as to form by County Counselor


County Counselor

4-15-87

The following condition should replace the condition requiring the applicant obtain a bond to guarantee removal of hazardous or putrescible wastes.

The applicant/owner shall pay a yearly fee to Sedgwick County to offset the cost of landfill inspection by the County Health Department. The fee shall be paid prior to operation of the landfill, and shall be \$6,000 for the first 12 months operation. The fee for subsequent periods shall be established after review and recommendation by the County Health Officer to the Board of County Commissioners. The maximum increase in the fee shall be limited to 100% for any 12 month period. In no event shall said fee exceed the actual direct and indirect cost of such inspection.

THE WICHITA-SEDGWICK COUNTY DEPARTMENT OF COMMUNITY HEALTH
OFFICE OF ENVIRONMENTAL HEALTH DATE April 13, 1987

TO Jack Galbraith, Current Plans Director
FROM Richard Hunter, Environmental Health Director *RH*

SUBJECT Additional approval
 conditions - Lusk
 Landfill

The following condition should replace the condition requiring the applicant obtain a bond to guarantee removal of hazardous or putrescible wastes.

The applicant/owner shall pay a yearly fee to Sedgwick County to offset the cost of landfill inspection by the County Health Department. The fee shall be paid prior to operation of the landfill, and shall be \$6,000 for the first 12 months operation. The fee for subsequent periods shall be established after review and recommendation by the County Health Officer to the Board of County Commissioners. The maximum increase in the fee shall be limited to 100% for any 12 month period.

The following condition should be provided to Commissioner Schroeder.

The applicant/owner shall provide a sign prior to landfill operation. This sign shall be a minimum of 8 feet wide and 4 feet high and be prominently displayed at the site entrance. The sign shall display the following message in 4 inch or larger letters that contrast with the background:

NO TRESPASSING - NOT A PUBLIC FACILITY

THIS LANDFILL MAY ONLY ACCEPT DEMOLITION WASTES
TRANSPORTED BY LICENSED SOLID WASTE TRANSPORT
VEHICLES. GARBAGE, HAZARDOUS WASTE AND MATERIAL
TRANSPORTED BY PRIVATE OR UNLICENSED VEHICLE IS
NOT ALLOWED.

LANDFILL OPERATES 8 AM TO 6 PM MONDAY THROUGH SATURDAY.

In addition to the above information, the sign shall contain all information required by State agencies. The sign shall be maintained in good repair and be clearly visible.

Please call me at 268-8351 if you need further information.



DEPARTMENT OF ENVIRONMENTAL RESOURCES

HISTORIC COURTHOUSE
510 NORTH MAIN
WICHITA KANSAS

TELEPHONE: (316) 268-7380

April 10, 1987

TO: Tom Scott, Chairman
Mark Schroeder, Vice-Chairman
Dave Bayouth, Commissioner
Bud Hentzen, Commissioner
Billy McCray, Commissioner
Board of Sedgwick County Commissioners

FROM: Dr. D. R. Hahn, Director *DRH*
Dept. of Environmental Resources

RE: Derby Landfill Zoning Case

On April 15, 1987, the Board of County Commissioners will be hearing a zoning case (DR 86-4) regarding a request for a Special Use Permit to establish a demolition construction landfill site southwest of Derby, Kansas on the site of the Derby Sanitary Landfill. I wish to use this opportunity to provide written input to you regarding considerations on the matter of the practice of landfilling in general. Some of these considerations may be relevant to you as you weigh the matter of the aforementioned request for a Special Use Permit.

Landfilling is a term which covers a variety of means for the disposal of various types of materials. The term "landfill" may be applied to activities ranging from open dumps to secured landfills exhibiting the highest application of modern technology. The term "landfilling" may also apply to activities including, but not restricted to, the landfilling of trash, the landfilling of hazardous and toxic wastes, and the landfilling of demolition wastes. For some time, landfills have been the method of choice or economic necessity for the disposal of certain types of waste in many areas of the country including Sedgwick County, Kansas. In theory, at least, engineers can design a landfill using modern materials and techniques which will not adversely impact the environment. However, the actual implementation and operation of such landfilling activity is, of course, a human endeavor and is subject to something less than perfection. As a result, many landfills

Board of Sedgwick County Commissioners
Page 2
April 10, 1987

around the United States have created negative environmental impacts primarily through the contamination of surface or ground water. As a result of such contamination, many of those landfills have been closed and/or remedial cleanup programs have been initiated. The costs for such cleanups are truly impressive. It should be noted that the community does not receive any waste disposal benefit for such expenditures in landfill cleanups. Thus, if a community expends \$5 million, \$10 million, \$20 million or whatever to clean up a contaminated landfill site, such expenditures do not aid in the disposal of a single ton of waste. It should be noted that the compliance with past and existing regulatory landfill design, operation, and monitoring criteria do not confer any kind of protection from liability for such contamination. One cannot use conformance with past or existing laws as a defense for not paying for such cleanups. Thus, while landfills can, in theory, be designed to operate safely, they do, in fact, carry a high risk and are costly should they fail.

With the aforementioned considerations in mind, the context for landfilling has been changing during the past few years and dramatic future changes may be anticipated. Current new landfills are subjected to regulations that are more stringent and hence, more expensive, than those in existence ten years ago. It is likely that landfilling regulations will become even more stringent in the near future. For example, the U.S. Environmental Protection Agency has indicated that it will issue new sanitary landfill regulations in May 1988. One may only speculate what those new regulations will entail, but many federal regulators have indicated that they expect such regulations to approach those currently imposed on secured hazardous waste disposal facilities which have led to very expensive rates for hazardous waste disposal. Some federal regulators have ventured the opinion that sanitary landfills may even be banned. Thus, indications are that the costs of landfilling can be expected to increase dramatically.

I would offer the following items for your thought and consideration:

1. A news item in the December 1985 issue of Waste Age indicated that the attorney general of Indiana ordered owners of the Northside Sanitary Landfill near Zionsville, Indiana, to pay \$28 million in fines and cleanup costs.

2. An article in the December 6, 1985 issue of Current Developments in the Environment Reporter indicated that the proposed cleanup agreement for a landfill site in Niagara, New York, would cost \$17 million.
3. A news item in the July 1985 issue of Waste Age indicated that a solid waste landfill in New Jersey was to be assessed a \$1.45 million fine, a \$5 million letter of credit, and at least \$2.6 million for cleanup activities.
4. An article in the April 19, 1985 issue of Current Developments in the Environment Reporter indicated that the regulation and permitting of state controlled non-hazardous waste sites would cost up to \$229.8 million annually for each of the next 10 years according to a report to Congress by the Environmental Protection Agency. That projection included municipal waste landfills, industrial landfills, and surface impoundments.
5. According to an article in the January 1985 issue of Waste Age, there were a total of 1,889 failed landfill sites out of a total of 5,601 examined, a failure rate of 33.7%.
6. According to a December 13, 1985 article in Current Developments in the Environment Reporter, 2/3 of all land disposal facilities in the United States failed to certify compliance with ground water monitoring and liability insurance requirements by November 8 and at least some of them are said to be discharging waste into municipal sewage treatment plants.
7. The Kansas Department of Health and Environment has compiled a list of sites in Kansas with contaminated ground water. That list was released to the public in mid-March 1987. A total of 38 contaminated sites were identified for Sedgwick County, Kansas including both the Chapin Landfill site and the Brooks Landfill site.
8. On October 17, 1986, President Reagan signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA). One of SARA's provisions includes the requirement for owners of underground storage tanks (home and farm fuel tanks holding less than 1,100 gallons are exempted) to provide a minimum of \$1 million environmental liability insurance to cover each incident of leakage from such underground storage tanks.

9. It should be noted that many of the contaminated sites found on state and federal lists for such locations contain materials for which the sites were never licensed nor permitted. For example, many sanitary landfills which had provisions to exclude hazardous wastes have, in fact, contaminated underlying ground water with hazardous constituents. Such cases bear testimony that permitting a landfill for apparently non-hazardous constituents does not provide assurance that hazardous wastes may not find their way into such sites.

I offered the previous 9 items for your thought and consideration because they illustrate some significant facts of life regarding landfilling today. First, it is very difficult, if not impossible, to totally regulate what materials enter and may be deposited in a landfill site. Second, landfills pose a significant risk in terms of failure rates and adverse environmental impacts. Third, such adverse environmental impacts frequently result in extremely expensive mitigation and cleanup measures. Such measures are directed against the owner of the site, whenever possible, but may be borne by the citizens and taxpayers of the community when the site owner cannot be located or is unable to pay. The latter consideration is of relevance to the zoning case before you in that I believe it is important, in light of the kind of information presented in this memorandum, to provide a measure of protection for the citizens and taxpayers of Sedgwick County in the event that a landfill such as the one before you should fail. On one hand, the costs of environmental protection to the landfill site owner are quite high, but at the same time, it hardly appears fair to place those burdens on the general taxpayer. Fourth, Sedgwick County has not been immune from landfill failures.

I close this memorandum with the comment that it is important to provide measures to protect the environment and to prevent the failure of a landfill site. Further, I would suggest that it is wise to provide for some mechanism, such as environmental liability insurance or an environmental protection performance bond, in order to provide a mechanism for the cleanup of a failed landfill site and to protect the public from bearing the cost for the cleanup of such a site which may be in the magnitude of one-half of an annual Sedgwick County budget. These comments are offered for your consideration as you weigh the aforementioned zoning case; I would be happy to respond should you have any questions regarding the remarks contained herein. Your attention to my comments is appreciated.

Jerry Seale called to advise of the quoted
premium for the bond at \$100 per estimated
cubic yard of fill.

\$100 X 150,000 cubic yards -
15 million bond

300,000 a year premium.

Total premium for 18 years \$5,400,000

This came from J. R. Zieshen Corporation
Denver, Colo. 1 800 621 8385
Ex. 309

Jockey advised that they couldn't find an insurance
company that would write environmental protection insurance.

They tried to make that a part of the contract. Even tried
to obtain insurance themselves and have the operator
pay premium. Sudden incident insurance was not
able to be obtained.

WICHITA-SEDGWICK COUNTY

Date: April 6, 1987

METROPOLITAN AREA PLANNING DEPARTMENT

TO: Board of County Commissioners

FROM: Marvin S. Krout, Director of Planning *MS Krout*

SUBJECT: DR 86-4 - Request for Special Use Permit to Establish a Demolition Construction Landfill Site on Property Zoned the "F" Heavy Industrial District.

The above-referenced case has been scheduled, as required by the District Court, for your April 15 agenda. The Commission first reviewed this request in April 1986 and recommended 3-0 that the application be denied. There was an associated request for heavy industrial zoning (SCZ-0559) which was also denied 3-0. The applicant appealed these decisions to the District Court and, in January of this year, the court ruled that the Commission's action in denying the zone change had been arbitrary and capricious and the zoning of said property was ordered changed from "R" Rural Residential to "F" Heavy Industrial. The court further ruled that the denial of the special use permit was not arbitrary and capricious but that the Commission had not entered a written order summarizing the evidence presented and stating the factors which it considered in arriving at its determination. The court thus ordered a rehearing by the Commission of the special use permit request at which time additional evidence could be presented by both sides.

In 1986, both the Derby Planning Commission and the Metropolitan Area Planning Commission recommended approval of the zone change and the special use permit, subject to a number of conditions.

The County's zoning text requires landfills to have not only heavy industrial zoning but also a special use permit. This permit can establish such conditions as deemed appropriate to make the landfill more acceptable to adjacent properties and the community as a whole. When this special use request was remanded to the Commission, staff from the planning, community health, environmental resources and legal departments met to discuss this matter and to try to formulate conditions which would protect the environment from problems often associated with landfill sites. These recommended conditions of approval are attached. They are somewhat more inclusive than the conditions recommended last year.

Also attached for your review and background information are the following materials:

PL/1150/2

Board of County Commissioners
(DR 86-4)
April 6, 1987
Page 2

1. Map of the application area and vicinity
2. Derby Planning Commission Minutes of March 20, 1986
3. MAPC Minutes of April 3, 1986
4. County Commission Minutes of April 30, 1986
5. District Court Journal Entry

- Actions:
1. Adopt findings of fact and approve the special use permit subject to the recommended conditions; adopt a resolution authorizing the special use permit; or
 2. Adopt findings of fact and deny the special use permit.

MSK:LO:rme
Attachments

4.7.87
In addition to the usual BOC referral sheet list, the following received a copy of Kreutz memo plus Latoff's recommended conditions of approval:
R. Hunter; J. Braun;
D. Hahn; R. Euson;
Larry Lusk; Richard Ramsey;
R. S. Delamater; Norma Moore.

PL/1150/2

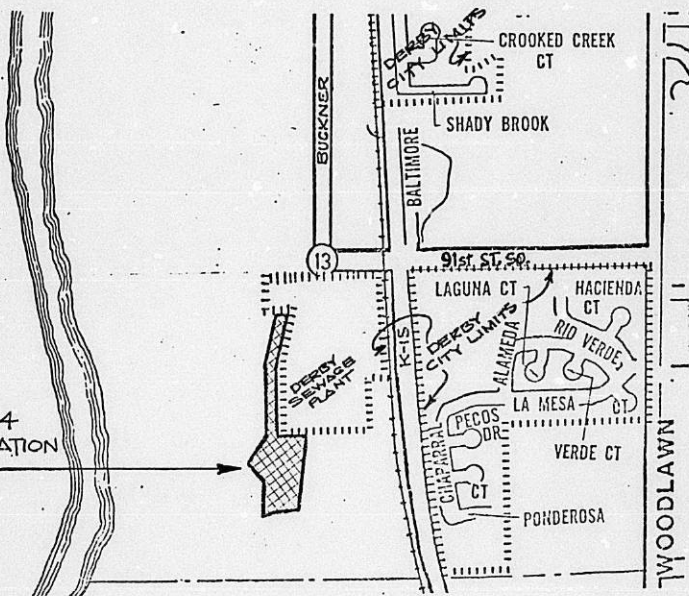
4/6/87

DR 86-4 CONDITIONS OF APPROVAL

- A. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of the Kansas Department of Health and Environment Bulletin No. 4-4 "Guidelines for Operation of Solid Waste Management Systems" shall be the only landfill material permitted. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, or putrescible wastes, shall be permitted for disposal at the site.
- B. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- C. The deposit of material on site shall cease and cover material, grading, and seeding shall be completed no later than 36 months from the day the landfill permit is issued by KDHE. Grading shall be in accordance with the Grading Plan dated April 15, 1986. Cover material shall be applied daily.
- D. Prior to the commencing of the operation, the applicant shall execute a Floodway Agreement covering the floodway on the south 100 feet of the application area, as shown on the Grading and Drainage Plan dated April 15, 1986.
- E. The landfill shall only be open to solid waste collection vehicles licensed under the Sedgwick County Health and Sanitation Code No. 7. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- F. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording prior to commencing the landfill operation.
- G. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
- H. An 8-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation. The fence shall be constructed of welded or woven wire with openings no larger than one-inch.

- I. Upon written notice of any violation by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation and subsequent action taken by the board.
- J. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing that cover material, final grading, and seeding are performed as detailed in the Grading Plan dated April 15, 1986, and in the Operating Manual referenced in condition B. This bond shall be in the amount of \$10,000 for each acre, or portion thereof, on which waste is being deposited.
- K. Prior to the commencing of the operation, the applicant/owner shall provide for installation and monitoring of a network of at least 4 wells which draw water from the uppermost permanent aquifer. One of these wells will monitor groundwater upslope of the site, the other three wells will monitor groundwater downslope from the site. These wells will be installed, constructed, operated, and sampled to comply with EPA Publication Number OSWER-9950.1 titled "RCRA Groundwater Monitoring Technical Enforcement Guidance Document" dated September, 1986, and shall remain in operation for 15 years from the date of landfill closure. Collection and analyses of samples from the wells will be accomplished by the County Health Officer and the actual costs of that monitoring shall be reimbursed by the applicant/owner.
- L. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing hazardous or toxic wastes (as defined by KSA 65-3430 et seq) or putrescible materials have not been placed in the landfill. This bond shall be in the amount of \$100 per cubic yard of waste to be deposited in the landfill and is intended to pay for the costs of excavation and disposal of wastes found to be hazardous or putrescible. This bond shall be in effect for 15 years from the date of landfill closure. A finding that hazardous or toxic wastes have been placed in the landfill shall be made when data from the assessment phase of the groundwater monitoring program described in condition K reveals that one or more chemical constituents listed in Appendix VIII of Paragraph 265 of CFR 40 is present in statistically significant quantities.
- M. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall file a restrictive covenant for the application area which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit construction of structures which penetrate the final cap or cover, and require approval of the Health Officer for use of the land for production of food crops. The covenant shall be in such form as may be approved by the County Counselor.

DR 86-4
APPLICATION
AREA



City of Derby



229 N. BALTIMORE • DERBY, KANSAS 67037 • 316/758-1519

PLANNING COMMISSION MEETING

March 20, 1986

MEMBERS PRESENT: Dick Loosen
Larry Lusk
Luther "Oakie" Payne
Dolan Pelley
Red Rehburg
Richard Schaffer
Bill Smith
Floyd Zollinger

MEMBERS ABSENT: Dottie Janssens
Larry Sims

NEXT REPRESENTATIVE TO THE CITY COUNCIL: Dick Loosen.....April 1, 1986
Larry Lusk.....April 15, 1986
Luther "Oakie" Payne.....May 6, 1986
Dolan Pelley.....May 20, 1986

PUBLIC HEARINGS:

Ordinance amending the Zoning Regulations of the City of Derby regarding a provision allowing temporary fences for model "show" homes. - Roger Weast

The Public Hearing opened at 7:00 p.m. for discussion and comments.

Roger Weast representing the Lusk Company was present to request a provision be made in the Zoning Regulations to allow temporary fences for model "show" homes.

Due to lack of questions and comments by the general assembly, the Public Hearing closed at 7:04 p.m.

* M.A.P.D. Case No. DR86-4 & No. SCZQ559 - Zone Change from "R" Rural Residential District to "F" Heavy Industrial District and Special Use Permit to establish a Demolition Construction Landfill site on property to be zoned "F" Heavy Industrial District. - Larry Lusk

Mr. Jack Galbraith with the Metropolitan Area Planning Department was present along with Mr. Larry Lusk to discuss this zone change and special use permit request with the Planning Commission.

The Public Hearing opened at 7:06 p.m. for discussion and comments

This 14 acre site has been closed for several years, it is the intention of the applicant to fill the large pot holes and cover. Once this is completed, Mr. Lusk intends to make this portion of the landfill part of the entire redevelopment plan for the entire site.

March 20, 1986

Neighbors and adjoining land owners were present at the meeting to voice their opposition.

Norma Moore - 9339 South K-15 - Mrs. Moore presented a signed petition opposing the re-opening of the landfill. She is afraid that problems that arose in the past will surface again, along with the "blowing" of trash which was a constant problem also.

Robert E. McHenry - 5900 East 91st Street South - Mr. McHenry questions whether or not flooding of Spring Creek would be a problem. The surveyor present, Mr. Lowell High assured him that this would not be a problem, and no due cause for concern.

Carol Warren - 9529 South K-15 - Mrs. Warren questioned the dumping of appliances such as refrigerators and stoves. She could not see how Mr. Lusk would be able to control and enforce what was being dumped on the site.

Norma Moore - 9339 South K-15 - Mrs. Moore is very concerned about the long timely process it has taken in the past to get anyone down from KDHE (Kansas Department of Health and Environment) to investigate any problems that arose in the past. She said that she felt that until a representative from KDHE came down from Topeka, that no one from the County would get involved in investigating any problems that may have arisen. She is also afraid that there will not be any inspections done until Topeka KDHE is involved, and that sometimes has taken weeks in the past.

Jack Brown - Sedgwick County Health Department - Mr. Brown assured Mrs. Moore that there will be regular inspections at the site. Mr. Jack Galbraith noted that these inspections were done without advance notice to the landfill owners.

Due to no further questions and comments from the general assembly, the Public Hearing closed at 8:00 p.m.

C.T.O. 8:02 p.m.

Business: The Minutes of February 20, 1986 stand approved as mailed.

Ordinance Amending the Zoning Regulations of the City of Derby with regards to a Provision for Temporary Fences for Model "show" Homes. - Roger Weast

Motion: "Move to recommend the amending of the Zoning Regulations, Section 3-103 (F) 3 with regards to a provision for temporary fences for model "show" homes only." - Oakie Payne

Second: Dolan Pelley

Vote: 9 Yea -0- Nay Motion Carried

Planning Commission recessed at 8:05 p.m.

Planning Commission reconvened at 8:15 p.m.

* Case #DR86-4 and SCZ #C159 - Zone Change from "R" Rural Residential District to "F" Heavy Industrial District & Special Use Permit to establish a Demolition Construction Landfill site on property to be zoned "F" Heavy Industrial District - Larry Lusk

After a lengthy discussion, the Planning Commission made the following recommendation:

Motion: "Move to recommend to M.A.P.D. the approval of the zone change from "R" Rural Residential District to "F" Heavy Industrial District AND a Special Use Permit to establish a Demolition Construction landfill site on property to be zoned "F" Heavy Industrial District subject to conditions stipulated by the Metropolitan Area Planning Dept. along with the following conditions:

1. Landfill operator to be on duty at all times during the operation hours of the dump.
2. If a violation of the landfill is found, owner will have 48 hours to clean it up. If not cleaned up within that time frame, landfill will be shut down until a full investigation can be conducted.
3. Landfill will be fenced on all sides which adjoin other properties before the first dumping takes place.
4. Trash will be covered DAILY with sand taken out of Arkansas River.
5. Drainage and Redevelopment Plan will be completed within 6 months after the expiration of the permit."

- Oakie Payne

Second: Bill Smith

Vote: All Yea

-0- Nay

Motion Carried

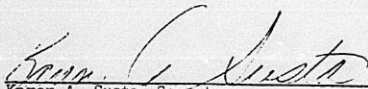
Miscellaneous: Red Rehburg updated the Planning Commission on action taken at the City Council meeting of March 18, 1986.

Oakie Payne discussed with the Planning Commission the sale of "Common Area" in Derby Hills East to adjoining land owners.

Motion: "Move to adjourn." - Bill Smith

Second: Dolan Pelley

Time: 8:40 p.m.


Karen A. Susta, Secretary
Derby City Planning Commission

EXCERPT FROM PLANNING COMMISSION MINUTES OF APRIL 3, 1986

LEGAL:

5a. Case No. SCZ-0559 - Larry Lusk requests zone change from "R" to "F";
AND

5b. Case No. DR 86-4 - Larry Lusk requests approval of Special Permit for a demolition construction landfill site commencing at a point 418 feet west and 1330 feet south of the NE corner of the SW $\frac{1}{4}$ of Section 13, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east parallel to the north line of said SW $\frac{1}{4}$, 323 feet; thence southwesterly 1010 feet, more or less, to the centerline of Spring Creek, said point being 190 feet west of the east line of said SW $\frac{1}{4}$; thence southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, south and 640 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly, 550 feet to a point 2010 feet south and 642 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly 315 feet to a point 850 feet west of the east line of said SW $\frac{1}{4}$; thence northeasterly to a point 1330 feet south and 498 feet west of the northeast corner of said SW $\frac{1}{4}$; thence east parallel to the north line of said SW $\frac{1}{4}$, 80 feet to the point of beginning; AND

Commencing at a point 418 feet west and 1330 feet south of the northeast corner of said SW $\frac{1}{4}$; thence S90°00'W parallel to the north line of said SW $\frac{1}{4}$, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the southeast corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning.

Generally located south of 91st Street South in an area between K-15 Highway and the Arkansas River.

GALBRAITH pointed out land use, zoning and showed slides of the general area. He reviewed the following staff report:

Background: Subject property is approximately 14 acres in size and located between K-15 and the Arkansas River in an area south of 91st Street South. The site is part of the former Derby Landfill although most of the filling operation occurred on land to the west. In 1984 that landfill site was declared full and was ordered closed. The owner has now submitted an application to the Kansas Department of Health and Environment for expansion of a landfill into the east 14 acres. It has been stated by the owner that he desires to fill holes left on the site when the previous landfill operation ceased. Demolition wastes and construction debris are the only types of landfill materials proposed to be permitted. The application has been tentatively approved subject to the applicant obtaining the necessary local zoning permits. The Sedgwick County Zoning Regulations require "F" Heavy Industrial zoning and a Special Use Permit for landfills.

Analysis: Property to the north is in the City of Derby and is zoned "M-1" Industrial. It is platted as Lot 1 of Lusk Industrial Addition and is owned by this applicant. Access to the proposed landfill site will be provided through this industrial plat out to 91st Street South. Property to the northeast is also zoned "M-1" and is the site of the Derby Sewage Treatment Plant. To the southeast are two single-family residences in the County's "R" Rural Residential district. South is agricultural land in the "R" district. The old landfill site to the west and northwest is in the "R" district, having begun operation prior to any zoning controls in this part of the county.

If the Planning Commission determines that the zone change and the special use permit are appropriate, the following are conditions of approval as recommended by staff and the Derby Planning Commission:

- a. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of The Kansas Department of Health and Environment Bulletin NO. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, shall be permitted for disposal at the site.

- b. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- c. The deposit of material on site shall cease by January 1, 1989, and the cover material, final grading in accordance with the grading plan, and seeding shall be completed no later than July 1, 1989, unless an extension of time is granted by KDHE and by the Board of County Commissioners after a public hearing. Filling and grading shall be in accordance with the Grading Plan dated _____. Cover material shall be applied daily.
- d. A drainage plan indicating how this site will drain during the landfill operation as well as after final completion shall be submitted to the County Bureau of Public Services for review and approval.
- e. The landfill shall not be open to the general public. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- f. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording.
- g. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
- h. A 4-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation.
- i. Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until authorized by the above or until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation.
- j. Within three months after final inspection and close-out of the landfill operation, the applicant shall submit a request to rezone this property to whatever zoning classification exists at that time on the balance of the former Derby landfill site.
- k. Items "d" and "f" above shall be complied with prior to these cases being forwarded to the Board of County Commissioners for final action. Also, four copies of the approved Grading Plan shall be submitted to the Planning Department prior to County Commission consideration of these cases.

DISCUSSION:

GALBRAITH stated that these requests were located in the Derby area of influence. He said that this is adjacent the area that was formerly known as the Derby Landfill Site. The owner has been working closely with the State Health Department and the local health department relative to the possibility of going in and reopening this 14 acres of land and filling it with demolition or construction type materials and to level the site so that this land could eventually be put to some other type of use. GALBRAITH said that in the last year's time the landowner has talked to Derby several times about annexing the land to Derby. Apparently for some reason they have chosen not to do that, so the applicant is back now filing the two necessary applications that he needs. He said that Derby considered these requests at their last meeting. The conditions were submitted to Derby and there were several of them that Derby asked to be rewritten in their recommendation of approval.

GALBRAITH stated that there have been a number of people within 1,000 feet of this site that have been concerned about this proposal and have been

following it all the way. They have appeared at the Derby Planning Commission meeting on several occasions.

GALBRAITH said that Derby recommended unanimously that the requests be approved subject to conditions. He mentioned that the Health Department officials had contacted the State Department of Environmental Health since the conditions were revised and have orally heard back from them that the conditions are all satisfactory.

LARRY LUSK, applicant, was present.

GARDNER asked Lusk what kind of materials would he put on the site and where did he expect to find them.

LUSK said that he would put in construction materials from builders and demolition materials from torn down houses.

GARDNER asked what kind of reuse would Lusk have for the site once he has refilled it.

LUSK said he would use it as agriculture.

NORMA MOORE, 9339 South K-15, read the following prepared statement:

"My name is Norma Moore, 9339 S. K-15. My parents Roscoe and Carol Warren, 9529 S. K-15 and my family live on 17 acres across Spring Creek from the proposed dump south of Derby. I am also speaking for neighbors that were unable to be here today, Mr. and Mrs. William Bennet who live north of the site, Mr. and Mrs. Rbt. McHenry who own land north, Mr. Kenneth Cherry who owns land south and Mrs. Fleming whose property and home is located southeast. I have protest petitions that as surrounding property owners, residents and taxpayers of Sedg. Co. we will file that records our opposition to the proposed use of this land and the attendant rezoning. After having dealt with Mr. Lusk in regards to the Derby Landfill and experiencing firsthand his inability to deal with that problem, and we have absolutely no confidence that this current similar project will benefit anyone except the landowner once more. He will continue to profit financially while the neighborhood and the environment deteriorates, our property values decline, a lovely rural area is spoiled and we are asked to accept the risks again!!

I have seen Spring Creek which borders my home on three sides literally choked with trash and debris, not to mention the wind blown litter that originated from the dump and infested the entire vicinity like a creeping blight. Contrary to Mr. Lusk's assurances, cleanup was left up to the individual landowner 99.9% of the time. The unpaved street that passes in front of the Bennets' home was a constant source of blowing trash, flat tires, noise and dust from the steady stream of garbage truck traffic. Mr. Cherry's pasture land that abuts Lusk's property on the south was covered with blowing trash and the fence line dividing the properties was a wall of garbage. Before the dump was finally closed the Arkansas River bank was bulldozed out and used as cover dirt for a problem already out of control. There were days upon days, and weeks upon weeks of solid garbage accumulation with no such thing as daily cover even being attempted.

When the south end of the landfill next to the creek, near my parents home was already many feet above an acceptable level of pure unadulterated trash, the owners and operators then began to bulldoze the trees on the banks of Spring Creek into the water and use the small creek bank as cover. If you saw the television reports on the operation at this time, you will remember 55 gallon oil drums full of trash lying on what was left of the creek bank, old tires and sheets of plastic hanging in our trees, Boeing paperwork by the reams blowing everywhere and filling the creek, old appliances, etc. It was a disgusting, disgraceful shame, visual pollution of the worst sort, not to mention a growing health hazard to those of us who make our homes in the area.

When the dump was finally ordered closed in 1984, and the operative words here are ORDERED CLOSED, the operation did not cease because the site was obviously full to overflowing and spilling into the surrounding land and water. But when it was finally forced to close, it had already amassed a thick file at the State and local levels of abuses of most if not all of the rules and regulations that have been passed concerning operations of this sort. The rules have never applied to this Derby operation and policing the area proved to be a costly and time consuming task for health agencies that consistently fell short of the goal of bringing them into compliance. The response to our complaints was a routine that was often long and involved and went something like this: the Sedg. Co. Health Dept. and/or the Wichita office of the KDHE would come out to check the latest complaints, which were then written up and forwarded onto the Topeka KDHE office and eventually to the Sec. Barbara Sabol, so the newest violations could then be duly noted and action contemplated. It might be as long as a week before someone from the State capitol was able to come down and verify the problem firsthand. Then it was back to Topeka to draft the next hand slap while my family and neighbors were forced to live, breath, and clean up other people's garbage.

I can understand the need for moving slowly and conservatively in these administrative agencies, but not to the point of inertia. There must be some point that when blatant disregard for procedures is dealt with swiftly and decisively. This has never proven to be the case in dealing with this dump and its owner.

While we are aware that this newest proposal is a demolition construction dump and not a garbage dump, in many respects it will be more of the same. It's common knowledge that there is a lot of blowing material in any construction project, and this 14 acre tract is located right on the banks of Spring Creek again. Something that we feel is even more serious than before is the fact that at the DPC meeting Mr. Lusk told us that there was not much of a way to control what went into this dump. I asked about asbestos and it wasn't given much discussion. After talking with the EPA in KC and reading the material they sent, my fears have just been reaffirmed. According to this pamphlet ASBESTOS EXPOSURE: "... once incorporated into manufactured items, the hazard resulting from asbestos is less serious, as long as the substance is not disrupted in any way. However, the fibers are nearly indestructible. A potential health risk arises whenever asbestos fibers are set free, resulting in asbestos dust." Since this site hopes to accept demolition material, the potential of blowing asbestos dust in the area is not an unreasonable assumption. Having this material a few thousand feet from my home, my parent's home, the woods in which my children play, is not a risk I feel any of us should be asked to take.

One last point we feel is worth making and we hope that this commission will take into consideration in regards to DPC's recommendation is the fact that Mr. Lusk is a member of this particular body. Derby has nothing to lose by recommending, after all they are never held responsible for any problems that develop. We feel that perhaps their decision was not entirely unbiased.

In conclusion, I would like to say that we know of what we speak. These are not just idle complaints of cranky neighbors, rather we are hoping to share with you our years of experience, our not unfounded fears about our future if this individual landowner is allowed to continue to wreak havoc with our homes, our properties, our neighborhood, our health and our peace of mind. Some of the people in this area have grown up here and their land has been passed down from their parents, and they had hoped to pass it onto their children and grandchildren. If the damage to this area is allowed to continue at its present proposed rate, there may be nothing worth passing down to our future generations. Please don't help this to happen, and please don't leave legal action as our only recourse. The answer is not more of the same, it's time to say enough."

GARDNER asked Moore what she saw as the answer or the solution to the problem.

MOORE said that she was not sure this is the only way of reclaiming this land. Mr. McHenry that owns the land north also has nursery property, and he had offered at one time to buy this land. MOORE said that she could not believe that this was the only solution, more demolition and construction material.

GARDNER asked Moore if she had any suggestions as to how it could best be handled. Should it be abandoned and left as it is, or covered further?

MOORE said that she felt that this was never completely covered the way it should have been when it was closed. There are still a lot of abandoned trucks, dirt, washing machines and appliances right along the creek bank, and should have been taken care of before the landfill was closed the last time.

GARDNER asked which agencies does Moore deal with to seek solutions to the problems that are troubling her.

MOORE said that everyone was sympathetic. They started with the Sedgwick County Department of Health and they were referred to the Wichita office of the Kansas Department of Health and Environment which would then send their information on to Topeka, who give this to Secretary Barbara Sabal where this could be looked over and they would decide there if there was anything that could be done about it. She said that before Secretary Sabal got it, someone from the Topeka office of the KDHE would end up coming down so that they could view it firsthand and then they would go back and draft something, and another piece of information went into the file.

MILES stated that he was not fortunate enough to live where Moore does, he happens to live at the north end where they have a landfill too. He said that when the City operated it, it was a disgrace to humanity. They gave it to a private owner and he did a much better job than the City, but not adequate. Now they have another group who at this time is doing a much better job than the last one. He said that age had improved the situation and he believed today in Sedgwick County they have a better handle on handling these kind of problems now than when they did when this Derby landfill started.

PETERS felt that the landfill should be cleaned up, and felt that with the conditions listed, it will help the situation. He said that he would not vote in favor of these applications if he did not feel that it eventually had some teeth in it. He believed that the landfill will finally be cleaned up.

COMMISSIONER MOORE returned to the meeting.

BANZER asked if there were not some recourse that the applicant clean out the junk cars now, and if so, who was enforcing the rules. He felt that the Commission could make all of the rules they wanted to, but if they were not enforced, what good were they.

WILSON questioned whether this landfill was the former Derby landfill.

LUSK stated that he originally started Derby Landfill and Wrecking Service. He sold the business in 1975 to Georgie and Jerry Engstrand. He said that he has a thick file with Richard Rumsey, attorney, on communication with the Kansas State Health Department trying to get those people to operate this landfill right. He said that he merged with Derby Landfill and had Mulvane trash in 1982 trying to help correct the situation. He went in with 10 percent, and when they hold 45 percent, you don't have much to say in a corporation. LUSK said that the cars that are there now were his own personal cars and they are sitting on industrial ground. He said that he did not know that they would offend anybody. He mentioned that he was going to rebuild two of the cars, a 1964 Galaxy and a 1964 Ford convertible, but rocks were thrown through the windshields and other damage, so they are nothing but junk now.

WILSON asked that when he was the original owner of the original dump, did he have any complaints.

LUSK said that they were operating as an open dump and there were no complaints from the neighborhood. The complaints started when Mrs. Moore moved in the area.

CONLEE left the meeting.

GARDNER asked Lusk if he was willing to post a performance bond and arrange a contract with an alternate contractor to come in and perform the service in the event he was unable to.

LUSK said no, a performance bond was too expensive.

GARDNER said that he talking about something that would adequately fund another contractor providing specific performance in the event he was unable.

LUSK did not feel it necessary to post a performance bond. He said that condition "I" of the staff comments points out that if he was in violation the operation ceases.

GARDNER said that he understood that. He also understood that neither the Health Department or the County Department of Public Works have the bureaucratic wherewithal to come in and solve the problem that then may exist in the event Lusk was unable to perform. He said that if they were going to create a situation of liability to address whether or not there is a mechanism for handling a situation of a non-performance.

JACK BROWN, Health Department, stated that he had expressed his opinion on subject matter to many people including the Derby Planning Commission. He said that the past history that has been addressed earlier was correct. There are numerous problems. In addition the State Health Department and he have discussed only opening up one acre at a time, and then closing it. He said that he was told today that that would be a requirement and that a performance bond type situation would have to be applied to the closing of each acre in this 14-acre tract so that it would be done in an orderly fashion. BROWN said that asbestos was mentioned, and asbestos, while it would be very difficult to keep small amounts out, is controlled through the State Health Department through licensing and contractors and has to be encapsulated and packaged to prevent it from getting into the atmosphere. Nonetheless, it would not be allowed in this landfill according to KDHE because they are trying to minimize different landfill sites for asbestos burial. Asbestos burial can only be permitted in a landfill with prior authorization.

GARDNER asked Brown to explain the bond matter again.

BROWN stated that this landfill would be demolition waste only, opened up an acre at a time so there would be 14 different openings and closings; each acre would be delineated and there would be a bond in the amount of \$10,000 that Mr. Lusk would have to establish for the closure should there be some failure to comply with permitting by the State Health Department.

GARDNER asked who came up with this requirement.

BROWN responded that it was the Health Department's requirement. He said that it was explained to him verbally that the bond would be required in this particular case.

GARDNER asked Brown if he read about or had been exposed to that kind of bond before in the operational conditions.

BROWN said no, he had not read the Kansas statutes that allow for that kind of bond type situation.

BROWN further explained that the condition of the State's final denial or approval of this permit requires that all local land use regulations and zoning

be complied with. The State will not look at this permit until everyone at the local level has acted.

GARDNER asked why the Health Department had had such a difficult time keeping the landfill in line.

BROWN responded that it was operated in a fashion that was totally contrary to all of the local and State regulations. The Health Department took action through the sanitation code #5 and #7, a nuisance abatement procedure on the old Derby landfill area. The State stepped in by that time; they were very slow to react. He said that he was not directly involved when that issue came up but he remembered the complaints. He said that now they have more speedier administrative powers at the State level, and with the condition of 48 hour correction, that was one of their responses locally to attempt to address things in a more timely fashion.

Considerable discussion followed concerning the enforcement of cleanup of the site and the performance bond.

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the character of the neighborhood; the zoning and uses of properties nearby; the suitability of subject property for the uses proposed; and the recommendation of staff, I move that we recommend to the governing body that the zone change and special use permit be approved subject to the following conditions:

- a. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of The Kansas Department of Health and Environment Bulletin NO. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, shall be permitted for disposal at the site.
- b. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- c. The deposit of material on site shall cease by January 1, 1989, and the cover material, final grading in accordance with the grading plan, and seeding shall be completed no later than July 1, 1989, unless an extension of time is granted by KDHE and by the Board of County Commissioners after a public hearing. Filling and grading shall be in accordance with the Grading Plan dated _____. Cover material shall be applied daily.
- d. A drainage plan indicating how this site will drain during the landfill operation as well as after final completion shall be submitted to the County Bureau of Public Services for review and approval.
- e. The landfill shall not be open to the general public. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- f. The applicant shall provide a 40-foot wide access easement through his Lusik Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording.
- g. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.

- h. A 4-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation.
- i. Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until authorized by the above or until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation.
- j. Within three months after final inspection and close-out of the landfill operation, the applicant shall submit a request to rezone this property to whatever zoning classification exists at that time on the balance of the former Derby landfill site.
- k. Items "d" and "f" above shall be complied with prior to these cases being forwarded to the Board of County Commissioners for final action. Also, four copies of the approved Grading Plan shall be submitted to the Planning Department prior to County Commission consideration of these cases.

Miles moved, Wilson seconded.

BANZER reiterated that landfills were very difficult to enforce and until the Commission gets some assurance that they can be enforced, he did not see how they could support this request.

GARDNER stated that he appreciated the effort staff has put on this, but did not think they addressed the most pointed and critical problem and that was how do you affect the solution in a short time period if it occurs short of going to court, and now is the time to put that in contractual form as a portion of the special use permits that have not been solved, not after the fact.

LUSK asked Gardner if he knew that what he was talking about already exists on the site.

GARDNER said that he was aware, and he was also aware by what the neighbors have said that they had an extremely difficult time, and Lusk has said himself that based on other operators that it has been a very difficult time.

VOTE ON THE MOTION: It carried with a vote of 5 in favor (Miles, Wilson, Bayouth, Moore and Peters) and 2 opposed (Banzer and Gardner). Crockett and Goebel were absent.

GALBRAITH announced that these cases go on to the County Commission on April 30th, but that since this issue of bonding has been raised, and since Jack Brown advises that the State will require one, he would like to ask them to pursue that and find out what that wording is because Mr. Lusk is saying that he was unable to give a bond, and they are hearing that the State will require it, he would like to have some of those answers before they go on.

LUSK said that if the State requires a bond it would be fine with him.

EXCERPT

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VOTE

Chairman Bernard A. Hentzen	Aye
Chairman Pro tem Donald E. Gragg	Aye
Commissioner Tom Scott	Aye

METROPOLITAN AREA PLANNING DEPARTMENT

Request for Zoning and Special Use Permit, District #2.

SCZ-0559 - Zone Change from "R" Rural Residential District to "F" Heavy Industrial District; and

DR 86-4 - Special Use Permit for a Demolition Construction Landfill Site, located south of 91st Street South in an area between Highway K-15 and the Arkansas River.

Mr. Jack Galbraith, Chief Planner, Current Plans, Metropolitan Area Planning Department, stepped to the podium. "Gentlemen, this application is a request to change the zoning from the Rural Residential District, the "R" classification, to Heavy Industrial; accompanying that is an application for a Special Permit for a landfill.

SLIDES WERE SHOWN OF THE AREA.

"The property is outlined in the black tape on the slide. It is south of 91st Street; it lies between K-15 on the east and the Arkansas River on the west. It's a site that was formerly part of the Derby Landfill Site. It's adjacent to the city limits of Derby; Derby is outlined in the dashed red tape. The Derby Sewer Treatment Plant is in that area directly north, inside their city, that is zoned a lighter industrial classification. The purple color on that slide north of 91st Street is County zoning, and that is light industrial zoning.

"This applicant for some months now has been attempting to reopen a part of the former Derby Landfill Site because this is a depressed area. He contacted us some time ago asking if it was possible to open that site up and deposit demolition and construction type waste and not have it opened for general public purposes. He's been working closely with the Environmental Health Department of Sedgwick County and the State Health Department in trying to get permission to reopen this site. With this application, he submitted...this slide's not working; let me check something.

"This is the aerial photograph that outlines the application area. You can see the former Derby Landfill that's west of there between the application area and the river. The darker shadow on that slide is a former sandpit. Of course, they've proposed to deposit cover material on top of the filling operation daily.

"This is the contour map and site plan that he submitted with the application; it's all generally just undeveloped now. There are single-family homes directly east between this site and K-15 Highway. This is looking at the entrance roadway through his industrial zoning that he'd drive through to get to the application area...another view looking back east towards the sewer treatment plant in Derby...another slide...that's part of the former landfill operation, and this slide really gets back into showing you directly the application area itself...between where the arrow is and the timber is a depressed area that he's desirous of having filled. The State said it would not require any longer time than January 1,

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"1989...about two and one-half years he believes that he can fill the operation and complete it...a slide showing a part of the old landfill site."

Mr. Gragg asked Mr. Galbraith to turn back two slides and asked, "OK; I thought this was a landfill. Is this also a salvage yard?"

Mr. Galbraith replied, "These...the Planning Commission asked that question the day this was heard, and he says these are cars that belong to him on the light industrial zoning that's inside the City of Derby. He had hopes at one time to restore some of these automobiles or trucks and they've been vandalized he said over a period of months now, or perhaps years, and I'm not sure what will become of them."

Mr. Gragg asked, "Doesn't a salvage take a little bit different category than light..."

Mr. Galbraith replied, "Yes it does in the County. It takes heavy industrial zoning plus a special permit, but again, he says this area lies inside the City of Derby."

"This is looking from K-15 now back to the west across the railroad track...one of the single-family homes...back up on 91st Street looking south at the sewer treatment plant."

"This, of course, is in the Derby area of influence so they considered this case first. At their meeting, they were concerned about assurances that this would be operated properly, that it would not be open to the general public; they were concerned about hours of operation, having an operator on duty at all time, that the site would be locked and secured when not open. They were also concerned about what assurance would they have that upon notification of a violation that the operation would cease immediately. We worked with the County Counselor's Office relative to a condition that would upon notification of the applicant by either the Health Department or the County Zoning Administrator's Office that the operation would cease immediately, that he would rectify those violations that occurred or within 14 days, he could have a hearing before the Board of County Commissioners to discuss those violations. Derby, after deliberation and modifying a number of the conditions, recommended to you unanimously that the application be approved, subject to those modified conditions."

"When the Metropolitan Area Planning Commission considered this, they debated it at great length also; you can tell that by looking at the minutes. The conditions that they recommended are on pages 7 and 8 of the minutes that are attached to your referral sheet. Again, the conditions of approval point out that this will be demolition and construction waste only, that no hazardous or toxic material shall be deposited on the site. The landfill operation is to cease by January 1, 1989. They've submitted the approved grading plan; they've submitted a drainage plan. Again, it was to be operated with a landfill operator on the premises at all times; the hours of operation are between 8 a.m. and 6 p.m., Monday through Saturday. The access easement through the industrial site to the north has now been submitted by separate easement. He is to construct a fence along Spring Creek, along the east and south property lines."

"Then Item P is one I would bring to your attention: Upon written notification of any violation by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until authorized by one of

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"the above or until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation. After this operation is completed, they are to final grade and seed the site, and they are also to request a rezoning then from the heavy industrial zoning classification back at that time to whatever the balance of his ownership is zoned.

"Following MAPC's meetings, we have 39 percent protest petitions filed; that requires a unanimous vote of the County Commission. There are a number of people here today in opposition to this request; the applicant and his attorney are present also. Jack Brown of the Health Department is also present, gentlemen, if you have questions of him.

"One of the things asked at the Planning Commission was, 'Would the applicant have to be bonded?' Mr. Brown has checked that out with the State, and a bond is required by the State, not to be less than \$5,000; it's more likely it will be \$10,000. The State advises that if this is granted by you, they will only permit this to be opened an acre at a time, and they will inspect each acre as it's filled and make sure that it's satisfactorily covered and then that bond submitted with the first acre then is renewable for the next acre on through the entire 14-acre site. Do you have questions?"

Chairman Hentzen asked for questions of Mr. Galbraith; there being none, he asked for others to speak to Item J.

Mr. Richard Rumsey, representing Mr. and Mrs. Lusk, the applicants, stepped to the podium. "I think I have a little bit of experience in the background on this case. The big complaint, as I understand it, that the surrounding property owners have is the way this was operated in the past. There is a file that is at least six inches thick where Mr. Lusk attempted to control the use of that operation as it was handled in the past; at times he was successful; at times he was not successful. There were District Court Orders that were issued; in any event, the landowners at times had reason to be upset.

"I think there are several material areas of change between now and what happened when this was being operated as a landfill; among, of course, are the ten or eleven requirements that have been related to you and I think are set forth pretty clearly on these documents maybe that you have in front of you. I think among those, the most material are as follows: One, this will be filled at an acre at a time. Each operation will be bonded. It can be closed down, as I understand it, within 48 hours if it isn't operated properly. Mr. Lusk will be in control, and he will be responsible for the closing of each acre as it's completed. There will be a fence, as pointed out, between the...to protect, at least in part, the owners to the east and the owners to the south.

"The land right now has little or no use; there are holes in the area that, as I understand it, when it rains, fills up five, six, seven, eight feet. The type of trash that's...not trash, but the type of debris that's going to be taken into that property is considerably different than what it was before.

"As has been pointed out, the Derby Planning Commission approved this unanimously; Mr. Lusk was a member of that Commission but did not sit at any of the meetings and in fact was in the audience at the time it was ruled upon and the requirements made by that body. The Metropolitan Area Planning Commission approved this 5-2; at least one of those people affected had some reservations, as I remember, if a bond were let, he might have changed his mind. But, in any event, we think it is an opportunity to improve the area in all honesty and, I think, to make it at least productive where now it is not. I think this might be an answer."

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Chairman Hentzen asked for anyone else to speak in support of the application; there being no one, he asked for speakers in opposition.

Mrs. Norma Moore, 9339 South K-15, stepped to the podium. "My family, which consists of my two sons, my husband, myself and my parents, Roscoe and Carol Warren, live across Spring Creek from the proposed dump site. This is a small scattered neighborhood inhabited by only a handful of families. We are located south of the Derby City Limits and the area that has in the past and will be in the future most severely impacted by Mr. Lusk's enterprise; we are the ones that will take the brunt of it.

"We are here today because our homes, our families, our lands, and very possibly even our health may be at risk once more. As our elected representatives, we're asking for your protection. In making a decision, you understandably rely to some degree on the approval or disapproval of other bodies that have reviewed this plan; in this case, the Derby Planning Commission was the first to give their approval. That wasn't much of a surprise to those of us involved considering the fact that Mr. Lusk is a member of the Planning Commission, and Derby has nothing to lose in the situation; they never have, and they never will be held responsible for anything that goes on in this dump site. As for the approval of the MAPC, I feel it's worth noting that although the proposal may have been approved, it wasn't unanimous; there were at least two Commissioners, Mr. Gardner and Mr. Banzer, who questioned and appeared to have some strong reservations concerning the reopening of this site.

"In the past, enforcement has proved to be an almost unattainable goal when it came to keeping this business venture in compliance with the then existing rules and regulations. In these tight economic times, it's difficult for me to believe that these same overworked health agencies will now have the adequate staff with enough time to devote to the problems that arise and handle the frequent regular checks that must be made on this sort of operation.

"When we lived through this nightmare the last couple of years, the routine was for the Sedgwick County Health Department and/or the Kansas Department of Health and Environment to check as often as they could or if there were specific complaints and then the staff people would go back and make their report. There seemed to be little or nothing that could or for some reason was being done to bring this dump and its operators into compliance. That left those of us who live in close proximity to continue to clean the blowing plastic, paper and Boeing paperwork from our property and to watch the creek fill with tires and debris. When this travesty was finally closed in 1985, we were assured that this bureaucratic and environmental ordeal was ended, and we believed it.

"While this particular project is a demolition construction landfill this time and not a solid waste landfill, I still know that there's quite a considerable amount of blowing material that originates from any construction project and with an average Kansas wind at 12 MPH, we, as neighbors, will be in for more of the same. While there may be restrictions put on this dump, all these restrictions still don't make a bad project a good one. As we have all too clearly observed in the past, these rules don't mean much if they can't be enforced, and unfortunately, that's been the rule rather than the exception. In our past dealings, we were often met with red tape and more often than not, rules that favored the offender rather than the victim.

"In conclusion, we are saying to you through our protest petitions and by our presence here today...and these are the members of the neighborhood that have come today...could I have them stand, please...that this is a potential problem of major proportion to us and our homes. We're asking for your support by a no vote today that will lay this situation to rest once and for all.

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Regular Meeting, April 30, 1986

"We particularly look to Mr. Scott, as our representative, to support us in our right to a clean, healthy and enjoyable environment in which to live. Thank you."

Chairman Hentzen thanked Ms. Moore and asked, "Let me ask you...what ought to be done with this land?"

Mrs. Moore replied, "I don't know; I'm not an expert, but...maybe we could fill it in with maybe dirt. I realize that wouldn't make much money for a landowner, but maybe fill dirt could be brought into this area if there are indeed holes. I haven't really seen the...I have walked the area and I haven't seen the holes that are said to exist. That's a possibility to me...maybe fill dirt, cement, rock, that sort of thing. I don't know. I don't even know if that's feasible; that would be more agreeable to me than demolition materials."

Chairman Hentzen stated, "I've been watching in the paper lately about the strip mining in southeastern Kansas where they just left it like it was, but it seems what they're trying to do here is to reclaim some land; that is, straighten it out even if it was screwed up in the past, and that's why I'm asking what could be done or what should be done. It just makes sense that if you've messed up a place like this that you can come in and straighten it out. I'm visualizing going in there and smoothing it out with a bulldozer and start farming it."

Mrs. Moore responded, "This was at one time a milo field; I mean it hasn't always been a mess and a dump. It should have been taken care of when the landfill was ...when the rest of the landfill was closed; it wouldn't have taken that much."

Chairman Hentzen stated, "Sure...what I'm...I understand your thinking and your comments, but if we reject this and it stays a junk pile just like it is now...what I'm trying to get at is what should we do...what should the community do; what should the owner do?"

Mrs. Moore stated, "The owner will have...he does have some responsibility to reclaim this area. He was part of the problem to begin with; he was involved in this past operation...gives us little confidence the present one will be a great improvement. It's hard for me to say. I don't feel like I have the expertise to say, 'This is what we should do,' but I have to say that I don't think that adding more garbage to an area is going to be the answer to it either."

Chairman Hentzen stated, "Well, I'm going to ask Mr. Rumsey if he would try to define for me what they mean by Waste Classifications I and II as defined in Chapter V of the Kansas Department...in other words, this lady used the word dump, garbage. I don't understand that; I don't understand that that's the request. Tell me what you're talking about putting in there."

Mr. Rumsey returned to the podium. "The definition in Chapter V...first of all, a demolition waste site, according to this article...one of the purposes for it is that it does not, as a rule, constitute a long-term hazard to the environment; it does not, as opposed to some dump sites.

"Waste classification is defined as: Class I, waste materials resulting from land clearing and excavation projects—trees, brush, stump, etc., which may or may

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"not be mixed with soil or rocks. Class II is waste materials resulting from housing developments and other projects requiring demolition of buildings and dwellings—brick, mortar, wood, plaster, asphaltic materials, which, as I understand it, may or may not be brought in, concrete, metal, etc. So, it's not garbage, and it's not the usual thing that you, I think, would consider as waste.

"I might also state that the Derby Landfill had been in operation some five to seven years before Mrs. Moore moved onto her property, so she moved in with her eyes open. But, this would certainly be an improvement over what operation has taken place in the past."

Chairman Hentzen commented, "Those definitions you read to me do not include any cars or tires or barrels or anything like that. Now, let me ask you one other question. Is this application being made to reclaim that land or is it being made to make a profit on filling up the holes with a bunch of junk?"

Mr. Rumsey replied, "As I understand it, it would cost...and this is what I've been told...some \$350,000 to \$500,000 to bring in fill dirt, and this money will not pay for the complete reclamation of that property, whatever he might make off this. It's my understanding...been a losing proposition for the landowner from Day One, but in any event, the purpose, as I understand it, is to fill that property. This is 14 acres; the Board of Health signed off on this property, believe it or not, in '84 or as Mrs. Moore said, in '85, I don't remember when, claiming that everything had been done. But in any event, it hasn't been done, and I think the only way it's going to be reclaimed is to be able to level it off. They are going to bring it up to the same level as the area to the west of this, which will smooth it out. But, it's my understanding this is not a profit-making operation; it's an operation to afford this man an economical way to bring this property back into some kind of usable condition. That's my understanding."

Chairman Hentzen thanked Mr. Rumsey and asked for anyone else who wished to speak to the subject.

Ms. Imogene Fleming, K-15, just east of this landfill part, stated, "I wonder about the part...he said asbestos may or may not...this is what we're concerned about is the pollution and maybe the debris that would be blown, could even come across...this Kansas wind, but I didn't understand this when Mr. Rumsey said, 'asbestos may or may not...' Now, we do not want things that will pollute our air; our families are too near and dear...and our lives are, and we know that these things can happen...in the news today about pollution. So, I wanted that clarified."

Mr. Scott asked, "Mr. Chairman, if you please...Mrs. Moore, could I ask you a couple of questions? Over the years, how many times have you called me about the problems there at the landfill at Derby?"

Mrs. Moore returned to the podium. "I have manila envelopes full of times that you and I have...have been called about this. I've probably dealt with this state and the Sedgwick County Health Department as much as anyone because they were the ones that were going to have to do the enforcing. Quite often...I don't know if you know...it seems like sometimes it was several times a week."

BOARD OF SEDGWICK COUNTY COMMISSIONERS
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Mr. Scott remarked, "It sure was. Secondly, what results did we get when we got the proper people down there to look at the landfill to see if it was being run the way the State required it to be run?"

Mrs. Moore replied, "Everyone agreed...the Sedgwick County Health Department, the Kansas Department of Health and Environment; everyone was in agreement there was a problem; it was out of control, and something had to be done about it. But, I don't know what the problem was; we never could seem to decide to say, 'Enough is enough.' 'Let's stop it right now, and you have to clean up what you've done.' Nothing was done for months at a time. I think finally the thing that made the move was the media heard about it and they came out and started looking at it. And, it wasn't long after that that wheels started to grind."

Mr. Scott stated, "Well, over the years, I've reviewed the site, and I could never see that the landfill was being run the way that I felt a landfill should be run; as a matter of fact, I made a trip there just this last week and looked at it, and I still saw paper, garbage, and stuff strung on a part that was supposed to be closed and filled. This was a concern of mine.

"My concern, gentlemen, is that I've had problems with this landfill from the very beginning; secondly, the people have said they've had enough down there, and I have to agree with them that they've had enough, that they've had very little help from the State and have had very little help from the County, and I'm sorry about this. Today, we can rectify this, and I assure you I intend to do it."

Mrs. Moore expressed her thanks.

Chairman Hentzen asked if anyone had anything new and different to add; there being no one, he asked the pleasure of the Commission.

MOTION

Mr. Scott moved to deny the Zone Change Request.

Mr. Gragg seconded the Motion.

VOTE

Chairman Bernard A. Hentzen	Aye
Chairman Pro tem Donald E. Gragg	Aye
Commissioner Tom Scott	Aye

Mr. Bill Rustin, County Counselor, stated, "Excuse me, Mr. Chairman...prior to taking the vote, I think it would be best for the matter of the record to state the reasons for the denial of the request."

Mr. Scott stated, "My reasons for making the motion is that over the years this has been a landfill, and I don't think the conditions of the way the landfill was run was proper; I think there's been violations made down there. I've had

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"County residents down there complaining about this; I think it would just be a continuation of what we've had if we approved this Zone Change and Special Use Permit? I've got pictures; I've got a stack of data two inches thick, if you need it, Mr. Counselor, to back up what I'm saying."

Mr. Rustin stated, "Mr. Scott, I don't need anything; I just think, for a matter of record, the reasons for denial should be put into the Motion."

Mr. Scott stated, "I'm just saying I've got it if you need it."

Mr. Rustin thanked Mr. Scott.

Mr. Gragg asked, "If we take Action Line 2, does that assist in documenting it? It says, 'Adopt the findings...'"

Mr. Rustin responded, "It would supplement what Commissioner Scott put in his motion, Commissioner Gragg."

Chairman Hentzen asked, "What are you suggesting?"

Mr. Gragg replied, "Well, I think the findings, also, in the MAPC records should be a part of any future documentation that would also...is what you and Mr. Galbraith were alluding to?"

Mr. Rustin responded, "Well, what I was saying sir, is that if you would like to do that, which would be fine, integrate those in with Commissioner Scott's motion."

Mr. Gragg asked, "Does it help satisfy or is just an unnecessary frill?"

Mr. Rustin stated, "It would help for the record, sir if reasons were stated for denying each request."

AMENDED MOTION

Mr. Scott stated that over the years the landfill had operated, it had not been run properly; violations had occurred; property owners had many complaints of which he had pictures and a two-inch thick file of data; therefore, he moved to adopt these findings and deny the Zone Change and Special Use Permit for the area south of 91st Street South between K-15 and the Arkansas River.

Mr. Gragg seconded the Motion.

VOTE

Chairman Bernard A. Hentzen	Aye
Chairman Pro tem Donald E. Gragg	Aye
Commissioner Tom Scott	Aye

RUMSEY, RICHEY & PLUMMER
RICHARD H. RUMSEY, P.A.
KEITH D. RICHEY
STEPHEN B. PLUMMER
ROBB W. RUMSEY
1041 North Waco
Wichita, Kansas 67203
(316) 262-4481

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

LARRY LUSK,)
Plaintiff,)
VS.) Case No. 86 C 1814
)
BOARD OF SEDGWICK COUNTY)
(KANSAS) COMMISSIONERS,)
Defendant.)

JOURNAL ENTRY

NOW, on this 5 day of January, 1987, the above-entitled matter comes on for hearing and trial. The plaintiff appears in person and by and through their attorney, Richard H. Rumsey. The defendant appears by and through its attorney, Royce E. Wallace.

THE COURT, being duly advised in the premises and after listening to arguments of counsel, FINDS:

1. Sufficient facts were presented at the hearing before the Sedgwick County Commission to substantiate a holding that the zoning of the property in question should be and it is hereby changed from "R", Rural Residential District, to "F", Heavy Industrial District.
2. The actions of the Sedgwick County Commission in denying the zoning change were arbitrary and capricious.
3. The highest and best use of the land is, in fact, "F", Heavy Industrial. The zoning of said property is hereby changed and modified from "R", Rural Residential District, to "F", Heavy Industrial District.
4. The Sedgwick County Commission in denying the special use permit was not arbitrary and capricious. However, the County Commission in denying the special permit did not enter a written order summarizing evidence before it stating the factors which it considered in arriving at its determination.

5. The issues relating to the special use permit are hereby remanded to the County Commission. The matter shall be set down for additional hearing, and additional evidence may be presented by both sides.

6. The character of the neighborhood, the zoning and uses of nearby property, the suitability of the subject property for the use to which it has been restricted, the extent to which the removal of the restrictions were detrimental to the nearby property, the length of time the subject property has remained vacant as zoned, and the relative gain to the public health, safety and welfare, all dictate that the property should be zoned "F", Heavy Industrial District.

IT IS, THEREFORE, BY THE COURT ORDERED AND DECREED that the above findings be and they are hereby made a binding and valid order and judgment of this Court.

TOM RAISA

DISTRICT COURT JUDGE

APPROVED:

RUMSEY, RICHEY & PLUMMER

BY *Richard H. Rumsey*
Richard H. Rumsey,
Attorney for Plaintiff

ROYCE E. WALLACE

Royce E. Wallace
Attorney for Defendant



Certified to be a true and correct copy of the above is a true and correct copy of the original entered of filed on the 20 day of Jan, 1967 and recorded in this Court of the Eighteenth Judicial District, Sedgewick County, Kansas. Dated this 20 day of Jan, 1967 Clerk of the District Court
By *Mayoni Scher*



SEDGWICK COUNTY, KANSAS

BUREAU OF PUBLIC SERVICES

1250 S. SENECA
WICHITA, KANSAS 67213-4498
(316) 268-7901

TO: Louise Olivarez, Senior Planner
Metropolitan Area Planning Department

FROM: James Weber, P.E., Director,
Sewer Operations and Maintenance *JW*

DATE: April 3, 1987

SUBJ: Special Use Permit #DR 86-4

We have reviewed and approved the "Grading and Drainage Plan" for the site covered by the referenced permit dated April 15, 1986. I have enclosed a copy of my letter to Derby dated September 12, 1985, which explains in detail the floodway requirements for the preliminary plat of Larry Lusk Addition which contains this site. If deemed appropriate by your department, I would suggest that an attempt be made to obtain the 100' wide floodway reserve on the south side of the permit site.

JW/sd

enclosure

RECEIVED

APR 07 1987

METROPOLITAN PLANNING
ROUTE _____



SEDGWICK COUNTY, KANSAS

DEPARTMENT OF PUBLIC WORKS

1200 S. WENDELL
WICHITA, KANSAS 67201-2200
(316) 268-7901

September 12, 1985

Karen Susta, Secretary
Derby Planning Commission
City Building
Derby, Kansas 67037

Dear Karen:

Re: Larry Lusk Addition
Preliminary Plat

As indicated on the enclosed copies of the F.I.R.M. and Floodway Map of the area, a major portion of this plat is located within a Zone A Flood Hazard Area and the Regulatory Floodway. Both a floodway and a minimum pad elevation should be established on this plat.

On November 10, 1975, the Division of Water Resources approved a floodplain encroachment plan for this site. Based upon this approval, we believe that the platted floodway line can be shown inside the regulatory floodway line established by FEMA. We recommend that the west 350 feet of this property be platted as a floodway reserve. This dimension would be consistent with the plan approved by the Division of Water Resources. No fill or encroachment should be allowed in the floodway reserve without approval of an amended encroachment plan by the Division of Water Resources.

A floodway reserve will also be required adjacent to Spring Creek. Our review of the information available in the Derby Flood Insurance Study and the Sedgwick County Flood Insurance Study indicates that 100 foot of floodway reserve should be platted north of the centerline of Spring Creek in the Southeast corner of the property.

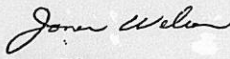
We recommend a minimum pad elevation of 1246 mean sea level for this property. This elevation should provide adequate protection from both the Arkansas River and Spring Creek. If this property is to be zoned for residential use, we recommend prohibition of basements. This prohibition would be consistent with the basement exemption incorporated in Derby's floodplain management ordinance.

Page 2
Karen Susta, Secretary
September 12, 1985

The contingent street dedication granted with Lusk Industrial Addition on the Southwest corner of 91st Street South and Buckner has not been shown on the preliminary plat. The contingent dedication should be shown on the final plat tracing.

If you should have any questions concerning these comments please call me at 268-7901.

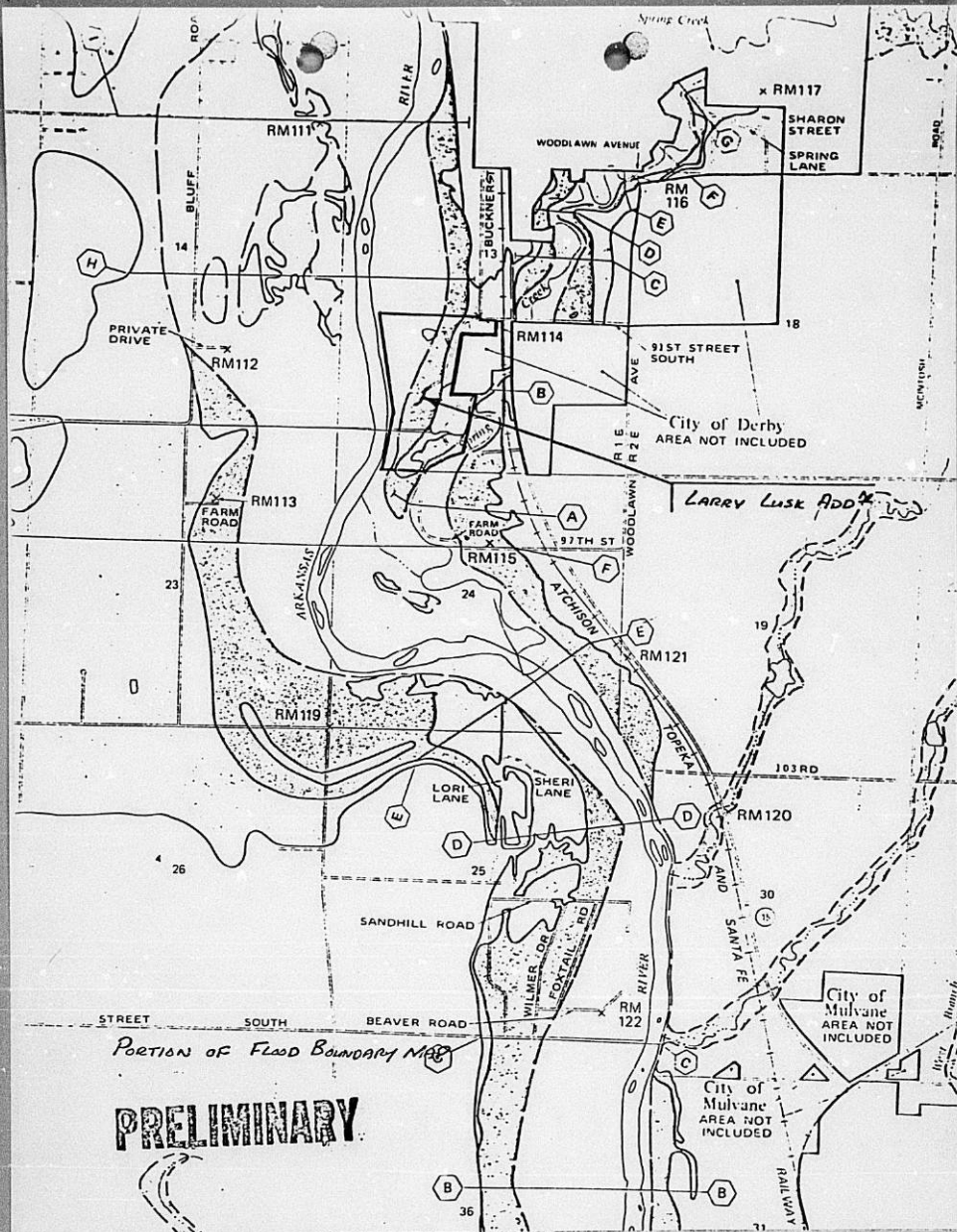
Sincerely,



James Weber
Engineer

JW/sd

cc: Lowell High
Forest Nagley, MAPD
Plat File /
Jack Brown, Health Dept.



Sedgwick County, Kansas

FLOODWAY RESERVE AGREEMENT

WHEREAS, to assure protection of the interests and safety of the public, it becomes necessary that Sedgwick County, State of Kansas, Party of the Second Part, provide flood protection and preserve the natural drainageway through the establishment of a "FLOODWAY RESERVE" within the property below described.

copy

AND WHEREAS, _____, Party of the First Part, is the rightful owner of, or legal agent for, the above property;

THE PARTIES HERETO AGREE as follows: That the Party of the First Part, for himself, his heirs, executors, administrators, and assigns for mutual considerations and covenants hereby agrees with the Party of the Second Part and its successors that a FLOODWAY RESERVE over and across the following described portion of the above described tract is necessary for the protection of the health and welfare of the county. The Party of the First Part hereby places the following described portion of the above described tract in the FLOODWAY RESERVE and state that he fully understands that by placing this portion of the tract in said Floodway Reserve no human habitat may be built therein and that any other obstruction to be placed therein shall be permitted only with the approval of the Kansas State Board of Agriculture, Division of Water Resources in accordance with KSA 24-126 or the appropriate governing body:

FURTHER, the "FLOODWAY RESERVE" shall be the responsibility of the owners of the property, Party of the First Part, until such time as the governing body exercising jurisdiction under K.S.A. 82a-301 elects to assume the responsibility for maintenance of, and improvement of drainage. Provided further that no building shall be constructed on, or within said "FLOODWAY RESERVE" nor shall any fill, change of grade, creation of channels or other work be carried on without the permission granted under K.S.A. 24-126, the Sedgwick County Engineer, or his successor.

Grantor _____, their heirs or assigns, to have full use and enjoy the premises except for, and subject to the right of the Grantee for the purpose herein granted.

DATED THIS _____ DAY OF _____, 19 _____.

PARTY OF THE FIRST PART

STATE OF KANSAS) ss
SEDGWICK COUNTY)

I hereby certify that on this _____ day of _____, 19____, before
me the undersigned, a Notary Public in and for the County and State aforesaid, came _____

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

WITNESS my hand and Notary Seal on the day and date last above written.

NOTARY PUBLIC

My appointment expires _____

SUBMITTED TO THE OFFICE OF COUNTY ENGINEER AND THE BOARD OF COUNTY
COMMISSIONERS FOR APPROVAL ON _____

APPROVED BY:

PARTY OF THE SECOND PART
SEDGWICK COUNTY COMMISSIONERS

DIRECTOR, BUREAU OF PUBLIC SERVICES/
COUNTY ENGINEER

CHAIRMAN

ATTEST:

COUNTY CLERK

APPROVED AS TO FORM ONLY:

ASSISTANT COUNTY COUNSELOR

4/6/87

DR 86-4 CONDITIONS OF APPROVAL

- A. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of the Kansas Department of Health and Environment Bulletin No. 4-4 "Guidelines for Operation of Solid Waste Management Systems" shall be the only landfill material permitted. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, or putrescible wastes, shall be permitted for disposal at the site.
- B. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- C. The deposit of material on site shall cease and cover material, grading, and seeding shall be completed no later than 36 months from the day the landfill permit is issued by KDHE. Grading shall be in accordance with the Grading Plan dated April 15, 1986. Cover material shall be applied daily.
- D. Prior to the commencing of the operation, the applicant shall execute a Floodway Agreement covering the floodway on the south 100 feet of the application area, as shown on the Grading and Drainage Plan dated April 15, 1986.
- E. The landfill shall only be open to solid waste collection vehicles licensed under the Sedgwick County Health and Sanitation Code No. 7. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- F. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording prior to commencing the landfill operation.
- G. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
- H. An 8-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation. The fence shall be constructed of welded or woven wire with openings no larger than one-inch.

FINAL VERSION
fallowing 4-6-87
staff meeting & meeting w/ Lusk

- I. Upon written notice of any violation by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation and subsequent action taken by the board.
- J. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing that cover material, final grading, and seeding are performed as detailed in the Grading Plan dated April 15, 1986, and in the Operating Manual referenced in condition B. This bond shall be in the amount of \$10,000 for each acre, or portion thereof, on which waste is being deposited.
- K. Prior to the commencing of the operation, the applicant/owner shall provide for installation and monitoring of a network of at least 4 wells which draw water from the uppermost permanent aquifer. One of these wells will monitor groundwater upslope of the site, the other three wells will monitor groundwater downslope from the site. These wells will be installed, constructed, operated, and sampled to comply with EPA Publication Number OSWER-9950.1 titled "RCRA Groundwater Monitoring Technical Enforcement Guidance Document" dated September, 1986, and shall remain in operation for 15 years from the date of landfill closure. Collection and analyses of samples from the wells will be accomplished by the County Health Officer and the actual costs of that monitoring shall be reimbursed by the applicant/owner.
- L. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing hazardous or toxic wastes (as defined by KSA 65-3430 et seq) or putrescible materials have not been placed in the landfill. This bond shall be in the amount of \$100 per cubic yard of waste to be deposited in the landfill and is intended to pay for the costs of excavation and disposal of wastes found to be hazardous or putrescible. This bond shall be in effect for 15 years from the date of landfill closure. A finding that hazardous or toxic wastes have been placed in the landfill shall be made when data from the assessment phase of the groundwater monitoring program described in condition K reveals that one or more chemical constituents listed in Appendix VIII of Paragraph 265 of CFR 40 is present in statistically significant quantities.
- M. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall file a restrictive covenant for the application area which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit construction of structures which penetrate the final cap or cover, and require approval of the Health Officer for use of the land for production of food crops. The covenant shall be in such form as may be approved by the County Counselor.

- 13
- A. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of the Kansas Department of Health and Environment Bulletin No. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as the only landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq or putrescible wastes, shall be permitted for disposal at the site.
 - B. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
 - C. The deposit of material on site shall cease and the cover material, final grading in accordance with the grading plan, and seeding shall be completed no later than 36 months from the day the landfill permit is issued by KDHE. Grading shall be in accordance with the Grading Plan dated April 15, 1986. Cover material shall be applied daily.
 - D. Prior to the commencing of the operation, the applicant shall execute a Floodway Agreement covering the floodway on the south 100 feet of the application area, as shown on the Grading and Drainage Plan dated April 15, 1986.
 - E. The landfill shall only be open to solid waste collection vehicles licensed under the Sedgwick County Health and Sanitation Code No. 7. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
 - F. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording prior to commencing the landfill operation.
 - G. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
 - H. An 8-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation. The fence shall be constructed of welded or woven wire with openings no larger than one-inch.

*AMENDED conditions
following 4-6-87 staff meeting.
Presented to Lusk at 2:30 meeting.*

- I. Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation and subsequent action taken by the board.
- J. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing cover material, final grading, and seeding are performed as detailed in the Grading Plan dated April 15, 1986, and as provided by special condition C. This bond shall be in the amount of \$10,000 for each acre, or portion thereof, on which waste is being deposited.
- K. Within one year and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing hazardous or toxic wastes (as defined by KSA 65-3430 et seq) or putrescible materials have not been placed in the landfill. This bond shall be in the amount of \$100 per cubic yard of waste to be deposited in the landfill and is intended to pay for the costs of excavation and disposal of wastes found to be hazardous or putrescible. This bond shall be in effect for 15 years from the date of landfill closure. A finding that hazardous or toxic wastes have been placed in the landfill shall be made when data from the assessment phase of the groundwater monitoring program described in condition L reveals that one or more chemical constituents listed in Appendix VIII of Paragraph 265 of CFR 40 is present in statistically significant quantities.
- L. Prior to the commencing of the operation, the applicant/owner shall provide for installation and monitoring of a network of at least 4 wells which draw water from the uppermost permanent aquifer. One of these wells will monitor groundwater upslope of the site, the other three wells will monitor groundwater downslope from the site. These wells will be installed, constructed, operated, and sampled to comply with EPA Publication Number OSWER-9950.1 titled "RCRA Groundwater Monitoring Technical Enforcement Guidance Document" dated September, 1986. Collection and analyses of samples from the wells will be accomplished by the County Health Officer and the actual costs of that monitoring will be reimbursed by the applicant/owner.
- M. Within 120 days and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall file a restrictive covenant for the application area which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit construction of structures which penetrate the final cap or cover, and require approval of the Health Officer for use of the land for production of food crops; and it shall be in such form as may be approved by the County Counselor.

received
1 PM
4-6-87

THE WICHITA-SEDGWICK COUNTY DEPARTMENT OF COMMUNITY HEALTH
OFFICE OF ENVIRONMENTAL HEALTH

DATE March 30, 1987

Additional changes
prepared by Health
Dept and presented
at 4-6-87 meeting

TO See Distribution
FROM Richard Hunter, Environmental Health Director

SUBJECT Consolidated approval
conditions - Lusk
Landfill (Rev 4-2-87)

I am enclosing a copy of the consolidated approval conditions for the proposed Lusk Landfill, which were agreed upon at our meeting of March 26, 1987. Deletions to the original conditions are shown as strike-outs, additions are underlined. Please call me at 268-8351 if you desire clarification or would like to review the cited publications.

a. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of the Kansas Department of Health and Environment Bulletin No. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as the only landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq or putrescible wastes, shall be permitted for disposal at the site.

b. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Schereer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.

c. The deposit of material on site shall cease by January-17, 1989, ~~and--the~~ cover material, final grading in accordance with the grading plan, and seeding shall be completed no later than 36 months from the day the landfill permit is issued by KDHE. ~~July---17---1989, unless--an-extension-of-time-is-granted-by KDHE and--grading.~~ Grading shall be in accordance with the Grading Plan dated April 15, 1986. Cover material shall be applied daily.

d. A drainage plan indicating how this site will drain during the landfill operation as well as after final completion shall be submitted to the County Bureau of Public Services for review and approval.

e. The landfill shall not be open to the general public. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.

f. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording.

g. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.

h. A 84-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation. The fence shall be constructed of welded or woven wire with openings no larger than one-inch.

i. Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence ~~until--authorized-by the-above--er~~ until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation and subsequent action taken by the board.

j. Within three months after final inspection and close-out of the landfill operation, the applicant shall submit a request to rezone this property to whatever zoning classification exists at that time on the balance of the former Derby landfill site.

k. Items "d" and "f" above shall be complied with prior to these cases being forwarded to the Board of County Commissioners for final action. Also, four copies of the approved Grading Plan shall be submitted to the Planning Department prior to County Commission consideration of these cases.

l. The applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing cover material, final grading, and seeding are performed as detailed in the Grading Plan dated April 15, 1986, and as provided by special condition c. This bond shall be in the amount of \$10,000 for each acre, or portion thereof, on which waste is being deposited. The active portion of the landfill shall be limited to one acre.

m. The applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing hazardous or toxic wastes (as defined by KSA 65-3430 et seq) or putrescible materials have not been placed in the landfill. This bond shall be in the amount of \$100 per cubic yard of waste to be deposited in the landfill and is intended to pay for the costs of excavation and disposal of wastes found to be hazardous or putrescible. This bond shall be in effect for 15 years from the date waste is placed in the landfill. A finding

that hazardous or toxic wastes have been placed in the landfill shall be made when data from the assessment phase of the groundwater monitoring program described in condition n. reveals that one or more chemical constituents listed in Appendix VIII of Paragraph 265 of CFR 40 is present in statistically significant quantities.

*add
last
sentence*

n. The applicant/owner will provide for installation and monitoring of a network of at least 4 wells which draw water from the uppermost permanent aquifer for a period of 15 years after the landfill is closed. One of these wells will monitor groundwater upslope of the site, the other three wells will monitor groundwater downslope from the site. These wells will be installed, constructed, operated, and sampled to comply with EPA Publication Number OSWER-9950.1 titled "RCRA Ground-Water Monitoring Technical Enforcement Guidance Document" dated September, 1986. Collection and analyses of samples from the wells will be accomplished by the County Health Officer and the actual costs of that monitoring will be reimbursed by the applicant/owner.

o. The applicant/owner shall file a restrictive covenant for the entire former Derby landfill site which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit construction of structures which penetrate the final cap or cover, and require approval of the Health Officer for use of the land for production of food crops.

dist: Bob Arnold, County Legal
Jack Galbraith, City County Planning
Katie Goering, County Environmental Resources
Doug Hahn, County Environmental Resources
Marvin Krout, City-County Planning

cf: Jack Brown, City-County Health

- A. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of the Kansas Department of Health and Environment Bulletin No. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, shall be permitted for disposal at the site.
- B. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- C. The deposit of material on site shall cease by ~~January 1, 1989~~ and the cover material, final grading in accordance with the grading plan, and seeding shall be completed no later than 36 months from the day the landfill permit is issued by KDHE ~~July 1, 1989, unless an extension of time is granted by KDHE~~ and grading shall be in accordance with the Grading Plan dated April 15, 1986. Cover material shall be applied daily.
- ~~D. A drainage plan indicating how this site will drain during the landfill operation as well as after final completion shall be submitted to the County Bureau of Public Services for review and approval.~~
- D. E. The landfill shall not be open to the general public. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- E. F. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording prior to commencing the landfill operation.
- F. G. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
- G. H. A 84-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation. The fence shall be constructed of welded or woven wire with openings no larger than one-inch.

This is a re-type of the Health Dept.'s 3/30/87 memo with a few changes prepared by MAPD. Discussed 4-6-87 at a meeting with Hunter, Brown, Hahn, Soehring, Kraut, Salzwath, Alvarez.

- H. ~~+~~ Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 40 hours, and the operation shall not commence ~~until authorized by the above or~~ until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation.
- I. ~~+~~ Within three months after final inspection and close-out of the landfill operation, the applicant shall submit a request to rezone this property to whatever zoning classification exists at that time on the balance of the former Derby landfill site.
- K. ~~Items "D" and "F" above shall be complied with prior to these cases being forwarded to the Board of County Commissioners for final action. Also, four copies of the approved Grading Plan shall be submitted to the Planning Department prior to County Commission consideration of these cases.~~
- J. Within 120 days and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing cover material, final grading, and seeding are performed as detailed in the Grading Plan dated April 15, 1986, and as provided by special condition C. This bond shall be in the amount of \$10,000 for each acre, or portion thereof, on which waste is being deposited. The minimum bond is \$10,000, which would allow waste to be deposited on one acre.
- K. Within 120 days and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing hazardous or toxic wastes (as defined by KSA 65-3430 et seq) or putrescible materials have not been placed in the landfill. This bond shall be in the amount of \$100 per cubic yard of waste to be deposited in the landfill and is intended to pay for the costs of excavation and disposal of wastes found to be hazardous or putrescible. This bond shall be in effect for 15 years from the date waste is placed in the landfill. A finding that hazardous or toxic wastes have been placed in the landfill shall be made when data from the assessment phase of the groundwater monitoring program described in condition L reveals that one or more chemical constituents listed in Appendix VIII of Paragraph 265 of CFR 40 is present in statistically significant quantities.
- L. Prior to the commencing of the operation, the applicant/owner will install and monitor a network of at least 4 wells which draw water from the uppermost permanent aquifer. One of these wells will monitor groundwater upslope of the site, the other three wells will monitor groundwater downslope from the site. These wells will be installed, constructed, operated, and sampled to comply with EPA Publication Number OSWER-9950.1 titled "RCRA Groundwater Monitoring Technical Enforcement Guidance Document" dated September, 1986.

M. Within 120 days and prior to the commencing of the operation, whichever occurs first, the applicant/owner shall file a restrictive covenant for the entire former Derby landfill site which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit construction of structures which penetrate the final cap or cover, and require approval of the Health Officer for use of the land for production of food crops.

THE WICHITA-SEDGWICK COUNTY DEPARTMENT OF COMMUNITY HEALTH
OFFICE OF ENVIRONMENTAL HEALTH

DATE March 30, 1987

RECEIVED

APR 01 1987
METROPOLITAN PLANNING
ROUTE 7

TO See Distribution

FROM Richard Hunter, Environmental Health Director

SUBJECT Consolidated approval
conditions - Lusk
Landfill

I am enclosing a copy of the consolidated approval conditions for the proposed Lusk Landfill, which were agreed upon at our meeting of March 26, 1987. Deletions to the original conditions are shown as strike-outs, additions are underlined. Please call me at 268-8351 if you desire clarification or would like to review the cited publications.

- OK
- a. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of the Kansas Department of Health and Environment Bulletin No. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, shall be permitted for disposal at the site.
- OK
- b. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- OK
- c. The deposit of material on site shall cease by ~~January 17, 1989~~, and the cover material, final grading in accordance with the grading plan, and seeding shall be completed no later than 36 months from the day the landfill permit is issued by KDHE July 1, 1989, unless an extension of time is granted by KDHE and grading shall be in accordance with the Grading Plan dated April 15, 1986. Cover material shall be applied daily.
- omit
dash out
- d. A drainage plan indicating how this site will drain during the landfill operation as well as after final completion shall be submitted to the County Bureau of Public Services for review and approval.
- OK
- e. The landfill shall not be open to the general public. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- 7/1/89
open to ?
"licensing"
sanctions?

done? if so, eliminate this condition

OK f. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording.

OK g. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.

OK h. A 84-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation. The fence shall be constructed of welded or woven wire with openings no larger than one-inch.

OK i. Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until authorized by the above or until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation.

OK j. Within three months after final inspection and close-out of the landfill operation, the applicant shall submit a request to rezone this property to whatever zoning classification exists at that time on the balance of the former Derby landfill site.

*PP
feasible?
(impossible?)*

k. Items "d" and "f" above shall be complied with prior to these cases being forwarded to the Board of County Commissioners for final action. Also, four copies of the approved Grading Plan shall be submitted to the Planning Department prior to County Commission consideration of these cases.

done?

when?

*
l. The applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing cover material, final grading, and seeding are performed as detailed in the Grading Plan dated April 15, 1986, and as provided by special condition c. This bond shall be in the amount of \$10,000 for each acre, or portion thereof, on which waste is being deposited. The minimum bond is \$10,000, which would allow waste to be deposited on one acre.

*allows
owner to
decide
how much
to deposit
@ a time*

*when?
(one day
of action
to be
submitted
prior to
excavation
process
first)*

*
m. The applicant/owner shall obtain a bond, payable to Sedgwick County, guaranteeing hazardous or toxic wastes (as defined by KSA 65-3430 et seq) or putrescible materials have not been placed in the landfill. This bond shall be in the amount of \$100 per cubic yard of waste to be deposited in the landfill and is intended to pay for the costs of excavation and disposal of wastes found to be hazardous or putrescible. This bond shall be in effect for 15 years from the date waste is placed in the landfill. A finding that hazardous or toxic wastes have been placed in the landfill

*need to
come up
total
cost*

*What is this bond
or cubic yards to
be placed on site?*

shall be made when data from the assessment phase of the groundwater monitoring program described in condition n. reveals that one or more chemical constituents listed in Appendix VIII of Paragraph 265 of CFR 40 is present in statistically significant quantities.

Prior to the commencing of the operation
n. *when?* The applicant/owner will install and monitor a network of at least 4 wells which draw water from the uppermost permanent aquifer. One of these wells will monitor groundwater upslope of the site, the other three wells will monitor groundwater downslope from the site. These wells will be installed, constructed, operated, and sampled to comply with EPA Publication Number OSWER-9950.1 titled "RCRA Ground-Water Monitoring Technical Enforcement Guidance Document" dated September, 1986.

when? o. The applicant/owner shall file a restrictive covenant for the entire former Derby landfill site which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit construction of structures which penetrate the final cap or cover, and require approval of the Health Officer for use of the land for production of food crops.

dist: Bob Arnold, County Legal
Jack Galbraith, City County Planning
Katie Goering, County Environmental Resources
Doug Hahn, County Environmental Resources
Marvin Krout, City-County Planning ✓

cf: Jack Brown, City-County Health

CASE NO. DR 86-4

11	Notices to adjoining property owners mailed on 4-1-87 for BCoC meeting on 4-15-87.
3	One each to Applicants and Agents.
6	One each to Ron Worley, David Spears, Jack Brown, Doug Hahn, Jim Weber and Karen Crook.
3	One each to Louise, Barbara and Glen.

23	TOTAL
----	-------

DR 86-4 Mailing List

Richard Rumsey
Rumsey, Richey & Plummer
1041 North Waco
Wichita, Kansas 67203

Larry Lusk
5001 East 71st Street South
Derby, Kansas 67037

Lowell D. High
1542 South St. Francis
Wichita, Kansas 67211

The City of Derby, KS.
(a municipal corporation)
Derby Municipal Building
229 North Baltimore
Derby, Kansas 67037

Lester D. ^{and} Ms. Norma D. Moore
9339 Southeast Boulevard
Derby, Kansas 67037

Carol and Roscoe Warren
9529 Southeast Boulevard
Derby, Kansas 67037

Charles W. and Naomi F. Glaser
9419 South Bluff Street
Wichita, Kansas 67236

William C. and Georgia L. Bennett
9101 South 55th Street East
Derby, Kansas 67037

R. E. and Nellie McHenry
5900 East 91st Street South
Derby, Kansas 67037

Richard L. and Imogene G. Fleming
9451 South 63rd Street East
Derby, Kansas 67037

Kenneth C. Cherry
9715 South 63rd Street East
Derby, Kansas 67037

Henry J. and Judy A. Phillips
c/o Phillips Southern Electric Co.
1822 South Mead
Wichita, Kansas 67211

Patrick S. Phillips
1822 South Mead
Wichita, Kansas 67211

David and Andra A. Udden
703 North Buckner
Derby, Kansas 67037

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION
CITY HALL, TENTH FLOOR, 455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1688

April 1, 1987

NOTICE OF PUBLIC HEARING

Case No.: DR 86-4.

Location: South of 91st Street South in an area between K-15 Highway and the Arkansas River.

Address: N/A.

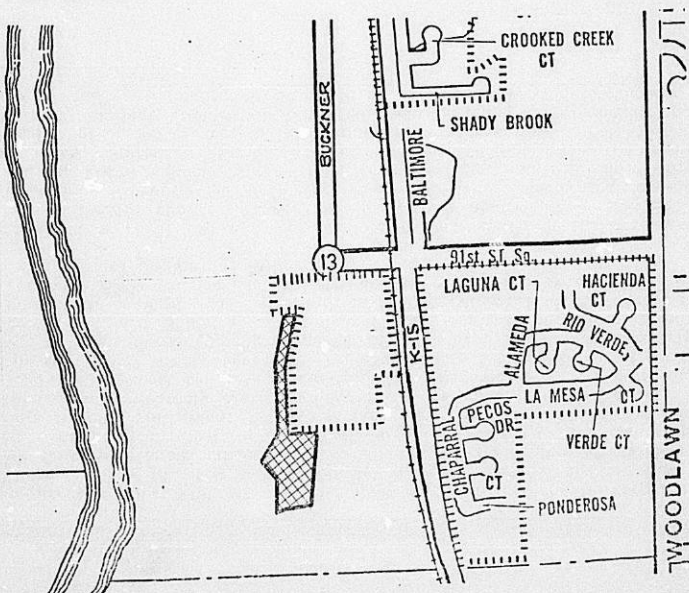
Request: Special Use Permit to Establish a Demolition Construction Landfill Site on Property Zoned the "F" Heavy Industrial District.

NOTICE IS HEREBY GIVEN that on Wednesday, April 15, 1987, the BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, meeting in the County Commission Meeting Room, Third Floor, Sedgwick County Courthouse, 525 North Main Street, Wichita, Kansas, beginning at 9:00 A.M., will consider the above-referenced request as decreed by the Eighteenth Judicial District Court of Sedgwick County, Kansas.

This case was previously considered by the Sedgwick County Commission in April 1986 and was denied along with an associated request for heavy industrial zoning. The applicant appealed these decisions to the District Court which, in January 1987, overturned the County Commission's decision on the rezoning and ordered the subject property rezoned to the "F" heavy industrial district. The District Court further ordered that the County Commission reconsider the request for a special use permit to establish a landfill site.

As an owner or occupant of property in the area, you have the right to appear at the County Commission meeting, either in person or by agent or attorney, to support or oppose this request. If you have no interest in or objection to the request, you have no obligation to appear at this meeting.

If you have any questions or wish additional information, please call 268-4421.



SEE REVERSE SIDE

PL/0188/4

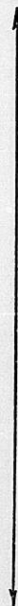
DESCRIPTION OF THE AREA PROPOSED TO BE CHANGED

CASE NO. DR 86-4
 Special Use Permit to Establish a Demolition Construction
 Landfill Site on Property Zoned the "F" Heavy Industrial District

Commencing at a point 418 feet west and 1330 feet south of the NE corner of the SW $\frac{1}{4}$ of Section 12, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east parallel to the north line of said SW $\frac{1}{4}$, 323 feet; thence southwesterly 1010 feet, more or less, to the centerline of Spring Creek, said point being 190 feet west of the east line of said SW $\frac{1}{4}$; thence southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, south and 640 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly, 550 feet to a point 2010 feet south and 642 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly 315 feet to a point 850 feet west of the east line of said SW $\frac{1}{4}$; thence northeasterly to a point 1330 feet south and 498 feet west of the northeast corner of said SW $\frac{1}{4}$; thence east parallel to the north line of said SW $\frac{1}{4}$, 80 feet to the point of beginning; AND

Commencing at a point 418 feet west and 1330 feet south of the northeast corner of said SW $\frac{1}{4}$; thence S90°00'W parallel to the north line of said SW $\frac{1}{4}$, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the southeast corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning. Generally located south of 91st Street South in an area between K-15 Highway and the Arkansas River.

Most Restrictive



Least Restrictive

DISTRICT	NAME OF DISTRICT AND USES PERMITTED
R	RURAL RESIDENTIAL Agriculture and One Family Dwellings
R-1	SUBURBAN RESIDENTIAL Agriculture, One Family Dwellings, Schools and Churches
AA	ONE FAMILY DWELLING Agriculture, One Family Dwellings, Schools and Churches
BB	OFFICE All Uses Permitted in More Restrictive Zones and Business and Professional Offices
OC	OFFICE COMMERCIAL Offices, Limited Retail and Service Uses Operated Within a Building.
LC	LIGHT COMMERCIAL All Uses Permitted in More Restrictive Zones and Purely Retail Businesses Operated Within a Building
C	GENERAL COMMERCIAL All Uses Permitted in More Restrictive Zones Plus All Commercial Uses
E	LIGHT INDUSTRIAL All Uses Permitted in More Restrictive Zones Plus Industrial Uses Which Do Not Create Hazards or Nuisance From Fire, Dust, Odor or Smoke***
F	HEAVY INDUSTRIAL Any Use, Some as Conditional Uses***

***Mobile home parks and trailer camps are not permitted.

3/87

PROPOSED CHANGES TO SPECIAL USE PERMIT
SCZ-0559 AND DR 86-4 LUSK DEMO LANDFILL

The following changes are proposed as amendments to the April 3, 1986 MAPC action on this case.

h. A (4) 8 foot fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation. The fence shall welded or woven wire with openings no larger than one inch.

i. Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence (until authorized by the above or) until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation.

*new
condition*

j. The applicant/owner shall file a restrictive covenant^{for his entire tract} which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, and require approval of the Health Officer for use of the land for production of food crops. ~~Perpetuity restrictions are prohibited.~~

(deletions)

underlined segments are additions or items for discussion

Site Monitor.

Testing Wells -

*Bonding included in the resolution - set a volume
basis -*

Financial guarantee for cover material

Bond for removal or control -

3 dongia unit and one sq. grass

*{ 250 thousand dollars -
performance bond -
that no hazardous waste
shall be disposed of. }*

3/87

Further provisions may be added to the conditional use permit to provide a higher level of assurance that the landfill will be operated and closed in an environmentally desirable manner and to provide for financial coverage in the event the landfill should cause environmental impairment. Such additional provisions could include the following:

1. Environmental Impairment Liability Insurance. Such insurance provides a source of funding in the event an operation-- in this case, a sanitary landfill--should create environmental problems and hazards requiring remedial work. Such work is usually quite expensive. For example, the owners of the hazardous waste disposal facility near Furley, Kansas have already invested \$20 million in that facility in efforts to remediate groundwater contamination. The environmental impairment liability insurance provides a mechanism for funding such cleanups and not placing the burden on the local taxpayers should the owner of the operation fail to, or be unable to, finance such damages. The City of Wichita has required a contractor of the Brooks Landfill site to provide such environmental impairment liability insurance for that operation. The language of the city's bid specification is as follows: "The policy will be in an amount not less than one million dollars (\$1,000,000) aggregate. If higher limits are required, it will be included under this provision." The premiums for such insurance policies would be paid by the owner of the Derby Landfill. Failure to provide a certificate of such a liability insurance policy would be deemed a violation of the provisions of the conditional use permit and appropriate actions would be taken.

2. Performance Bond. One of the major concerns with any landfill operation is the proper closure of the site when land-filling is completed. Such closure usually includes placing a two-foot earthen cover on the site along with appropriate grading, placement of monitoring wells, and other similar activities. These activities are required to render the site suitable for future use but are usually not viewed favorably by owners of such sites because they involve considerable expenditure without any income from such activities. Thus, it is important that provision be made, and in a sense, guaranteed, for the funds necessary to properly close the landfill site. Within a certain number of days of execution of the license for the landfill operation, the landfill owner shall deliver, or cause to be delivered, a performance bond with a surety company licensed to do business in the state of Kansas as surety. Such bonds shall be kept in full force and effect at all times during the duration of the landfill operation. According to MAPC minutes, at the time the applicant petitioned for the current activity in early 1986, the estimated cost for closing the site (by KDHE personnel) was \$140,000. It may be that a performance bond in the neighborhood of \$200,000 may be required for proper closure.

3. Site Monitor. In some cases of this type, provision is made for hiring an official to monitor the site and its activities with the cost of such site monitoring assessed to the regulated individual, in this case, the owner of the site.

4. Cease Operations Provision. In some cases of this nature, a provision is made that if said operation is in violation

and does not meet the violated standards within 48 hours, the county can order the operation stopped and maintained in that condition until compliance is reached.

The attractiveness of the initial two proposals are as follows:

1. It provides a means to assure that problems at the landfill, current and future, can be addressed without causing a financial burden to the taxpayers of Sedgwick County.
2. The provisions place the burden and cost of proper operation on the applicant and not on the regulatory agencies.

LUSK DEMOLITION FILL - CHRONOLOGY

- November 1, 1984 - Derby Landfill closes, permit # 236 revoked.
- January 17, 1985 - Public Hearing by Derby Planning Commission for zoning change for area of former Derby Landfill plus adjacent 14 acres from "R" Rural Residential to "F" Heavy Industrial, and request to issue special permit for landfill operation on the site. (Postponed).
- January 31, 1985 - request from Lusk's attorney to KDHE for continuing approval of previous permit and agreed extension.
- May 9, 1985 - Lusk withdraws both changes previously requested.
- May 10, 1985 - statement from KDHE that all previous permits and approvals were terminated with closure of Derby Landfill.
- June 20, 1985 - Derby Planning Commission holds public hearing on postponed application from Larry Lusk (see January 17, 1985). Tabled until next Planning Commission Meeting.
- October 2, 1985 - Lusk files application for operation of an industrial or construction land disposal area. Application is for 14 acre site only.
- October 28, 1985 - Environmental Health Division requests comments from MAPD, County Zoning, and County Fire, on application.
- December 9, 1985 - Consolidated comments received as a result of the above communicated to Mr. Lusk.
- December 30, 1985 - Lusk submits document to amend 1976 engineering specifications, reflecting change of landfill type from sanitary to demolition.
- February 11, 1986 - Final plans on topography of site received. All questions raised in December 9, 1985 communication now addressed.
- March 20, 1986 - Derby Planning Commission approves zone change and special use permit, and refers to M.A.P.C.
- April 3, 1986 - M.A.P.C. approves zone change and special use permit subject to a number of additional conditions.

April 30, 1986 - County Commission unanimously denies zone change and special use permit.

May, 1986 - Lusk files suit against County Commission that their decision was arbitrary and capricious.

February 25, 1987 - County Commission fixes April 15, 1987, for hearing on special use permit for construction and demolition landfill on previously referenced 14 acres.

STATE OF KANSAS)
Sedgwick County) ss.

Larry Ricketts, being first duly sworn, Deposes
and says: That he is Publisher of

THE DAILY REPORTER

a daily Newspaper printed in the State of Kansas, and published in and
of general circulation in Sedgwick County, Kansas, with a general
paid circulation on a daily basis in Sedgwick County, Kansas, and that
said newspaper is not a trade, religious or fraternal publication.

Said newspaper is a daily published Monday through Friday and
has been so published continuously and uninterruptedly in said county
and state for a period of more than five years prior to the first
publication of said notice; and has been admitted at the post office of
Derby, Kansas, in said County as second class matter.

That the attached notice is a true copy thereof and was published in
the regular and entire issue of said newspaper for 1 consecutive
day, the first publication thereof being
made as aforesaid on the 23rd day of
March, 19 87, with subsequent publications
being made on the following dates:

- _____, 19 _____
- _____, 19 _____
- _____, 19 _____
- _____, 19 _____
- _____, 19 _____
- _____, 19 _____

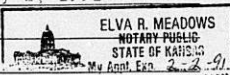
[Signature]
Subscribed and sworn to before me this 24th
day of March, 19 87.

Notary Public

My commission expires: February 2, 1991

Printer's fee \$ 14.37

Additional copies \$ _____



(Published in The Daily Reporter on
March 23, 1987)

OFFICIAL NOTICE
TO WHOM IT MAY CONCERN AND TO
ALL PERSONS INTERESTED:
NOTICE IS HEREBY GIVEN that on
Wednesday, April 15, 1987, the BOARD OF
COUNTY COMMISSIONERS OF
SEDGWICK COUNTY, KANSAS, will con-
sider the following item as decreed by the
Eighteenth Judicial District Court of
Sedgwick County, Kansas:

CASE NO. DR 86-4
Special Use Permit to
Establish a Demolition
Construction Landfill Site on
Property Zoned the "F"
Heavy Industrial District

Commencing at a point 418 feet west and
1330 feet south of the NE corner of the SW 1/4
of Section 15, Township 29 South, Range 1
East of the 4th P.M., Sedgwick County,
Kansas; thence east parallel to the north
line of said SW 1/4, 323 feet; thence
southwesterly 1010 feet, more or less, to the
centerline of Spring Creek; said point be-
ing 190 feet west of the east line of said
SW 1/4; thence southwesterly along the
centerline of said Spring Creek to a point
2560 feet, more or less, south and 540 feet
west of the northeast corner of said SW 1/4;
thence northwesterly, 550 feet to a point
2010 feet south and 642 feet west of the
northeast corner of said SW 1/4; thence
northwesterly 315 feet to a point 850 feet
west of the east line of said SW 1/4; thence
northeasterly to a point 1330 feet south and
488 feet west of the northeast corner of said
SW 1/4; thence east parallel to the north line
of said SW 1/4, 80 feet to the point of begin-
ning; AND

Commencing at a point 418 feet west and
1790 feet south of the northeast corner of
said SW 1/4; thence S89°00'W parallel to the
north line of said SW 1/4, 40 feet; thence
N1°00'E, 494.66 feet; thence N12°30'E,
384.66 feet to the south line of Lot 1, Block 1,
Lusk Industrial Addition, an Addition to
the City of Derby, Sedgwick County, Kan-
sas; thence N10°00'E along the south line of
said Lot 1, 40.97 feet to the southeast corner
of said Lot 1; thence S12°30'W, 389.23 feet;
thence S0°00'E, 460 feet to the point of
beginning.

Generally located south of 91st Street
South in an area between K-15 Highway
and the Arkansas River.
This matter will come on for hearing in
the County Commission Meeting Room,
Third Floor, Sedgwick County Courthouse,
525 North Main, Wichita, Kansas, at 9:00
A.M., or as soon thereafter as the same
may be heard. All persons interested in
this matter will be heard at this time
concerning their views and wishes.
WITNESS MY HAND this 20th day of
March, 1987.

Marvin S. Krout, Secretary
Wichita-Sedgwick County
Metropolitan Area Planning
Commission

(Ma. 23)

Published in The Daily Reporter on March 23, 1987 (One Time)

OFFICIAL NOTICE

TO WHOM IT MAY CONCERN AND TO ALL PERSONS INTERESTED:

NOTICE IS HEREBY GIVEN that on Wednesday, April 15, 1987, the BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, will consider the following item as decreed by the Eighteenth Judicial District Court of Sedgwick County, Kansas:

CASE NO. DR 86-4

Special Use Permit to Establish a Demolition Construction
Landfill Site on Property Zoned the "F" Heavy Industrial District

Commencing at a point 418 feet west and 1330 feet south of the NE corner of the SW $\frac{1}{4}$ of Section 13, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east parallel to the north line of said SW $\frac{1}{4}$, 323 feet; thence southwesterly 1010 feet, more or less, to the centerline of Spring Creek, said point being 190 feet west of the east line of said SW $\frac{1}{4}$; thence southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, south and 640 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly, 550 feet to a point 2010 feet south and 642 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly 315 feet to a point 850 feet west of the east line of said SW $\frac{1}{4}$; thence northeasterly to a point 1330 feet south and 498 feet west of the northeast corner of said SW $\frac{1}{4}$; thence east parallel to the north line of said SW $\frac{1}{4}$, 80 feet to the point of beginning; AND

Commencing at a point 418 feet west and 1330 feet south of the northeast corner of said SW $\frac{1}{4}$; thence S90°00'W parallel to the north line of said SW $\frac{1}{4}$, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the southeast corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning.
Generally located south of 91st Street South in an area between K-15 Highway and the Arkansas River.

This matter will come on for hearing in the County Commission Meeting Room, Third Floor, Sedgwick County Courthouse, 525 North Main, Wichita, Kansas, at 9:00 A.M., or as soon thereafter as the same may be heard. All persons interested in this matter will be heard at this time concerning their views and wishes.

WITNESS MY HAND this 20th day of March, 1987.

Marvin S. Krout, Secretary
Wichita-Sedgwick County
Metropolitan Area Planning Commission

February 26, 1987

Mr. Richard H. Rumsey
Rumsey, Richey & Plummer
1041 North Waco
Wichita, Kansas 67203

RE: DR 86-4 - Request for Special Use Permit to establish a landfill for demolition wastes and construction debris. South of 91st Street South in an area between K-15 and the Arkansas River.

Dear Mr. Rumsey:

At Wednesday's Board of County Commissioners' meeting, an April 15, 1987, hearing date was set for the above-referenced case. We will advertise this hearing date in The Daily Reporter the end of March and will send notices by first class mail to property owners within 1000 feet of the site no later than April 1.

For your information, I have enclosed a copy of last year's MAPC recommendations. It is probable that these will be considered as conditions of approval should the County Commission now determine that this special use request is appropriate at this location. Perhaps the time limits specified in Item "c" will be changed but the other conditions are likely to remain. We have in our file the access easement required by item "f". We may need additional copies of the grading plan and of the drainage plan as required in conditions "c" and "d" and will let you know after further discussion with County Engineering.

If you have any questions or comments on this matter, please call our office at 268-4421.

Sincerely,

Louise Olivarez
Senior Planner

LO:blw
Enclosure

cc: Larry Lusk, 5001 E. 71st Street South, Derby, KS. 67037
Lowell High, 1542 S. St. Francis, Wichita, KS. 67211

bcc: Douglas Hahn
Jack Brown
Jim Weber

PL/0118/4

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

February 12, 1987

TO: SCZ-0559 File

FROM: Jack H. Galbraith

SUBJECT: District Court action ordering the change of zoning from "R" to "F" (District Court Case No. 86 C 1814)

Attached is a copy of the Journal Entry of the Larry Lusk vs. Board of Sedgwick County Commissioners case filed and recorded on January 26, 1987, in which it is stated that "the zoning of said property is hereby changed and modified from "R", Rural Residential District, to "F", Heavy Industrial District." This property is located in the SW $\frac{1}{4}$, Section 13, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, and is more specifically described in the Notice of Public Hearing, a copy of which is attached. As of January 26, 1987, this property is now zoned "F" Heavy Industrial.

JHG/LO:blw
Attachments

cc: Graphics Division (for posting to official zoning maps)
Ruby Eubanks (for filing in 1987 County Zoning Resolutions file)
✓ DR 86-4 file



SEDGWICK COUNTY, KANSAS
LEGAL DEPARTMENT

Richard A. Euson
Assistant County Counselor

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

February 2, 1987

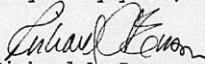
Mr. Marvin Krout
Director of Planning
City Hall - 10th Floor
455 N. Main
Wichita, KS 67202

Re: Lusk vs. Board of Sedgwick County Commissioners

Dear Mr. Krout:

Attached for your reference is a copy of a journal entry in the above-named action. The case arose out of the Board of County Commissioners' failure to make findings and conclusions relating to their denial of rezoning. An agreement was apparently reached that the court would be permitted to change the zoning but that the Board of County Commissioners would retain jurisdiction to hear the conditional use permit. It does not appear necessary to return the matter to the MAPC. Would you please process the necessary paperwork to bring the conditional use permit to a hearing before the County Commission.

Very truly yours,


Richard A. Euson
Assistant County Counselor

RAE/mp

Enclosure

cc: Robert R. Arnold

RECEIVED

FEB 03 1987

METROPOLITAN PLANNING
ROUTE

- Jacks pls brief me on
this case. Don't understand
why court took different action
on zoning than special permit.
MK
2/3

RUMSEY, RICHEY & PLUMMER
RICHARD H. RUMSEY, P.A.
KEITH D. RICHEY
STEPHEN B. PLUMMER
ROBB W. RUMSEY
1041 North Waco
Wichita, Kansas 67203
(316) 262-4481

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

LARRY LUSK,)
Plaintiff,)
VS.) Case No. 86 C 1814
)
BOARD OF SEDGWICK COUNTY)
(KANSAS) COMMISSIONERS,)
Defendant.)

JOURNAL ENTRY

NOW, on this 5 day of January, 1987, the above-entitled matter comes on for hearing and trial. The plaintiff appears in person and by and through their attorney, Richard H. Rumsey. The defendant appears by and through its attorney, Royce E. Wallace.

THE COURT, being duly advised in the premises and after listening to arguments of counsel, FINDS:

1. Sufficient facts were presented at the hearing before the Sedgwick County Commission to substantiate a holding that the zoning of the property in question should be and it is hereby changed from "R", Rural Residential District, to "F", Heavy Industrial District.
2. The actions of the Sedgwick County Commission in denying the zoning change were arbitrary and capricious.
3. The highest and best use of the land is, in fact, "F", Heavy Industrial. The zoning of said property is hereby changed and modified from "R", Rural Residential District, to "F", Heavy Industrial District.
4. The Sedgwick County Commission in denying the special use permit was not arbitrary and capricious. However, the County Commission in denying the special permit did not enter a written order summarizing evidence before it stating the factors which it considered in arriving at its determination.

5. The issues relating to the special use permit are hereby remanded to the County Commission. The matter shall be set down for additional hearing, and additional evidence may be presented by both sides.

6. The character of the neighborhood, the zoning and uses of nearby property, the suitability of the subject property for the use to which it has been restricted, the extent to which the removal of the restrictions were detrimental to the nearby property, the length of time the subject property has remained vacant as zoned, and the relative gain to the public health, safety and welfare, all dictate that the property should be zoned "F", Heavy Industrial District.

IT IS, THEREFORE, BY THE COURT ORDERED AND DECREED that the above findings be and they are hereby made a binding and valid order and judgment of this Court.

TOM RAUM

DISTRICT COURT JUDGE

APPROVED:

RUMSFY, RICHEY & PLUMMER

BY Richard H. Rumsey
Richard H. Rumsey,
Attorney for Plaintiff

ROYCE E. WALLACE
Royce E. Wallace
Attorney for Defendant



Certified to be a true and correct copy of the original instrument filed on the 29 day of Jan, 1987 and recorded in the Court of the Eighteenth Judicial District, Sedgewick County, Kansas.
Dated this 28 day of Jan, 1987
Clerk of the District Court
By Mayoni Seher

WICHITA-SEDCWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION
CITY HALL, TENTH FLOOR, 455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1688

DATE: March 6, 1986

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Thursday, March 20, 1986, at 7 p.m., the DERBY CITY PLANNING COMMISSION meeting at the Derby Municipal Building, 229 North Baltimore, Derby, Kansas, will consider the following items for purposes of making a recommendation to the Metropolitan Area Planning Commission and Board of County Commissioners:

CASE NO. SCZ-0559
Zone Change from the "R" Rural Residential District
to the "F" Heavy Industrial District

AND

CASE NO. DR 86-4
Special Use Permit to Establish a Demolition Construction
Land Fill Site on Property to be Zoned "F"
Heavy Industrial District

Commencing at a point 418 feet west and 1330 feet south of the NE corner of the SW $\frac{1}{4}$ of Section 13, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east parallel to the north line of said SW $\frac{1}{4}$, 323 feet; thence southwesterly 1010 feet, more or less, to the centerline of Spring Creek, said point being 190 feet west of the east line of said SW $\frac{1}{4}$; thence southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, south and 640 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly, 550 feet to a point 2010 feet south and 642 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly 315 feet to a point 850 feet west of the east line of said SW $\frac{1}{4}$; thence northeasterly to a point 1330 feet south and 498 feet west of the northeast corner of said SW $\frac{1}{4}$; thence east parallel to the north line of said SW $\frac{1}{4}$, 80 feet to the point of beginning; AND

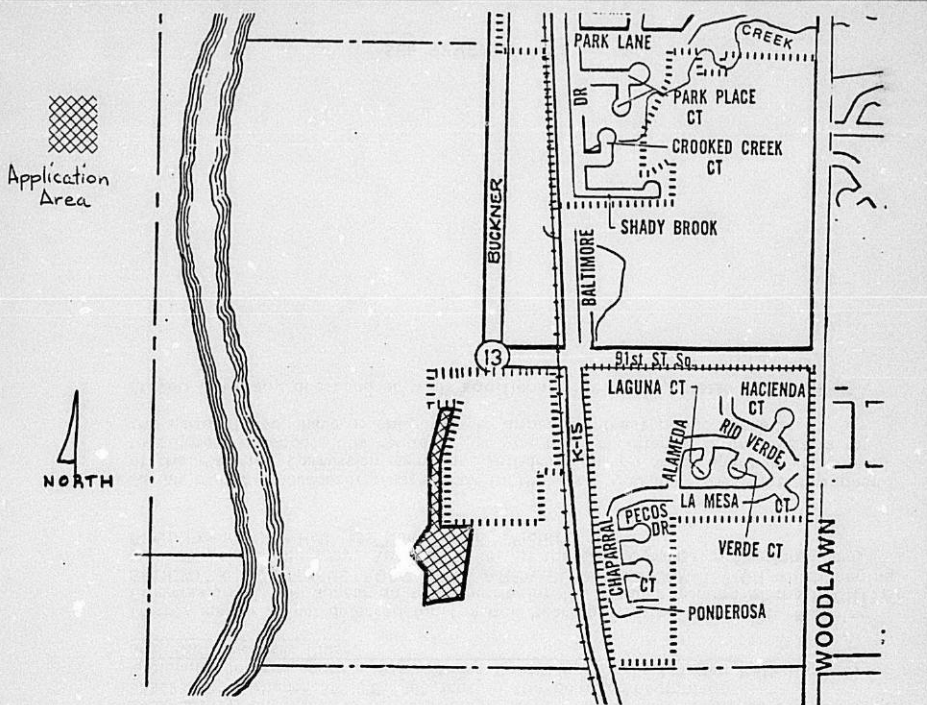
Commencing at a point 418 feet west and 1330 feet south of the northeast corner of said SW $\frac{1}{4}$; thence S90°00'W parallel to the north line of said SW $\frac{1}{4}$, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the southeast corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning.
Generally located south of 91st Street South in an area between K-15 Highway and the Arkansas River.

If this matter is not deferred for further hearings by the Derby City Planning Commission, it will appear on the agenda for the regular meeting of the WICHITA-SEDCWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION which begins at 1:30 p.m., Thursday, April 3, 1986, in the City Commission Meeting Room, First Floor, City Hall, 455 North Main, Wichita, Kansas.

As an owner or occupant of property in the area, you have the right to appear at the Planning Commission meetings, either in person or by agent or attorney, to support or oppose this request. If you have no interest in or objection to the request, you have no obligation to appear at these public hearings.

If you have any questions or wish additional information, please call 268-4421.

SEE REVERSE SIDE



Most Restrictive



Least Restrictive

DISTRICT	NAME OF DISTRICT AND USES PERMITTED
R	RURAL RESIDENTIAL Agriculture and One Family Dwellings
R-1	SUBURBAN RESIDENTIAL Agriculture, One Family Dwellings, Schools and Churches
AA	ONE FAMILY DWELLING Agriculture, One Family Dwellings, Schools and Churches
BB	OFFICE All Uses Permitted in More Restrictive Zones and Business and Professional Offices
OC	OFFICE COMMERCIAL Offices, Limited Retail and Service Uses Operated Within a Building.
LC	LIGHT COMMERCIAL All Uses Permitted in More Restrictive Zones and Purely Retail Businesses Operated Within a Building
C	GENERAL COMMERCIAL All Uses Permitted in More Restrictive Zones Plus All Commercial Uses
E	LIGHT INDUSTRIAL All Uses Permitted in More Restrictive Zones Plus Industrial Uses Which Do Not Create Hazards or Nuisance From Fire, Dust, Odor or Smoke***
F	HEAVY INDUSTRIAL Any Use, Some Conditional Uses***

***Mobile home parks and trailer camps are not permitted.

EXCERPT

BOARD OF SEDGWICK COUNTY COMMISSIONERS
PROCEEDINGS

Regular Meeting, April 30, 1986

VOTE

Chairman Bernard A. Hentzen	Aye
Chairman Pro tem Donald E. Gragg	Aye
Commissioner Tom Scott	Aye

METROPOLITAN AREA PLANNING DEPARTMENT

Request for Zoning and Special Use Permit, District #2.

SCZ-0559 - Zone Change from "R" Rural Residential District to "F" Heavy Industrial District; and

DR 86-4 - Special Use Permit for a Demolition Construction Landfill Site, located south of 91st Street South in an area between Highway K-15 and the Arkansas River.

Mr. Jack Galbraith, Chief Planner, Current Plans, Metropolitan Area Planning Department, stepped to the podium. "Gentlemen, this application is a request to change the zoning from the Rural Residential District, the "R" classification, to Heavy Industrial; accompanying that is an application for a Special Permit for a landfill.

SLIDES WERE SHOWN OF THE AREA.

"The property is outlined in the black tape on the slide. It is south of 91st Street; it lies between K-15 on the east and the Arkansas River on the west. It's a site that was formerly part of the Derby Landfill Site. It's adjacent to the city limits of Derby; Derby is outlined in the dashed red tape. The Derby Sewer Treatment Plant is in that area directly north, inside their city, that is zoned a lighter industrial classification. The purple color on that slide north of 91st Street is County zoning, and that is light industrial zoning.

"This applicant for some months now has been attempting to reopen a part of the former Derby Landfill Site because this is a depressed area. He contacted us some time ago asking if it was possible to open that site up and deposit demolition and construction type waste and not have it opened for general public purposes. He's been working closely with the Environmental Health Department of Sedgwick County and the State Health Department in trying to get permission to reopen this site. With this application, he submitted...this slide's not working; let me check something.

"This is the aerial photograph that outlines the application area. You can see the former Derby Landfill that's west of there between the application area and the river. The darker shadow on that slide is a former sandpit. Of course, they've proposed to deposit cover material on top of the filling operation daily.

"This is the contour map and site plan that he submitted with the application; it's all generally just undeveloped now. There are single-family homes directly east between this site and K-15 Highway. This is looking at the entrance roadway through his industrial zoning that he'd drive through to get to the application area...another view looking back east towards the sewer treatment plant in Derby...another slide...that's part of the former landfill operation, and this slide really gets back into showing you directly the application area itself...between where the arrow is and the timber is a depressed area that he's desirous of having filled. The State said it would not require any longer time than January 1,

BOARD OF SEDGWICK COUNTY COMMISSIONERS
PROCEEDINGS

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"1989...about two and one-half years he believes that he can fill the operation and complete it...a slide showing a part of the old landfill site."

Mr. Gragg asked Mr. Galbraith to turn back two slides and asked, "OK; I thought this was a landfill. Is this also a salvage yard?"

Mr. Galbraith replied, "These...the Planning Commission asked that question the day this was heard, and he says these are cars that belong to him on the light industrial zoning that's inside the City of Derby. He had hopes at one time to restore some of these automobiles or trucks and they've been vandalized he said over a period of months now, or perhaps years, and I'm not sure what will become of them."

Mr. Gragg asked, "Doesn't a salvage take a little bit different category than light..."

Mr. Galbraith replied, "Yes it does in the County. It takes heavy industrial zoning plus a special permit, but again, he says this area lies inside the City of Derby."

"This is looking from K-15 now back to the west across the railroad track...one of the single-family homes...back up on 91st Street looking south at the sewer treatment plant."

"This, of course, is in the Derby area of influence so they considered this case first. At their meeting, they were concerned about assurances that this would be operated properly, that it would not be open to the general public; they were concerned about hours of operation, having an operator on duty at all time, that the site would be locked and secured when not open. They were also concerned about what assurance would they have that upon notification of a violation that the operation would cease immediately. We worked with the County Counselor's Office relative to a condition that would upon notification of the applicant by either the Health Department or the County Zoning Administrator's Office that the operation would cease immediately, that he would rectify those violations that occurred or within 14 days, he could have a hearing before the Board of County Commissioners to discuss those violations. Derby, after deliberation and modifying a number of the conditions, recommended to you unanimously that the application be approved, subject to those modified conditions."

"When the Metropolitan Area Planning Commission considered this, they debated it at great length also; you can tell that by looking at the minutes. The conditions that they recommended are on pages 7 and 8 of the minutes that are attached to your referral sheet. Again, the conditions of approval point out that this will be demolition and construction waste only, that no hazardous or toxic material shall be deposited on the site. The landfill operation is to cease by January 1, 1989. They've submitted the approved grading plan; they've submitted a drainage plan. Again, it was to be operated with a landfill operator on the premises at all times; the hours of operation are between 8 a.m. and 6 p.m., Monday through Saturday. The access easement through the industrial site to the north has now been submitted by separate easement. He is to construct a fence along Spring Creek, along the east and south property lines."

"Then Item F is one I would bring to your attention: Upon written notification of any violation by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until authorized by one of

BOARD OF SEDGWICK COUNTY COMMISSIONERS
PROCEEDINGS

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"the above or until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation. After this operation is completed, they are to final grade and seed the site, and they are also to request a rezoning then from the heavy industrial zoning classification back at that time to whatever the balance of his ownership is zoned.

"Following MAPC's meetings, we have 39 percent protest petitions filed; that requires a unanimous vote of the County Commission. There are a number of people here today in opposition to this request; the applicant and his attorney are present also. Jack Brown of the Health Department is also present, gentlemen, if you have questions of him.

"One of the things asked at the Planning Commission was, 'Would the applicant have to be bonded?' Mr. Brown has checked that out with the State, and a bond is required by the State, not to be less than \$5,000; it's more likely it will be \$10,000. The State advises that if this is granted by you, they will only permit this to be opened an acre at a time, and they will inspect each acre as it's filled and make sure that it's satisfactorily covered and then that bond submitted with the first acre then is renewable for the next acre on through the entire 14-acre site. Do you have questions?"

Chairman Hentzen asked for questions of Mr. Galbraith; there being none, he asked for others to speak to Item J.

Mr. Richard Rumsey, representing Mr. and Mrs. Lusk, the applicants, stepped to the podium. "I think I have a little bit of experience in the background on this case. The big complaint, as I understand it, that the surrounding property owners have is the way this was operated in the past. There is a file that is at least six inches thick where Mr. Lusk attempted to control the use of that operation as it was handled in the past; at times he was successful; at times he was not successful. There were District Court Orders that were issued; in any event, the landowners at times had reason to be upset.

"I think there are several material areas of change between now and what happened when this was being operated as a landfill; among, of course, are the ten or eleven requirements that have been related to you and I think are set forth pretty clearly on these documents maybe that you have in front of you. I think among those, the most material are as follows: One, this will be filled at an acre at a time. Each operation will be bonded. It can be closed down, as I understand it, within 48 hours if it isn't operated properly. Mr. Lusk will be in control, and he will be responsible for the closing of each acre as it's completed. There will be a fence, as pointed out, between the...to protect, at least in part, the owners to the east and the owners to the south.

"The land right now has little or no use; there are holes in the area that, as I understand it, when it rains, fills up five, six, seven, eight feet. The type of trash that's...not trash, but the type of debris that's going to be taken into that property is considerably different than what it was before.

"As has been pointed out, the Derby Planning Commission approved this unanimously; Mr. Lusk was a member of that Commission but did not sit at any of the meetings and in fact was in the audience at the time it was ruled upon and the requirements made by that body. The Metropolitan Area Planning Commission approved this 5-2; at least one of those people affected had some reservations, as I remember, if a bond were let, he might have changed his mind. But, in any event, we think it is an opportunity to improve the area in all honesty and, I think, to make it at least productive where now it is not. I think this might be an answer."

BOARD OF SEDGWICK COUNTY COMMISSIONERS
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Chairman Hentzen asked for anyone else to speak in support of the application; there being no one, he asked for speakers in opposition.

Mrs. Norma Moore, 9339 South K-15, stepped to the podium. "My family, which consists of my two sons, my husband, myself and my parents, Roscoe and Carol Warren, live across Spring Creek from the proposed dump site. This is a small scattered neighborhood inhabited by only a handful of families. We are located south of the Derby City Limits and the area that has in the past and will be in the future most severely impacted by Mr. Lusk's enterprise; we are the ones that will take the brunt of it.

"We are here today because our homes, our families, our lands, and very possibly even our health may be at risk once more. As our elected representatives, we're asking for your protection. In making a decision, you understandably rely to some degree on the approval or disapproval of other bodies that have reviewed this plan; in this case, the Derby Planning Commission was the first to give their approval. That wasn't much of a surprise to those of us involved considering the fact that Mr. Lusk is a member of the Planning Commission, and Derby has nothing to lose in the situation; they never have, and they never will be held responsible for anything that goes on in this dump site. As for the approval of the MAPC, I feel it's worth noting that although the proposal may have been approved, it wasn't unanimous; there were at least two Commissioners, Mr. Gardner and Mr. Banzer, who questioned and appeared to have some strong reservations concerning the reopening of this site.

"In the past, enforcement has proved to be an almost unattainable goal when it came to keeping this business venture in compliance with the then existing rules and regulations. In these tight economic times, it's difficult for me to believe that these same overworked health agencies will now have the adequate staff with enough time to devote to the problems that arise and handle the frequent regular checks that must be made on this sort of operation.

"When we lived through this nightmare the last couple of years, the routine was for the Sedgwick County Health Department and/or the Kansas Department of Health and Environment to check as often as they could or if there were specific complaints and then the staff people would go back and make their report. There seemed to be little or nothing that could or for some reason was being done to bring this dump and its operators into compliance. That left those of us who live in close proximity to continue to clean the blowing plastic, paper and Boeing paperwork from our property and to watch the creek fill with tires and debris. When this travesty was finally closed in 1985, we were assured that this bureaucratic and environmental ordeal was ended, and we believed it.

"While this particular project is a demolition construction landfill this time and not a solid waste landfill, I still know that there's quite a considerable amount of blowing material that originates from any construction project and with an average Kansas wind at 12 MPH, we, as neighbors, will be in for more of the same. While there may be restrictions put on this dump, all these restrictions still don't make a bad project a good one. As we have all too clearly observed in the past, these rules don't mean much if they can't be enforced, and unfortunately, that's been the rule rather than the exception. In our past dealings, we were often met with red tape and more often than not, rules that favored the offender rather than the victim.

"In conclusion, we are saying to you through our protest petitions and by our presence here today...and these are the members of the neighborhood that have come today...could I have them stand, please...that this is a potential problem of major proportion to us and our homes. We're asking for your support by a no vote today that will lay this situation to rest once and for all.

BOARD OF SEDGWICK COUNTY COMMISSIONERS
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"We particularly look to Mr. Scott, as our representative, to support us in our right to a clean, healthy and enjoyable environment in which to live. Thank you."

Chairman Hentzen thanked Ms. Moore and asked, "Let me ask you...what ought to be done with this land?"

Mrs. Moore replied, "I don't know; I'm not an expert, but...maybe we could fill it in with maybe dirt. I realize that wouldn't make much money for a landowner, but maybe fill dirt could be brought into this area if there are indeed holes. I haven't really seen the...I have walked the area and I haven't seen the holes that are said to exist. That's a possibility to me...maybe fill dirt, cement, rock, that sort of thing. I don't know. I don't even know if that's feasible; that would be more agreeable to me than demolition materials."

Chairman Hentzen stated, "I've been watching in the paper lately about the strip mining in southeastern Kansas where they just left it like it was, but it seems what they're trying to do here is to reclaim some land; that is, straighten it out even if it was screwed up in the past, and that's why I'm asking what could be done or what should be done. It just makes sense that if you've messed up a place like this that you can come in and straighten it out. I'm visualizing going in there and smoothing it out with a bulldozer and start farming it."

Mrs. Moore responded, "This was at one time a milo field; I mean it hasn't always been a mess and a dump. It should have been taken care of when the landfill was ...when the rest of the landfill was closed; it wouldn't have taken that much."

Chairman Hentzen stated, "Sure...what I'm...I understand your thinking and your comments, but if we reject this and it stays a junk pile just like it is now...what I'm trying to get at is what should we do...what should the community do; what should the owner do?"

Mrs. Moore stated, "The owner will have...he does have some responsibility to reclaim this area. He was part of the problem to begin with; he was involved in this past operation...gives us little confidence the present one will be a great improvement. It's hard for me to say. I don't feel like I have the expertise to say, 'This is what we should do,' but I have to say that I don't think that adding more garbage to an area is going to be the answer to it either."

Chairman Hentzen stated, "Well, I'm going to ask Mr. Rumsey if he would try to define for me what they mean by Waste Classifications I and II as defined in Chapter V of the Kansas Department...in other words, this lady used the word dump, garbage. I don't understand that; I don't understand that that's the request. Tell me what you're talking about putting in there."

Mr. Rumsey returned to the podium. "The definition in Chapter V...first of all, a demolition waste site, according to this article...one of the purposes for it is that it does not, as a rule, constitute a long-term hazard to the environment; it does not, as opposed to some dump sites.

"Waste classification is defined as: Class I, waste materials resulting from land clearing and excavation projects—trees, brush, stump, etc., which may or may

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"not be mixed with soil or rocks. Class II is waste materials resulting from housing developments and other projects requiring demolition of buildings and dwellings—brick, mortar, wood, plaster, asphaltic materials, which, as I understand it, may or may not be brought in, concrete, metal, etc. So, it's not garbage, and it's not the usual thing that you, I think, would consider as waste.

"I might also state that the Derby Landfill had been in operation some five to seven years before Mrs. Moore moved onto her property, so she moved in with her eyes open. But, this would certainly be an improvement over what operation has taken place in the past."

Chairman Hentzen commented, "Those definitions you read to me do not include any cars or tires or barrels or anything like that. Now, let me ask you one other question. Is this application being made to reclaim that land or is it being made to make a profit on filling up the holes with a bunch of junk?"

Mr. Rumsey replied, "As I understand it, it would cost...and this is what I've been told...some \$350,000 to \$500,000 to bring in fill dirt, and this money will not pay for the complete reclamation of that property, whatever he might make off this. It's my understanding...been a losing proposition for the landowner from Day One, but in any event, the purpose, as I understand it, is to fill that property. This is 14 acres; the Board of Health signed off on this property, believe it or not, in '84 or as Mrs. Moore said, in '85, I don't remember when, claiming that everything had been done. But in any event, it hasn't been done, and I think the only way it's going to be reclaimed is to be able to level it off. They are going to bring it up to the same level as the area to the west of this, which will smooth it out. But, it's my understanding this is not a profit-making operation; it's an operation to afford this man an economical way to bring this property back into some kind of usable condition. That's my understanding."

Chairman Hentzen thanked Mr. Rumsey and asked for anyone else who wished to speak to the subject.

Ms. Imogene Fleming, K-15, just east of this landfill part, stated, "I wonder about the part...he said asbestos may or may not...this is what we're concerned about is the pollution and maybe the debris that would be blown, could even come across...this Kansas wind, but I didn't understand this when Mr. Rumsey said, 'asbestos may or may not...' Now, we do not want things that will pollute our air; our families are too near and dear...and our lives are, and we know that these things can happen...in the news today about pollution. So, I wanted that clarified."

Mr. Scott asked, "Mr. Chairman, if you please...Mrs. Moore, could I ask you a couple of questions? Over the years, how many times have you called me about the problems there at the landfill at Derby?"

Mrs. Moore returned to the podium. "I have manila envelopes full of times that you and I have...have been called about this. I've probably dealt with this state and the Sedgwick County Health Department as much as anyone because they were the ones that were going to have to do the enforcing. Quite often...I don't know if you know...it seems like sometimes it was several times a week."

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Mr. Scott remarked, "It sure was. Secondly, what results did we get when we got the proper people down there to look at the landfill to see if it was being run the way the State required it to be run?"

Mrs. Moore replied, "Everyone agreed...the Sedgwick County Health Department, the Kansas Department of Health and Environment; everyone was in agreement there was a problem; it was out of control, and something had to be done about it. But, I don't know what the problem was; we never could seem to decide to say, 'Enough is enough.' 'Let's stop it right now, and you have to clean up what you've done.' Nothing was done for months at a time. I think finally the thing that made the move was the media heard about it and they came out and started looking at it. And, it wasn't long after that that wheels started to grind."

Mr. Scott stated, "Well, over the years, I've reviewed the site, and I could never see that the landfill was being run the way that I felt a landfill should be run; as a matter of fact, I made a trip there just this last week and looked at it, and I still saw paper, garbage, and stuff strung on a part that was supposed to be closed and filled. This was a concern of mine.

"My concern, gentlemen, is that I've had problems with this landfill from the very beginning; secondly, the people have said they've had enough down there, and I have to agree with them that they've had enough, that they've had very little help from the State and have had very little help from the County, and I'm sorry about this. Today, we can rectify this, and I assure you I intend to do it."

Mrs. Moore expressed her thanks.

Chairman Hentzen asked if anyone had anything new and different to add; there being no one, he asked the pleasure of the Commission.

MOTION

Mr. Scott moved to deny the Zone Change Request.

Mr. Gragg seconded the Motion.

VOTE

Chairman Bernard A. Hentzen	Aye
Chairman Pro tem Donald E. Gragg	Aye
Commissioner Tom Scott	Aye

Mr. Bill Rustin, County Counselor, stated, "Excuse me, Mr. Chairman...prior to taking the vote, I think it would be best for the matter of the record to state the reasons for the denial of the request."

Mr. Scott stated, "My reasons for making the motion is that over the years this has been a landfill, and I don't think the conditions of the way the landfill was run was proper; I think there's been violations made down there. I've had

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"County residents down there complaining about this; I think it would just be a continuation of what we've had if we approved this Zone Change and Special Use Permit? I've got pictures; I've got a stack of data two inches thick, if you need it, Mr. Counselor, to back up what I'm saying."

Mr. Rustin stated, "Mr. Scott, I don't need anything; I just think, for a matter of record, the reasons for denial should be put into the Motion."

Mr. Scott stated, "I'm just saying I've got it if you need it."

Mr. Rustin thanked Mr. Scott.

Mr. Gragg asked, "If we take Action Line 2, does that assist in documenting it? It says, 'Adopt the findings...'"

Mr. Rustin responded, "It would supplement what Commissioner Scott put in his motion, Commissioner Gragg."

Chairman Hentzen asked, "What are you suggesting?"

Mr. Gragg replied, "Well, I think the findings, also, in the MAPC records should be a part of any future documentation that would also...is what you and Mr. Galbraith were alluding to?"

Mr. Rustin responded, "Well, what I was saying sir, is that if you would like to do that, which would be fine, integrate those in with Commissioner Scott's motion."

Mr. Gragg asked, "Does it help satisfy or is just an unnecessary 'rill?'"

Mr. Rustin stated, "It would help for the record, sir if reasons were stated for denying each request."

AMENDED MOTION

Mr. Scott stated that over the years the landfill had operated, it had not been run properly; violations had occurred; property owners had many complaints of which he had pictures and a two-inch thick file of data; therefore, he moved to adopt these findings and deny the Zone Change and Special Use Permit for the area south of 91st Street South between K-15 and the Arkansas River.

Mr. Gragg seconded the Motion.

VOTE

Chairman Bernard A. Hentzen	Aye
Chairman Pro tem Donald E. Gragg	Aye
Commissioner Tom Scott	Aye

THE WICHITA-SEDGWICK COUNTY DEPARTMENT OF COMMUNITY HEALTH


OFFICE OF Environmental Health DATE April 9, 1986

TO Jack Galbraith, Chief Planner
FROM Jack A. Brown, Chief, Environmental Quality

SUBJECT SCZ-0559 and DR 86-4/
Proposed Larry Lusk
Demolition and Construction
Waste Landfill

At the April 3, 1986, MAPC meeting the merits of locally requiring a performance bond for operating the above subject landfill was debated.

I have discussed this matter with KDHE staff as it relates to the pending KDHE permit required for this activity. The agreement I have with KDHE is that a permit bond as specified by K.A.R. 28-19-17(f) will be necessary as part of the permit approval. The bond would be applied to the opening and closure of small increments of the proposed 14 acre tract, e.g., 1 acre segments. The minimum bond requirement is \$5000. KDHE may establish a higher bond requirement in an amount it deems necessary to close out the landfill if the permit requirements are violated. These funds should be adequate for third party closure due to the small amount of landfill that would be open at any one time. Should the bond be forfeited, a contractor would be hired to bring the site into compliance and closure. In any event the amount of the bond is predicated on the area to be opened, filled and closed. In addition, liability insurance as specified in K.A.R. 28-19-18 will be required. The insurance is to cover claims arising from injuries to other parties, including bodily injury or damage to property of others. The policy is to provide coverage with a minimum liability limit of \$500,000 for bodily injury and \$200,000 for property damage. I have enclosed a copy of the regulations pertaining to the permit bond (K.A.R. 28-19-17 f) and insurance 28-29-18. Subsection (e) of the regulations regarding insurance gives KDHE authority to require coverage specifically for contamination, pollution or property damage arising from a "non-sudden" occurrence, however, this may not be required due to the nature of the materials to be landfilled and the availability of this type of insurance.


Jack A. Brown, Chief
Environmental Quality

JAB/cb

cc: Larry Lusk

RECEIVED

APR 09 1986

METROPOLITAN PLANNING

ROUTE _____

KAR 28-29-17 - Financial assurances for closure and post closure care.

(f) Persons operating construction and demolition landfills or other special use landfills or facilities incidental to their business or occupation may file a permit bond with the department in lieu of the requirements of paragraphs (a) and (b) of this regulation.

(1) The bond shall conform to the requirements of paragraph (e)(4) of this regulation

and shall apply to all disposal operations of the owner or operator, permitted or otherwise.

(2) The minimum amount of the bond shall be \$5,000. The minimum amount may be increased by the secretary depending on the number of permitted disposal areas and the cumulative acreage operated by the person at any one time.

(3) The effective term of the bond shall be three years, or one year longer than the estimated life of the site, whichever is greater. If for any reason the surety elects to cancel the coverage of the bond, the coverage shall automatically extend for one year beyond the date specified in the notice of cancellation. Notices of cancellation shall be served on the secretary in the manner of service of summons and complaint as provided in the Kansas rules of civil procedure.

(4) Nothing in this subsection shall relieve any person of any obligation to secure necessary permits and approvals or any other duty required by any applicable provisions of these regulations.

(g) Any permit issued under these regulations shall be subject to suspension or cancellation at any time if deposits due to the closure or post-closure maintenance funds are not properly escrowed, if a surety bond obtained for a permit is cancelled, or if the surety is relieved from liability for any reason. However, a permit shall not be cancelled or suspended under this provision if, within 90 days after notice of cancellation, the permittee files with the department a similar bond approved by the secretary. This bond shall be effective for the balance of the permit period and shall be in effect commencing on or before the date of cancellation of the previous bond. (Authorized by K.S.A. 1983 Supp. 65-3406, 65-3407; implementing K.S.A. 1983 Supp. 65-3406, 65-3407; effective, E-82-8, April 10, 1981; effective May 1, 1982; amended, T-84-41, Dec. 21, 1983; amended May 1, 1984.)

23-29-18. Insurance required. (a) Each person operating a solid waste processing facility or disposal area shall secure and maintain liability insurance for claims arising from injuries to other parties, including bodily injury or damage to property of others. This insurance shall be of the types and in not less than the amounts listed in subsections (d) and (e) below. Each person securing a permit shall file evidence of satisfactory insurance coverage at the time the department issues the permit and before any site development work is started.

(b) The liability insurance shall be issued by an insurance company authorized to do business in Kansas or through a licensed insurance agent operating under the authority of K.S.A. 1982 Supp. 40-246b. The liability insurance shall be subject to the insurer's policy provisions filed with and

approved by the commissioner of insurance pursuant to K.S.A. 40-216, except as authorized by K.S.A. 1982 Supp. 40-246b.

(c) A certificate or memorandum of insurance shall be furnished to the department for its approval showing specifically the coverage and limits, together with the name of the insurance company and insurance agent. If any of the coverages set forth on these certificates or memorandums of insurance are reduced, cancelled, terminated, or non-renewed, the permittee or insurance company shall, not less than 30 days before the effective date of the action, furnish the department with appropriate notices of that action. Timely proof of periodic renewal shall be furnished to the department by submittal of a certificate or memorandum of insurance before the expiration date of the policy.

(d) The permit application and all other factors shall be reviewed by the department to determine an adequate amount of insurance coverage for each disposal area or processing facility. The determination shall be based on the types of waste disposed, and on the location and area of the site. The policy shall provide coverage, including completed operations coverage, with a minimum liability limit of \$500,000 for bodily injury and \$200,000 for property damage. The policy shall have not more than a \$5,000 deductible for each occurrence. The minimum coverage shall include the following exposures:

(1) Coverage of premises and operations, including operations of independent contractors;

(2) Coverage for contamination or pollution; and

(3) Extension of the contamination and pollution liability coverage for vehicles of the solid waste processing facility or disposal area when these vehicles are away from the permittee's premises.

(e) The department shall specify, at the time a permit is issued, whether the permittee must furnish coverage specifically for contamination, pollution or property damage arising from a non-sudden occurrence. Minimum coverage required for a non-sudden occurrence shall be \$1,000,000, with a \$25,000 deductible for each occurrence.

(f) Insurance policies furnished under

this regulation shall contain the following endorsements:

(1) Any deductible amount provided for in any part of the policy shall be paid by the insurer upon establishment of legal liability of any insured and the insurer shall be entitled to recover from the insured for that deductible amount.

(2) Contractual liability coverage specifically referring to and covering the obligation of the permittee to defend, indemnify and hold harmless the state of Kansas, and its officers, agents and employees, both officially and personally, from alleged claims or causes of action for personal injury, property damage or devaluation arising out of the issuance of the permit or operation of any site or facility thereunder.

(g) Any applicant may request the department to evaluate the hazard or hazards involved and may request a variance, under K.A.R. 23-29-2, from the specific insurance coverage amounts prescribed in this regulation when:

(1) The solid waste management activity is conducted solely on the premise where the wastes are generated;

(2) The applicant performs the waste management activity;

(3) The applicant is the owner of the property where the activity is conducted; and

(4) The applicant is able to demonstrate other financial responsibility satisfactory to the secretary. (Authorized by K.S.A. 1983 Supp. 65-3406; implementing K.S.A. 1983 Supp. 65-3406, 65-3407; effective, E-79-22, Sep. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982; amended, T-84-11 Dec. 71

Planning Agenda

Item #

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION
TO BOARD OF COUNTY COMMISSIONERS

REQUEST FOR ZONING AND
SPECIAL USE PERMIT

SCZ-0559 - ZONE CHANGE FROM "R" RURAL RESIDENTIAL DISTRICT TO
"F" HEAVY INDUSTRIAL DISTRICT; AND

DR 86-4 - SPECIAL USE PERMIT FOR A DEMOLITION CONSTRUCTION LANDFILL
SITE, LOCATED SOUTH OF 91ST STREET SOUTH IN AN AREA BETWEEN HIGHWAY
K-15 AND THE ARKANSAS RIVER.

The Planning Commission recommends that the application for zone change and special use permit be approved subject to conditions.

(see minutes for full motion)

Miles moved, Wilson seconded and it carried with a vote of 5 in favor (Miles, Wilson, Bayouth, Moore and Peters) and 2 opposed (Banzer and Gardner. Crockett and Goebel were absent.

NOTE: 39.3% protest petitions have been filed within 1000 feet requiring a unanimous vote of the County Commission to approve these requests.

- ACTION:
1. Adopt the findings of fact of the Metropolitan Area Planning Commission and approve the zone change request and the special use permit subject to the recommended conditions; adopt resolutions authorizing the zone change and special use permit and instruct the Planning Department to withhold publication until the appropriate conditions have been complied with; or
 2. Adopt findings and deny the applications.

DATA AND MINUTES

MAPC Hearing Date: 4-03-86 - BCoC Hearing Date:

COMMISSION DISTRICT #2

AREA DATA:

Size: 14± acres

	<u>Land Use</u>	<u>Zoning</u>
Application Area	Undeveloped	"R"
North	Derby Sewer Plant	"R" & "M-1" (Derby industrial zoning)
South	Spring Creek & Agricultural	"R"
East	Undeveloped & Single-family	"R" & "M-1"
West	Former landfill	"R"

Applicant: Larry Lusk, 5001 E. 71st Street South, Derby, Kansas 67037.

Protestors: Norma Moore, 9339 South K-15.

EXCERPT FROM PLANNING COMMISSION MINUTES OF APRIL 3, 1986

LEGAL:

- 5a. Case No. SCZ-0559 - Larry Lusk requests zone change from "R" to "F";
AND
- 5b. Case No. DR 86-4 - Larry Lusk requests approval of Special Permit
for a demolition construction landfill site commencing at a point 418 feet
west and 1330 feet south of the NE corner of the SW $\frac{1}{4}$ of Section 13,
Township 29 South, Range 1 East of the 6th P.M., Sedgwick County,
Kansas; thence east parallel to the north line of said SW $\frac{1}{4}$, 323 feet;
thence southwesterly 1010 feet, more or less, to the centerline of Spring
Creek, said point being 190 feet west of the east line of said SW $\frac{1}{4}$; thence
southwesterly along the centerline of said Spring Creek to a point 2560
feet, more or less, south and 640 feet west of the northeast corner of
said SW $\frac{1}{4}$; thence northwesterly, 550 feet to a point 2010 feet south and
642 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly
315 feet to a point 850 feet west of the east line of said SW $\frac{1}{4}$; thence
northeasterly to a point 1330 feet south and 498 feet west of the north-
east corner of said SW $\frac{1}{4}$; thence east parallel to the north line of said
SW $\frac{1}{4}$, 80 feet to the point of beginning; AND

Commencing at a point 418 feet west and 1330 feet south of the northeast corner of said SW $\frac{1}{4}$; thence S90°00'W parallel to the north line of said SW $\frac{1}{4}$, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the southeast corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning. Generally located south of 91st Street South in an area between K-15 Highway and the Arkansas River.

GALBRAITH pointed out land use, zoning and showed slides of the general area. He reviewed the following staff report:

Background: Subject property is approximately 14 acres in size and located between K-15 and the Arkansas River in an area south of 91st Street South. The site is part of the former Derby Landfill although most of the filling operation occurred on land to the west. In 1984 that landfill site was declared full and was ordered closed. The owner has now submitted an application to the Kansas Department of Health and Environment for expansion of a landfill into the east 14 acres. It has been stated by the owner that he desires to fill holes left on the site when the previous landfill operation ceased. Demolition wastes and construction debris are the only types of landfill materials proposed to be permitted. The application has been tentatively approved subject to the applicant obtaining the necessary local zoning permits. The Sedgwick County Zoning Regulations require "F" Heavy Industrial zoning and a Special Use Permit for landfills.

Analysis: Property to the north is in the City of Derby and is zoned "M-1" Industrial. It is platted as Lot 1 of Lusk Industrial Addition and is owned by this applicant. Access to the proposed landfill site will be provided through this industrial plat out to 91st Street South. Property to the northeast is also zoned "M-1" and is the site of the Derby Sewage Treatment Plant. To the southeast are two single-family residences in the County's "R" Rural Residential district. South is agricultural land in the "R" district. The old landfill site to the west and northwest is in the "R" district, having begun operation prior to any zoning controls in this part of the county.

If the Planning Commission determines that the zone change and the special use permit are appropriate, the following are conditions of approval as recommended by staff and the Derby Planning Commission:

- a. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of The Kansas Department of Health and Environment Bulletin NO. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, shall be permitted for disposal at the site.

- b. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- c. The deposit of material on site shall cease by January 1, 1989, and the cover material, final grading in accordance with the grading plan, and seeding shall be completed no later than July 1, 1989, unless an extension of time is granted by KDHE and by the Board of County Commissioners after a public hearing. Filling and grading shall be in accordance with the Grading Plan dated _____. Cover material shall be applied daily.
- d. A drainage plan indicating how this site will drain during the landfill operation as well as after final completion shall be submitted to the County Bureau of Public Services for review and approval.
- e. The landfill shall not be open to the general public. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- f. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording.
- g. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
- h. A 4-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation.
- i. Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until authorized by the above or until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation.
- j. Within three months after final inspection and close-out of the landfill operation, the applicant shall submit a request to rezone this property to whatever zoning classification exists at that time on the balance of the former Derby landfill site.
- k. Items "d" and "f" above shall be complied with prior to these cases being forwarded to the Board of County Commissioners for final action. Also, four copies of the approved Grading Plan shall be submitted to the Planning Department prior to County Commission consideration of these cases.

DISCUSSION:

GALBRAITH stated that these requests were located in the Derby area of influence. He said that this is adjacent the area that was formerly known as the Derby Landfill Site. The owner has been working closely with the State Health Department and the local health department relative to the possibility of going in and reopening this 14 acres of land and filling it with demolition or construction type materials and to level the site so that this land could eventually be put to some other type of use. GALBRAITH said that in the last year's time the landowner has talked to Derby several times about annexing the land to Derby. Apparently for some reason they have chosen not to do that, so the applicant is back now filing the two necessary applications that he needs. He said that Derby considered these requests at their last meeting. The conditions were submitted to Derby and there were several of them that Derby asked to be rewritten in their recommendation of approval.

GALBRAITH stated that there have been a number of people within 1,000 feet of this site that have been concerned about this proposal and have been

following it all the way. They have appeared at the Derby Planning Commission meeting on several occasions.

GALBRAITH said that Derby recommended unanimously that the requests be approved subject to conditions. He mentioned that the Health Department officials had contacted the State Department of Environmental Health since the conditions were revised and have orally heard back from them that the conditions are all satisfactory.

LARRY LUSK, applicant, was present.

GARDNER asked Lusk what kind of materials would he put on the site and where did he expect to find them.

LUSK said that he would put in construction materials from builders and demolition materials from torn down houses.

GARDNER asked what kind of reuse would Lusk have for the site once he has refilled it.

LUSK said he would use it as agriculture.

NORMA MOORE, 9339 South K-15, read the following prepared statement:

"My name is Norma Moore, 9339 S. K-15. My parents Roscoe and Carol Warren, 9529 S. K-15 and my family live on 17 acres across Spring Creek from the proposed dump south of Derby. I am also speaking for neighbors that were unable to be here today, Mr. and Mrs. William Bennet who live north of the site, Mr. and Mrs. Rbt. McHenry who own land north, Mr. Kenneth Cherry who owns land south and Mrs. Fleming whose property and home is located southeast. I have protest petitions that as surrounding property owners, residents and taxpayers of Sedg. Co. we will file that records our opposition to the proposed use of this land and the attendant rezoning. After having dealt with Mr. Lusk in regards to the Derby Landfill and experiencing firsthand his inability to deal with that problem, and we have absolutely no confidence that this current similar project will benefit anyone except the landowner once more. He will continue to profit financially while the neighborhood and the environment deteriorates, our property values decline, a lovely rural area is spoiled and we are asked to accept the risks again!!

I have seen Spring Creek which borders my home on three sides literally choked with trash and debris, not to mention the wind blown litter that originated from the dump and infested the entire vicinity like a creeping blight. Contrary to Mr. Lusk's assurances, cleanup was left up to the individual landowner 99.9% of the time. The unpaved street that passes in front of the Bennets' home was a constant source of blowing trash, flat tires, noise and dust from the steady stream of garbage truck traffic. Mr. Cherry's pasture land that abuts Lusk's property on the south was covered with blowing trash and the fence line dividing the properties was a wall of garbage. Before the dump was finally closed the Arkansas River bank was bulldozed out and used as cover dirt for a problem already out of control. There were days upon days, and weeks upon weeks of solid garbage accumulation with no such thing as daily cover even being attempted.

When the south end of the landfill next to the creek, near my parents home was already many feet above an acceptable level of pure unadulterated trash, the owners and operators then began to bulldoze the trees on the banks of Spring Creek into the water and use the small creek bank as cover. If you saw the television reports on the operation at this time, you will remember 55 gallon oil drums full of trash lying on what was left of the creek bank, old tires and sheets of plastic hanging in our trees, Boeing paperwork by the reams blowing everywhere and filling the creek, old appliances, etc. It was a disgusting, disgraceful shame, visual pollution of the worst sort, not to mention a growing health hazard to those of us who make our homes in the area.

When the dump was finally ordered closed in 1984, and the operative words here are ORDERED CLOSED, the operation did not cease because the site was obviously full to overflowing and spilling into the surrounding land and water. But when it was finally forced to close, it had already amassed a thick file at the State and local levels of abuses of most if not all of the rules and regulations that have been passed concerning operations of this sort. The rules have never applied to this Derby operation and policing the area proved to be a costly and time consuming task for health agencies that consistently fell short of the goal of bringing them into compliance. The response to our complaints was a routine that was often long and involved and went something like this: the Sedg. Co. Health Dept. and/or the Wichita office of the KDHE would come out to check the latest complaints, which were then written up and forwarded onto the Topeka KDHE office and eventually to the Sec. Barbara Sabol, so the newest violations could then be duly noted and action contemplated. It might be as long as a week before someone from the State capitol was able to come down and verify the problem firsthand. Then it was back to Topeka to draft the next hand slap while my family and neighbors were forced to live, breath, and clean up other people's garbage.

I can understand the need for moving slowly and conservatively in these administrative agencies, but not to the point of inertia. There must be some point that when blatant disregard for procedures is dealt with swiftly and decisively. This has never proven to be the case in dealing with this dump and its owner.

While we are aware that this newest proposal is a demolition construction dump and not a garbage dump, in many respects it will be more of the same. It's common knowledge that there is a lot of blowing material in any construction project, and this 14 acre tract is located right on the banks of Spring Creek again. Something that we feel is even more serious than before is the fact that at the DPC meeting Mr. Lusk told us that there was not much of a way to control what went into this dump. I asked about asbestos and it wasn't given much discussion. After talking with the EPA in KC and reading the material they sent, my fears have just been reaffirmed. According to this pamphlet ASBESTOS EXPOSURE: "... once incorporated into manufactured items, the hazard resulting from asbestos is less serious, as long as the substance is not disrupted in any way. However, the fibers are nearly indestructible. A potential health risk arises whenever asbestos fibers are set free, resulting in asbestos dust." Since this site hopes to accept demolition material, the potential of blowing asbestos dust in the area is not an unreasonable assumption. Having this material a few thousand feet from my home, my parent's home, the woods in which my children play, is not a risk I feel any of us should be asked to take.

One last point we feel is worth making and we hope that this commission will take into consideration in regards to DPC's recommendation is the fact that Mr. Lusk is a member of this particular body. Derby has nothing to lose by recommending, after all they are never held responsible for any problems that develop. We feel that perhaps their decision was not entirely unbiased.

In conclusion, I would like to say that we know of what we speak. These are not just idle complaints of cranky neighbors, rather we are hoping to share with you our years of experience, our not unfounded fears about our future if this individual landowner is allowed to continue to wreak havoc with our homes, our properties, our neighborhood, our health and our peace of mind. Some of the people in this area have grown up here and their land has been passed down from their parents, and they had hoped to pass it onto their children and grandchildren. If the damage to this area is allowed to continue at its present proposed rate, there may be nothing worth passing down to our future generations. Please don't help this to happen, and please don't leave legal action as our only recourse. The answer is not more of the same, it's time to say enough."

GARDNER asked Moore what she saw as the answer or the solution to the problem.

MOORE said that she was not sure this is the only way of reclaiming this land. Mr. McHenry that owns the land north also has nursery property, and he had offered at one time to buy this land. MOORE said that she could not believe that this was the only solution, more demolition and construction material.

GARDNER asked Moore if she had any suggestions as to how it could best be handled. Should it be abandoned and left as it is, or covered further?

MOORE said that she felt that this was never completely covered the way it should have been when it was closed. There are still a lot of abandoned trucks, dirt, washing machines and appliances right along the creek bank, and should have been taken care of before the landfill was closed the last time.

GARDNER asked which agencies does Moore deal with to seek solutions to the problems that are troubling her.

MOORE said that everyone was sympathetic. They started with the Sedgwick County Department of Health and they were referred to the Wichita office of the Kansas Department of Health and Environment which would then send their information on to Topeka, who give this to Secretary Barbara Sabal where this could be looked over and they would decide there if there was anything that could be done about it. She said that before Secretary Sabal got it, someone from the Topeka office of the KDHE would end up coming down so that they could view it firsthand and then they would go back and draft something, and another piece of information went into the file.

MILES stated that he was not fortunate enough to live where Moore does, he happens to live at the north end where they have a landfill too. He said that when the City operated it, it was a disgrace to humanity. They gave it to a private owner and he did a much better job than the City, but not adequate. Now they have another group who at this time is doing a much better job than the last one. He said that age had improved the situation and he believed today in Sedgwick County they have a better handle on handling these kind of problems now than when they did when this Derby landfill started.

PETERS felt that the landfill should be cleaned up, and felt that with the conditions listed, it will help the situation. He said that he would not vote in favor of these applications if he did not feel that it eventually had some teeth in it. He believed that the landfill will finally be cleaned up.

COMMISSIONER MOORE returned to the meeting.

BANZER asked if there were not some recourse that the applicant clean out the junk cars now, and if so, who was enforcing the rules. He felt that the Commission could make all of the rules they wanted to, but if they were not enforced, what good were they.

WILSON questioned whether this landfill was the former Derby landfill.

LUSK stated that he originally started Derby Landfill and Wrecking Service. He sold the business in 1975 to Georgie and Jerry Engstrand. He said that he has a thick file with Richard Rumsey, attorney, on communication with the Kansas State Health Department trying to get those people to operate this landfill right. He said that he merged with Derby Landfill and had Mulvane trash in 1982 trying to help correct the situation. He went in with 10 percent, and when they hold 45 percent, you don't have much to say in a corporation. LUSK said that the cars that are there now were his own personal cars and they are sitting on industrial ground. He said that he did not know that they would offend anybody. He mentioned that he was going to rebuild two of the cars, a 1964 Galaxy and a 1964 Ford convertible, but rocks were thrown through the windshields and other damage, so they are nothing but junk now.

WILSON asked that when he was the original owner of the original dump, did he have any complaints.

LUSK said that they were operating as an open dump and there were no complaints from the neighborhood. The complaints started when Mrs. Moore moved in the area.

CONLEE left the meeting.

GARDNER asked Lusk if he was willing to post a performance bond and arrange a contract with an alternate contractor to come in and perform the service in the event he was unable to.

LUSK said no, a performance bond was too expensive.

GARDNER said that he talking about something that would adequately fund another contractor providing specific performance in the event he was unable.

LUSK did not feel it necessary to post a performance bond. He said that condition "1" of the staff comments points out that if he was in violation the operation ceases.

GARDNER said that he understood that. He also understood that neither the Health Department or the County Department of Public Works have the bureaucratic wherewithal to come in and solve the problem that then may exist in the event Lusk was unable to perform. He said that if they were going to create a situation of liability to address whether or not there is a mechanism for handling a situation of a non-performance.

JACK BROWN, Health Department, stated that he had expressed his opinion on subject matter to many people including the Derby Planning Commission. He said that the past history that has been addressed earlier was correct. There are numerous problems. In addition the State Health Department and he have discussed only opening up one acre at a time, and then closing it. He said that he was told today that that would be a requirement and that a performance bond type situation would have to be applied to the closing of each acre in this 14-acre tract so that it would be done in an orderly fashion. BROWN said that asbestos was mentioned, and asbestos, while it would be very difficult to keep small amounts out, is controlled through the State Health Department through licensing and contractors and has to be encapsulated and packaged to prevent it from getting into the atmosphere. Nonetheless, it would not be allowed in this landfill according to KDHE because they are trying to minimize different landfill sites for asbestos burial. Asbestos burial can only be permitted in a landfill with prior authorization.

GARDNER asked Brown to explain the bond matter again.

BROWN stated that this landfill would be demolition waste only, opened up an acre at a time so there would be 14 different openings and closings; each acre would be delineated and there would be a bond in the amount of \$10,000 that Mr. Lusk would have to establish for the closure should there be some failure to comply with permitting by the State Health Department.

GARDNER asked who came up with this requirement.

BROWN responded that it was the Health Department's requirement. He said that it was explained to him verbally that the bond would be required in this particular case.

GARDNER asked Brown if he read about or had been exposed to that kind of bond before in the operational conditions.

BROWN said no, he had not read the Kansas statutes that allow for that kind of bond type situation.

BROWN further explained that the condition of the State's final denial or approval of this permit requires that all local land use regulations and zoning

be complied with. The State will not look at this permit until everyone at the local level has acted.

GARDNER asked why the Health Department had had such a difficult time keeping the landfill in line.

BROWN responded that it was operated in a fashion that was totally contrary to all of the local and State regulations. The Health Department took action through the sanitation code #5 and #7, a nuisance abatement procedure on the old Derby landfill area. The State stepped in by that time; they were very slow to react. He said that he was not directly involved when that issue came up but he remembered the complaints. He said that now they have more speedier administrative powers at the State level, and with the condition of 48 hour correction, that was one of their responses locally to attempt to address things in a more timely fashion.

Considerable discussion followed concerning the enforcement of cleanup of the site and the performance bond.

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the character of the neighborhood; the zoning and uses of properties nearby; the suitability of subject property for the uses proposed; and the recommendation of staff; I move that we recommend to the governing body that the zone change and special use permit be approved subject to the following conditions:

- a. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of The Kansas Department of Health and Environment Bulletin NO. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, shall be permitted for disposal at the site.
- b. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- c. The deposit of material on site shall cease by January 1, 1989, and the cover material, final grading in accordance with the grading plan, and seeding shall be completed no later than July 1, 1989, unless an extension of time is granted by KDHE and by the Board of County Commissioners after a public hearing. Filling and grading shall be in accordance with the Grading Plan dated _____. Cover material shall be applied daily.
- d. A drainage plan indicating how this site will drain during the landfill operation as well as after final completion shall be submitted to the County Bureau of Public Services for review and approval.
- e. The landfill shall not be open to the general public. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- f. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording.
- g. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.

- h. A 4-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation.
- i. Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until authorized by the above or until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation.
- j. Within three months after final inspection and close-out of the landfill operation, the applicant shall submit a request to rezone this property to whatever zoning classification exists at that time on the balance of the former Derby landfill site.
- k. Items "d" and "f" above shall be complied with prior to these cases being forwarded to the Board of County Commissioners for final action. Also, four copies of the approved Grading Plan shall be submitted to the Planning Department prior to County Commission consideration of these cases.

Miles moved, Wilson seconded.

BANZER reiterated that landfills were very difficult to enforce and until the Commission gets some assurance that they can be enforced, he did not see how they could support this request.

GARDNER stated that he appreciated the effort staff has put on this, but did not think they addressed the most pointed and critical problem and that was how do you affect the solution in a short time period if it occurs short of going to court, and now is the time to put that in contractual form as a portion of the special use permits that have not been solved, not after the fact.

LUSK asked Gardner if he knew that what he was talking about already exists on the site.

GARDNER said that he was aware, and he was also aware by what the neighbors have said that they had an extremely difficult time, and Lusk has said himself that based on other operators that it has been a very difficult time.

VOTE ON THE MOTION: It carried with a vote of 5 in favor (Miles, Wilson, Bayouth, Moore and Peters) and 2 opposed (Banzer and Gardner). Crockett and Goebel were absent.

GALBRAITH announced that these cases go on to the County Commission on April 30th, but that since this issue of bonding has been raised, and since Jack Brown advises that the State will require one, he would like to ask them to pursue that and find out what that wording is because Mr. Lusk is saying that he was unable to give a bond, and they are hearing that the State will require it, he would like to have some of those answers before they go on.

LUSK said that if the State requires a bond it would be fine with him.

RESOLUTION NO. _____

CASE NO. DR 96-4

A RESOLUTION AUTHORIZING A SPECIAL USE PERMIT TO ESTABLISH A DEMOLITION CONSTRUCTION LANDFILL SITE ON CERTAIN LANDS LOCATED IN SEDGWICK COUNTY KANSAS, UNDER THE AUTHORITY GRANTED BY SECTION 13.F OF THE ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS.

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

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and proper notice having been given and hearing held and under authority of and subject to the provisions of Section 13.F of the Zoning Regulations for the Unincorporated Area of Sedgwick County, Kansas, a Special Use Permit to establish a demolition land fill site property zoned "F" is hereby approved on lands legally described as follows:

Commencing at a point 418 feet west and 1330 feet south of the NE corner of the SW $\frac{1}{4}$ of Section 13, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east parallel to the north line of said SW $\frac{1}{4}$, 323 feet; thence southwesterly 1010 feet, more or less, to the centerline of Spring Creek, said point being 190 feet west of the east line of said SW $\frac{1}{4}$; thence southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, south and 640 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly, 550 feet to a point 2010 feet south and 642 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly 315 feet to a point 850 feet west of the east line of said SW $\frac{1}{4}$; thence northeasterly to a point 1330 feet south and 498 feet west of the northeast corner of said SW $\frac{1}{4}$; thence east parallel to the north line of said SW $\frac{1}{4}$, 80 feet to the point of beginning; AND

Commencing at a point 418 feet west and 1330 feet south of the northeast corner of said SW $\frac{1}{4}$; thence S90°00'W parallel to the north line of said SW $\frac{1}{4}$, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the southeast corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning. Generally located south of 91st Street South in an area between K-15 Highway and the Arkansas River.

CONDITIONS OF APPROVAL:

- a. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of The Kansas Department of Health and Environment Bulletin NO. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, shall be permitted for disposal at the site.
- b. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- c. The deposit of material on site shall cease by January 1, 1989, and the cover material, final grading in accordance with the grading plan, and seeding shall be completed no later than July 1, 1989, unless an extension of time is granted by KDHE and by the Board of County Commissioners after a public hearing. Filling and grading shall be in accordance with the Grading Plan dated April 15, 1986. Cover material shall be applied daily.

- d. A drainage plan indicating how this site will drain during the landfill operation as well as after final completion shall be submitted to the County Bureau of Public Services for review and approval.
- e. The landfill shall not be open to the general public. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- f. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording.
- g. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
- h. A 4-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation.
- i. Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until authorized by the above or until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation.
- j. Within three months after final inspection and close-out of the landfill operation, the applicant shall submit a request to rezone this property to whatever zoning classification exists at that time on the balance of the former Derby landfill site.
- k. Items "d" and "f" above shall be complied with prior to these cases being forwarded to the Board of County Commissioners for final action. Also, four copies of the approved Grading Plan shall be submitted to the Planning Department prior to County Commission consideration of these cases.

SECTION II. That this Resolution shall take effect and be in force from and after its adoption by the Board of County Commissioners.

ADOPTED AT WICHITA, KANSAS, this _____ day of _____, 19__.

_____, Chairman
Bernard A. Hentzen

_____, Commissioner
Donald E. Gragg

_____, Commissioner
Tom Scott

ATTEST:

Donnell L. Wright, County Clerk

(SEAL)

Approved as to form by County Counselor

William D. Rustin, County Counselor

R E S O L U T I O N N O . _____

A RESOLUTION CHANGING THE ZONING CLASSIFICATIONS FOR CERTAIN LANDS LOCATED WITHIN THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED IN SECTION 17.C OF THE ZONING REGULATIONS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, DECEMBER 12, 1984.

BE IT RESOLVED BY THE GOVERNING BODY OF SEDGWICK COUNTY, KANSAS.

SECTION I. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section 17.C of the Zoning Regulations, the zoning district of the land legally described is hereby changed as follows:

CASE NO. SCZ-0559
Zone Change from the "R" Rural Residential District
to the "F" Heavy Industrial District

Commencing at a point 418 feet west and 1330 feet south of the NE corner of the SW $\frac{1}{4}$ of Section 13, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east parallel to the north line of said SW $\frac{1}{4}$, 323 feet; thence southwesterly 1010 feet, more or less, to the centerline of Spring Creek, said point being 190 feet west of the east line of said SW $\frac{1}{4}$; thence southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, south and 640 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly, 550 feet to a point 2010 feet south and 642 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly 315 feet to a point 850 feet west of the east line of said SW $\frac{1}{4}$; thence northeasterly to a point 1330 feet south and 498 feet west of the northeast corner of said SW $\frac{1}{4}$; thence east parallel to the north line of said SW $\frac{1}{4}$, 80 feet to the point of beginning; AND

Commencing at a point 418 feet west and 1330 feet south of the northeast corner of said SW $\frac{1}{4}$; thence S90°00'W parallel to the north line of said SW $\frac{1}{4}$, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the southeast corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning. Generally located south of 91st Street South in an area between K-15 Highway and the Arkansas River.

SECTION II. That upon the taking effect of this Resolution, the above zoning change shall be entered and shown on the particular sectional zoning map contained 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 once in the official County paper.

PASSED AND ADOPTED by the Board of County Commissioners at
Wichita, Kansas, this _____ day of _____, 19__.

_____, Chairman
Bernard A. Hentzen

_____, Commissioner
Donald E. Cragg,

_____, Commissioner
Tom Scott

ATTEST:

Donnell L. Wright, County Clerk
(SEAL)

APPROVED AS TO FORM:

William D. Rustin, County Counselor

April 4, 1986

Norma Moore
9339 South K-15
Derby, KS 67037

Re: SCZ-0559 & DR 86-4

Dear Ms. Moore:

The Planning Commission at its regular meeting of April 3, 1986, considered the above-captioned zone change and special use permit requests, and their action was as indicated on the attached letter.

This is to advise you that if property owners within 1000 feet of the application area desire to submit legal protest petitions, they must be submitted to the Office of the County Clerk no later than 5:00 p.m., Thursday, April 17, 1986. Several copies of the protest petition form have already been provided for you and if you have need for more forms, they may be obtained at this office.

If you have any questions concerning this matter, please call.

Sincerely yours,

Jack H. Galbraith
Chief Planner

JHG/lw

Enclosures

April 4, 1986

Larry Lusk
5001 East 71st Street South
Derby, Kansas 67037

Re: SCZ-0559 and DR 86-4 "R" to "F" and Special Use permit for landfill. South of 91st Street South in an area between K-15 Highway and the Arkansas River.

Dear Mr. High:

At its regular meeting of April 3, 1986, the Metropolitan Area Planning Commission considered the above-captioned cases. The action of the Planning Commission was to recommend approval of the zone change and special use permit, subject to the following conditions:

- a. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of The Kansas Department of Health and Environment Bulletin NO. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, shall be permitted for disposal at the site.
- b. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- c. The deposit of material on site shall cease by January 1, 1989, and the cover material, final grading in accordance with the grading plan, and seeding shall be completed no later than July 1, 1989, unless an extension of time is granted by KDHE and by the Board of County Commissioners after a public hearing. Filling and grading shall be in accordance with the Grading Plan dated _____. Cover material shall be applied daily.
- d. A drainage plan indicating how this site will drain during the landfill operation as well as after final completion shall be submitted to the County Bureau of Public Services for review and approval.

Larry Lusk
SCZ-0559 & DR 86-4
Page 2

- e. The landfill shall not be open to the general public. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- f. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording.
- g. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
- h. A 4-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation.
- i. Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until authorized by the above or until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation.
- j. Within three months after final inspection and close-out of the landfill operation, the applicant shall submit a request to rezone this property to whatever zoning classification exists at that time on the balance of the former Derby landfill site.
- k. Items "d" and "f" above shall be complied with prior to these cases being forwarded to the Board of County Commissioners for final action. Also, four copies of the approved Grading Plan shall be submitted to the Planning Department prior to County Commission consideration of these cases.

As to conditions "c" and "d", it is necessary that we receive four copies each of a dated grading plan and drainage plan. Also, we need a signed and notarized easement satisfying condition "f". If we receive those documents by 5:00 p.m. on April 16, 1986, this case will be scheduled for consideration by the Board of County Commissioners at 9:00 a.m., on Wednesday, April 30, 1986. Because of remodeling of the County Commission meeting room, this matter will be considered by the Board of County Commissioners in the City Building, First Floor, 455 North Main.

Regarding the discussion of a performance bond that may be required by the State, it was suggested that you and Jack Brown resolve that with the State so those questions can be answered at the County Commission meeting.

Larry Lusk
SCZ-0559 & DR 86-4
Page 3

If you have any questions, please contact our office.

Sincerely yours,

Jack H. Galbraith
Chief Planner

JHG/lw

cc: Lowell D. High, 1542 South St. Francis, Wichita, KS 67211
Norma Moore, 9339 South K-15, Derby, KS 67037
Jack Brown, Wichita-Sedgwick County Health Department
Ron Worley, County Zoning Administrator

City of Derby



229 N. BALTIMORE • DERBY, KANSAS 67037 • 316/788-1519



Louise Filb

March 21, 1986

Mr. Jack Gailbrath
Metropolitan Area Planning Dept.
455 N. Main 10th Floor
Wichita, Kansas 67202

Re: Petition from Mrs. Norma Moore

Dear Jack:

Per Mrs. Moore's request, I am forwarding her petition on to you for your review.
If we can be of any further assistance, please do not hesitate to give us a call.

Sincerely,

Karen Susta

Karen Susta, Secretary
Derby City Planning Commission

/ks

RECEIVED

MAR 25 1986

METROPOLITAN PLANNING

ROUTE

March 20, 1986

In response to consideration of Case No. SCZ-0559 and DR86-4 concerning the Lusk property south of Derby, we the undersigned oppose recommendation and/or further approval of the proposed zone changes and the Special Use Permit to establish a Demolition Construction Landfill on this site. As citizens of Sedgwick County and adjoining property owners we feel great concern for the future of our property and homes in relation to the Lusk land and it's proposed use.

Norma D. Moore

~~Norma D. Moore~~
9339 S. K-15
Derby, Ks.
Kenneth Chung
9715 S 63E
Derby, Ks.

William S. Bennett

9101 S 55th E
Derby, Ks

Georgia L. Bennett

9101 So. 55th East
Derby, Ks. 67037

Robert E. McHenry J.

5900 E 91stS.
Derby Ks. ALSO ADJACENT OWNER

Patricia A. McHenry

5900 E. 91st So.
Derby, Ks 67037

May McHenry

5900 E. 91stS.
Derby

Carol J. Warren
Norma Warren

9529 So. K-15

Derby, Kansas 67037

cc: Tom Scott
Jack Galbraith
Jack Brown

City of Derby



229 N. BALTIMORE • DERBY, KANSAS 67037 • 316/788-1519

PLANNING COMMISSION MEETING

March 20, 1986

MEMBERS PRESENT: Dick Loosen
Larry Lusk
Luther "Oakie" Payne
Dolan Pelley
Red Rehburg
Richard Schaffer
Bill Smith
Floyd Zollinger

MEMBERS ABSENT: Dottie Janssens
Larry Sims

NEXT REPRESENTATIVE TO THE CITY COUNCIL: Dick Loosen.....April 1, 1986
Larry Lusk.....April 15, 1986
Luther "Oakie" Payne.....May 6, 1986
Dolan Pelley.....May 20, 1986

PUBLIC HEARINGS:

Ordinance amending the Zoning Regulations of the City of Derby regarding a provision allowing temporary fences for model "show" homes. - Roger Weast

The Public Hearing opened at 7:00 p.m. for discussion and comments.

Roger Weast representing the Lusk Company was present to request a provision be made in the Zoning Regulations to allow temporary fences for model "show" homes.

Due to lack of questions and comments by the general assembly, the Public Hearing closed at 7:04 p.m.

* M.A.P.D. Case No. DR86-4 & No. SCZO559 - Zone Change from "R" Rural Residential District to "F" Heavy Industrial District and Special Use Permit to establish a Demolition Construction Landfill site on property to be zoned "F" Heavy Industrial District. - Larry Lusk

Mr. Jack Galbraith with the Metropolitan Area Planning Department was present along with Mr. Larry Lusk to discuss this zone change and special use permit request with the Planning Commission.

The Public Hearing opened at 7:06 p.m. for discussion and comments

This 14 acre site has been closed for several years, it is the intention of the applicant to fill the large pot holes and cover. Once this is completed, Mr. Lusk intends to make this portion of the landfill part of the entire redevelopment plan for the entire site.

Neighbors and adjoining land owners were present at the meeting to voice their opposition.

Norma Moore - 9339 South K-15 - Mrs. Moore presented a signed petition opposing the re-opening of the landfill. She is afraid that problems that arose in the past will surface again, along with the "blowing" of trash which was a constant problem also.

Robert E. McHenry - 5900 East 91st Street South - Mr. McHenry questions whether or not flooding of Spring Creek would be a problem. The surveyor present, Mr. Lowell High assured him that this would not be a problem, and no due cause for concern.

Carol Warren - 9529 South K-15 - Mrs. Warren questioned the dumping of appliances such as refrigerators and stoves. She could not see how Mr. Lusk would be able to control and enforce what was being dumped on the site.

Norma Moore - 9339 South K-15 - Mrs. Moore is very concerned about the long timely process it has taken in the past to get anyone down from KDHE (Kansas Department of Health and Environment) to investigate any problems that arose in the past. She said that she felt that until a representative from KDHE came down from Topeka, that no one from the County would get involved in investigating any problems that may have arisen. She is also afraid that there will not be any inspections done until Topeka KDHE is involved, and that sometimes has taken weeks in the past.

Jack Brown - Sedgwick County Health Department - Mr. Brown assured Mrs. Moore that there will be regular inspections at the site. Mr. Jack Galbraith noted that these inspections were done without advance notice to the landfill owners.

Due to no further questions and comments from the general assembly, the Public Hearing closed at 8:00 p.m.

C.T.O. 8:02 p.m.

Business: The Minutes of February 20, 1986 stand approved as mailed.

Ordinance Amending the Zoning Regulations of the City of Derby with regards to a Provision for Temporary Fences for Model "show" Homes. - Roger Weast

Motion: "Move to recommend the amending of the Zoning Regulations, Section 3-103 (F) 3 with regards to a provision for temporary fences for model "show" homes only." - Oakie Payne

Second: Dolan Pelley

Vote: 9 Yea -0- Nay Motion Carried

Planning Commission recessed at 8:05 p.m.

Planning Commission reconvened at 8:15 p.m.

* Case #DR86-4 and SCZ #J559 - Zone Change from "R" Rural Residential District to "F" Heavy Industrial District & Special Use Permit to establish a Demolition Construction Landfill site on property to be zoned "F" Heavy Industrial District - Larry Lusk

After a lengthy discussion, the Planning Commission made the following recommendation:

Motion: "Move to recommend to M.A.P.D. the approval of the zone change from "R" Rural Residential District to "F" Heavy Industrial District AND a Special Use Permit to establish a Demolition Construction landfill site on property to be zoned "F" Heavy Industrial District subject to conditions stipulated by the Metropolitan Area Planning Dept. along with the following conditions:

1. Landfill operator to be on duty at all times during the operation hours of the dump.
2. If a violation of the landfill is found, owner will have 48 hours to clean it up. If not cleaned up within that time frame, landfill will be shut down until a full investigation can be conducted.
3. Landfill will be fenced on all sides which adjoin other properties before the first dumping takes place.
4. Trash will be covered DAILY with sand taken out of Arkansas River.
5. Drainage and Redevelopment Plan will be completed within 6 months after the expiration of the permit."

- Oakie Payne

Second: Bill Smith

Vote: All Yea

-O- Nay

Motion Carried


Miscellaneous: Red Rehburg updated the Planning Commission on action taken at the City Council meeting of March 18, 1986.

Oakie Payne discussed with the Planning Commission the sale of "Common Area" in Derby Hills East to adjoining land owners.

Motion: "Move to adjourn." - Bill Smith

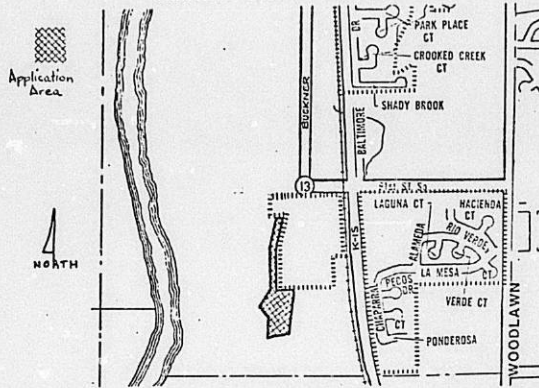
Second: Dolan Pelley

Time: 8:40 p.m.


Karen A. Susta, Secretary

Derby City Planning Commission

REVISED STAFF REPORT



SCZ-0559 - REQUEST FOR ZONE CHANGE FROM "R" RURAL RESIDENTIAL TO "F" HEAVY INDUSTRIAL; AND

DR 86-4 - REQUEST FOR SPECIAL USE PERMIT FOR A DEMOLITION CONSTRUCTION LANDFILL SITE, LOCATED SOUTH OF 91ST STREET SOUTH IN AN AREA BETWEEN HIGHWAY K-15 AND THE ARKANSAS RIVER.

Applicant: Larry Lusk, 5001 E. 71st Street South, Derby, Kansas 67037.

Size: 14± acres

	Land Use	Zoning
Application Area	Undeveloped	"R"
North	Derby Sewer Plant	"R" & "M-1"(Derby industrial zoning)
South	Spring Creek & Agricultural	"R"
East	Undeveloped & Single-family	"R" & "M-1"
West	Former landfill	"R"

Background: Subject property is approximately 14 acres in size and located between K-15 and the Arkansas River in an area south of 91st Street South. The site is part of the former Derby Landfill although most of the filling operation occurred on land to the west. In 1984 that landfill site was declared full and was ordered closed. The owner has now submitted an application to the Kansas Department of Health and Environment for expansion of a landfill into the east 14 acres. It has been stated by the owner that he desires to fill holes left on the site when the previous landfill operation ceased. Demolition wastes and construction debris are the only types of landfill materials proposed to be permitted. The application has been tentatively approved subject to the applicant obtaining the necessary local zoning permits. The Sedgwick County Zoning Regulations require "F" Heavy Industrial zoning and a Special Use Permit for landfills.

Analysis: Property to the north is in the City of Derby and is zoned "M-1" Industrial. It is platted as Lot 1 of Lusk Industrial Addition and is owned by this applicant. Access to the proposed landfill site will be provided through this industrial plat out to 91st Street South. Property to the northeast is also zoned "M-1" and is the site of the Derby Sewage Treatment Plant. To the southeast are two single-family residences in the County's "R" Rural Residential district. South is agricultural land in the "R" district. The old landfill site to the west and

northwest is in the "R" district, having begun operation prior to any zoning controls in this part of the county.

If the Planning Commission determines that the zone change and the special use permit are appropriate, the following are conditions of approval as recommended by staff and the Derby Planning Commission:

- a. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of The Kansas Department of Health and Environment Bulletin NO. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, shall be permitted for disposal at the site.
- b. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- c. The deposit of material on site shall cease by January 1, 1989, and the cover material, final grading in accordance with the grading plan, and seeding shall be completed no later than July 1, 1989, unless an extension of time is granted by KDHE and by the Board of County Commissioners after a public hearing. Filling and grading shall be in accordance with the Grading Plan dated _____. Cover material shall be applied daily.
- d. A drainage plan indicating how this site will drain during the landfill operation as well as after final completion shall be submitted to the County Bureau of Public Services for review and approval.
- e. The landfill shall not be open to the general public. A landfill operator shall be on the site during all hours of operation. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday. Access to subject property shall be prohibited except during the hours of operation.
- f. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial Addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording.
- g. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
- h. A 4-foot high fence shall be installed on the east property line and along the north side of the floodway on the south to minimize the blowing of any materials. Said fence shall be installed prior to the commencing of the operation.
- i. Upon written notice of any violation, by the County Zoning Administrator or the Department of Community Health, the operation shall cease and the violation shall be corrected within 48 hours, and the operation shall not commence until authorized by the above or until after a public hearing before the Board of County Commissioners held within 14 days of the notice of violation.
- j. Within three months after final inspection and close-out of the landfill operation, the applicant shall submit a request to rezone this property to whatever zoning classification exists at that time on the balance of the former Derby landfill site.
- k. Items "d" and "f" above shall be complied with prior to these cases being forwarded to the Board of County Commissioners for final action. Also, four copies of the approved Grading Plan shall be submitted to the Planning Department prior to County Commission consideration of these cases.



March 25, 1986

Chuck Linn
Solid Waste Section
KDHE
Forbes Field
Topeka, KS 66620

RE: Demolition Landfill - 91st Street
South between Highway K-15 and
Arkansas River/owner: Larry Lusk

Dear Chuck,

Enclosed is a copy of the revised staff report with conditions of approval for the above referenced landfill. I would appreciate any comments you might have regarding these conditions, since as you stated in our phone conversation today, they would be incorporated into the KDHE landfill permit at such time one is granted. One item we discussed, the disposal of asbestos, is not addressed as it was felt KDHE is in a better position to restrict or authorize its disposal.

This item is on the MAPC April 3, 1986, agenda so your comments would be appreciated as soon as possible.

Jack A. Brown, Chief
Environmental Quality

JAB/cb

Encl.

cc: Jack Galbraith, MAPD ✓

RECEIVED
MAR 26 1986
METROPOLITAN PLANNING
ROUTE _____

Nichita-Sedgwick County Department of Community Health
1900 East Ninth Street-Nichita, Kansas 67214-3198 (316)268-8401

- a. Demolition and construction wastes of the Waste Classifications I and II as defined in Chapter V of The Kansas Department of Health and Environment Bulletin No. 4-4 "Guidelines for Operation of Solid Waste Management Systems" only shall be permitted as landfill materials. No hazardous or toxic wastes, as defined by KSA 65-3430 et seq, ~~nor asbestos or materials containing asbestos~~ shall be permitted for disposal at the site.

CHAPTER V

GUIDELINES FOR CONSTRUCTION AND DEMOLITION WASTES

Under certain conditions it may be beneficial to establish sites for construction and demolition operations. These materials do not as a rule constitute long-term hazards to the environment, but may occur in quantities, or in bulk so as to be disruptive to normal sanitary landfill operations. A measure of control is necessary so that undesirable materials are not deposited at these sites thereby creating public health, aesthetic and nuisance problems. In general, construction and demolition landfills will not be open for public use and generally will be project oriented. The use of landfill will be restricted to municipalities, counties, organizations, or individuals having a substantial volume of nonputrescible material from demolition or construction projects.

Other situations suggestive to establishment of sites for these materials would be to provide fill to raise the elevation of properties for beneficial uses such as building, parking, recreation or agricultural purposes. Permits will be required for construction and demolition sites. No person shall dispose of any construction or demolition wastes at any location other than a site or facility for which a permit has been issued by the Department of Health and Environment. Such requirements shall be subject to the following exceptions:

- a. Control by ordinance or resolution. When a city or a county provides adequate control of these type disposal sites by ordinance or resolution and demonstrates to the Department of Health and Environment that they have the enforcing agency to insure these standards are adhered to the Division of Environment will issue a permit to the person operating said site or facility upon certification by the enforcement department of said city or county to

the Division of Environment.

- b. Construction and demolition areas may be operated on the same tract in conjunction with municipal or county sanitary landfill sites.

1. Classification of Materials.

- a. Wastes excluded from construction and demolition sites include the following: Wastes from the operations of households, commercial establishments, institutions, industrial processes, agricultural facilities, and municipalities, such as garbage, dead animals, paper, food and beverage containers, leaves, yard trimmings, ashes, tires, liquids, septic tank pumpings, sludges, vehicles, machinery, appliances and hazardous wastes. In order to facilitate site selection and suitability of soil and geology characteristics, demolition wastes have been divided into three classes. Flood plain locations will be considered separately and may require additional approval from the United States Army Corps of Engineers, Division of Water Resources, State Board of Agriculture and local floodplain zoning agencies, drainage boards, and flood control facility operating agencies. It will be the responsibility of the applicant to determine if clearance from these agencies is needed.

b. Waste Classifications are defined as follows:

- i. Class I - Waste materials resulting from land clearing and excavation projects, i.e., trees, brush, stumps, etc. which may or may not be mixed with soil and rocks.
- ii. Class II - Waste materials resulting from urban renewal, housing development, and other projects requiring demo-

lition of buildings and dwellings, i.e., brick, mortar, wood, plaster, asphaltic materials, concrete, metal, etc.

iii. Class III - Waste materials resulting from cleaning settling ponds, lagoons, and sludges containing precipitated organic and metallic materials.

2. Permit requirements for Class I wastes are:
 - a. Most bedrock materials shall be deemed suitable with the exception of sinkholes, subsidence areas, and unstable rock material.
 - b. Ground water conditions shall be deemed suitable if the seasonal high water table is a minimum of 12 inches below the surface.
 - c. If the water table is at the surface (a swamp), a sub-base of clean fill, to a height twelve inches above the high water level, prior to the deposition of any wastes may be deemed satisfactory.
 - d. If chipped wood wastes are included in the waste materials, a minimum soil depth of twenty four inches above the seasonal high water table will be required in all locations.
3. Permit requirements for Class II wastes are:
 - a. Soil shall be deemed suitable if well drained, and has a minimum depth of one foot to bedrock.
 - b. Most bedrock materials shall be deemed suitable with the exception of sinkholes, subsidence areas, and unstable rock material.
 - c. Ground water conditions shall be deemed suitable if the seasonal high water table is a minimum of two feet below the surface.
 - d. Leachate and treatment facilities may be required to enhance site suitability.
4. Permit requirements for Class III wastes will meet regulations and guidelines for sanitary landfill.

5. A demolition site may not be located at the site of a former dump, private or public, until the abandoned dump has been officially closed in accordance with K. A. R. 28-29-6.
6. For small sites of short duration the Director may waive any of the following requirements: Before planning any project the engineer retained for the project should visit or call the Bureau of Environmental Sanitation offices to discuss the project and current application procedure. The amount of detail required in planning will be discussed at that time.
 - a. All sites must be included as a part of the County Solid Waste Management Plan. Approval may be required by local, county, and regional, zoning, land use and solid waste management authorities.
 - b. Completed permit application.
 - c. A site plan indicating the following items:

(Plans and drawings should be folded to 8½ x 11 inch size)

 - i. An Existing Conditions Plan of the area showing land use and zoning within ¼ mile of the proposed landfill site. This plan shall show all buildings, lakes, ponds, watercourses, wetlands, sinkholes, rock outcroppings, roads, public parks, and other applicable details and should indicate the general topography with contours and drainage patterns. An on-site bench mark shall be indicated and a north arrow drawn. A location insert map and a U.S.G.S. topographic map should be included. The scale of the Existing Conditions Plan shall not be greater than 400 feet per inch.
 - ii. A Development Plan of the site and immediately adjacent area showing dimensions, contours (contour intervals of five feet or less), soil boring locations (if required) and surface elevations, and present and planned pertinent

features, including, but not limited to, roads, screening, buffer zone fencing, gate and surface water diversion and drainage. The Development Plan shall show the progressive development of trench and/or area fills and any phase construction. The scale of this plan shall not be greater than 200 feet per inch.

(When determining the site development plan, consideration shall be given to the ultimate land use of the completed site; for example, there may be pre-planned building islands, not to be used for land-filling of demolition wastes.)

- iii. A Cross Sections Plan, including a minimum of two cross sections of each phase, perpendicular to one another, showing existing grade, excavation grade, final grade, high water table profile, profile and identity of soils, and profile and identity of bedrock.
- iv. An Ultimate Land Use Plan showing the land use after the site is completed, final contours (contour intervals of two feet or less) and surface water drainage. Consideration shall be given in the design of an ultimate land use plan for erosion and differential settlement. The scale of the ultimate land use plan shall not be greater than 200 feet per inch.
- v. If recommended by the district geologist, a report showing any or all of the following: surface features, underground formations, soil boring data from on-site soil borings, high water table profile direction of ground water flow, type and availability of cover material and any existing refuse deposits shall be prepared.

- vi. An operations plan and procedures considering each of the items in Number 7 of these guidelines.
 - vii. Estimated construction time schedule.
 - viii. Completion date.
7. Any person who maintains or operates a demolition landfill site or permits the use of property for such shall maintain and operate the site in conformance with the following practices unless otherwise allowed by the Department in issuing the required permit.
- a. Open burning shall be prohibited unless a variance or exemption is obtained from state or local air quality agencies.
 - b. Demolition wastes may not be deposited in surface or ground waters.
 - c. Dumping of the demolition wastes shall be confined to as small an area as practicable and with appropriate facilities to confine windblown material within the area. At the end of each day of operation, all windblown material resulting from the operation shall be collected and returned to the area by the operator.
 - d. Demolition wastes shall be compacted as densely as practicable. When dumping methods are used the lifts should be limited to four feet of compacted wastes.
 - e. When combustible materials are disposed a compacted earth fire-break shall be provided whenever a lift has progressed fifty feet in length or at the end of a working week, whichever occurs first. Firebreaks shall be provided as earth cover on top of deposited wastes on the working face and on side slopes if any.
 - f. Surface water drainage shall be diverted around and away from the landfill operating area.
 - g. A minimum separating distance of 20 feet, or greater as specified by the Director, shall be maintained between the disposal operation and the adjacent property line.

- h. Effective means shall be taken, if necessary, to control flies, rodents, and other insects or vermin.
- i. Adequate dust control on the site shall be provided.
- j. Equipment adequate for operation of the site shall be provided and kept at the site during hours of operation.
- k. Arrangements shall be made with a local fire control agency to immediately acquire their services when needed.
- l. The site shall be adequately screened by existing or provided means.
- m. An attendant shall be on duty when the site is open.
- n. Access to the site shall be controlled. A gate shall be at the entrance to the site and kept locked when an attendant is not on duty.
- o. Site Closure.
 - i. Within one month after final termination of a site, or a major part thereof, the area shall be covered with at least two feet of compacted earth material, graded to a minimum 2% slope and 33% side slopes to promote surface water runoff without excessive erosion. Bulky items shall not protrude through top or side slopes.
 - ii. The finished surface of the filled area shall be covered and maintained with adequate topsoil and seeded to provide suitable vegetation immediately upon completion of filling, or immediately in the spring on areas terminated during winter conditions. If necessary, seeded slopes shall be covered with straw or similar material to prevent erosion.
 - iii. Prior to completion of a demolition landfill site, the Department shall be notified in order that a site inves-

tigation may be conducted by the Department staff before earthmoving equipment is removed from the property.

- iv. After completion of a demolition landfill site, a detailed description, including a plat, shall be filed with the county register of deeds. The description shall include general types and location of wastes, depth of fill and other information of interest to future landowners.

1d

CASE NO. SCZ-0559 & DR 86-4

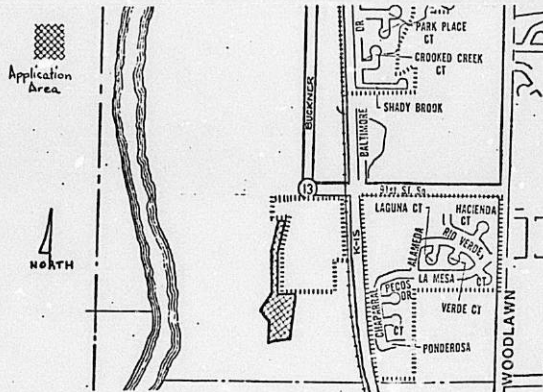
- 13 "Notices of Public Hearing" and Staff Reports mailed on 3-13-86 to Derby Planning Commissioners, City Clerk, City Secretary and City Administrator for the Derby City Planning Commission meeting on 3-10-86 and for the MAPC meeting on 4-3-86.
- 2 One each to Applicant and Agent.
- 3 One each to Ron Worley, Jack Brown, David Spears and Jon Davis (Health Dept.)

18

TOTAL

MARCH 20, 1986
DCPC

STAFF REPORT



SCZ-0559 - REQUEST FOR ZONE CHANGE FROM "R" RURAL RESIDENTIAL TO "F" HEAVY INDUSTRIAL; AND

DR 86-4 - REQUEST FOR SPECIAL USE PERMIT FOR A DEMOLITION CONSTRUCTION LANDFILL SITE, LOCATED SOUTH OF 91ST STREET SOUTH IN AN AREA BETWEEN HIGHWAY K-15 AND THE ARKANSAS RIVER.

Applicant: Larry Lusk, 5001 E. 71st Street South, Derby, Kansas 67037.

Size: 14± acres

	<u>Land Use</u>	<u>Zoning</u>
Application Area	Undeveloped	"R"
North	Derby Sewer Plant	"R" & "M-1" (Derby industrial zoning)
South	Spring Creek & Agricultural	"R"
East	Undeveloped & Single-family	"R" & "M-1"
West	Former landfill	"R"

Background: Subject property is approximately 14 acres in size and located between K-15 and the Arkansas River in an area south of 91st Street South. The site is part of the former Derby Landfill although most of the filling operation occurred on land to the west. In 1984 that landfill site was declared full and was ordered closed. The owner has now submitted an application to the Kansas Department of Health and Environment for expansion of a landfill into the east 14 acres. It has been stated by the owner that he desires to fill holes left on the site when the previous landfill operation ceased. Demolition wastes and construction debris are the only types of landfill materials proposed to be permitted. The application has been tentatively approved subject to the applicant obtaining the necessary local zoning permits. The Sedgwick County Zoning Regulations require "F" Heavy Industrial zoning and a Special Use Permit for landfills.

Analysis: Property to the north is in the City of Derby and is zoned "M-1" Industrial. It is platted as Lot 1 of Lusk Industrial Addition and is owned by this applicant. Access to the proposed landfill site will be provided through this industrial plat out to 91st Street South. Property to the northeast is also zoned "M-1" and is the site of the Derby Sewage Treatment Plant. To the southeast are two single-family residences in the County's "R" Rural Residential district. South is agricultural land in the "R" district. The old landfill site to the west and

northwest is in the "R" district, having begun operation prior to any zoning controls in this part of the county.

If the Planning Commission determines that the zone change and the special use permit are appropriate, the following are recommended conditions of approval:

- a. Demolition wastes and construction debris only shall be permitted as landfill materials. No hazardous or toxic materials of any kind shall be permitted.
- b. The landfill operation shall proceed in accordance with the Operating Manual and Design Details for the Derby Sanitary Landfill prepared by Delamater, Freund and Scherer and approved by KDHE on March 9, 1976, and as later amended. It shall also proceed in accordance with all conditions established by the Kansas Department of Health and Environment.
- c. The deposit of material on site shall cease by January 1, 1989, and the cover material, grading and seeding shall be completed no later than July 1, 1989, unless an extension of time is granted by KDHE and by the Board of County Commissioners after a public hearing.
- d. Hours of operation shall not exceed 8 a.m. to 6 p.m. Monday through Saturday.
- e. The applicant shall provide a 40-foot wide access easement through his Lusk Industrial addition out to 91st Street South. Said easement shall be valid for the duration of the landfill special use permit. The applicant shall submit said easement to the Metropolitan Area Planning Department for review and approval and for recording.
- f. An all-weather surfaced road shall be provided from 91st Street South to the landfill site prior to landfill operations commencing.
- g. A drainage plan indicating how this site will drain during the landfill operation as well as after final completion shall be submitted to the County bureau of Public Services for review and approval.
- h. Within three months after final inspection and close-out of the landfill operation, the applicant shall submit a request to rezone this property to whatever zoning classification exists at that time on the balance of the former Derby landfill site.
- i. Items "e" and "g" above shall be complied with prior to these cases being forwarded to the Board of County Commissioners for final action.

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

DATE: March 10, 1986

TO: Jack Brown, Chief, Environmental Quality

FROM: Louise Olivarez, Senior Planner

SUBJECT: SCZ-0559 and DR 86-4 - Request from Larry Lusk for "F" Zoning and a Special Permit for a Landfill.

The above-referenced cases have been scheduled for review by the Derby City Planning Commission on March 20, 1986 and by the Metropolitan Area Planning Commission on April 3, 1986. Attached is a copy of the notice which was mailed last week to property owners within 1000 feet of the site. The long, narrow north portion of the application area is for an access road. Of necessity, this County rezoning application ends where the Derby City limits is encountered. The access road would continue through the Lusk Industrial Addition, which is zoned industrial under Derby's regulations, to 91st Street South.

I may be contacting you later this week as I prepare to write the staff report.

Louise Olivarez
Senior Planner

LO:blw

CASE NO. SCZ-0559¹DR 86-4

11	"Notices to adjoining property owners mailed on 3-6-86 for Derby P. C. meeting on 3-20-86 and for MAPC meeting on 4-3-86.
2	One each to Applicant and Agent.
3	One each to CPO , Carl Gipson & Karen Crook.
2	One each to Louise and Glen.
<hr/>	
18	TOTAL

3-10-88

Jack Braun
Ron Warley
David Spears

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION
CITY HALL, TENTH FLOOR, 455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1688

DATE: March 6, 1986

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Thursday, March 20, 1986, at 7 p.m., the DERBY CITY PLANNING COMMISSION, meeting at the Derby Municipal Building, 229 North Baltimore, Derby, Kansas, will consider the following items for purposes of making a recommendation to the Metropolitan Area Planning Commission and Board of County Commissioners:

CASE NO. SCZ-0559
Zone Change from the "R" Rural Residential District
to the "F" Heavy Industrial District
AND
CASE NO. DR 86-4
Special Use Permit to Establish a Demolition Construction
Land Fill Site on Property to be Zoned "F"
Heavy Industrial District

Commencing at a point 418 feet west and 1330 feet south of the NE corner of the SW $\frac{1}{4}$ of Section 13, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east parallel to the north line of said SW $\frac{1}{4}$, 323 feet; thence southwesterly 1010 feet, more or less, to the centerline of Spring Creek, said point being 190 feet west of the east line of said SW $\frac{1}{4}$; thence southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, south and 640 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly, 550 feet to a point 2010 feet south and 642 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly 315 feet to a point 850 feet west of the east line of said SW $\frac{1}{4}$; thence northeasterly to a point 1330 feet south and 498 feet west of the northeast corner of said SW $\frac{1}{4}$; thence east parallel to the north line of said SW $\frac{1}{4}$, 80 feet to the point of beginning; AND

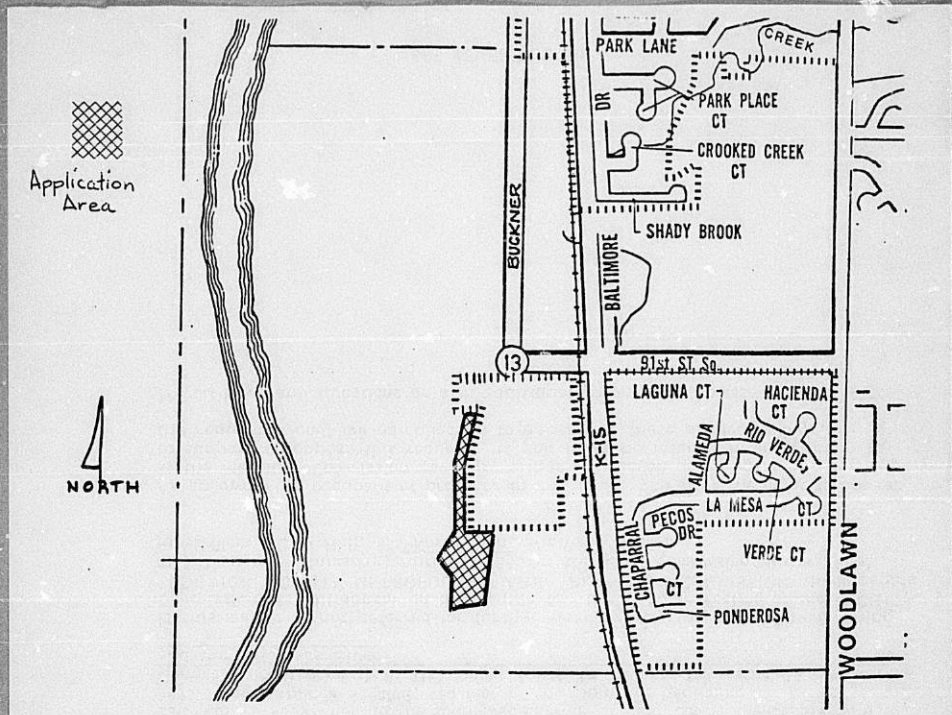
Commencing at a point 418 feet west and 1330 feet south of the northeast corner of said SW $\frac{1}{4}$; thence S90°00'W parallel to the north line of said SW $\frac{1}{4}$, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the southeast corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning.
Generally located south of 91st Street South in an area between K-15 Highway and the Arkansas River.

If this matter is not deferred for further hearings by the Derby City Planning Commission, it will appear on the agenda for the regular meeting of the WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION which begins at 1:30 p.m., Thursday, April 3, 1986, in the City Commission Meeting Room, First Floor, City Hall, 455 North Main, Wichita, Kansas.

As an owner or occupant of property in the area, you have the right to appear at the Planning Commission meetings, either in person or by agent or attorney, to support or oppose this request. If you have no interest in or objection to the request, you have no obligation to appear at these public hearings.

If you have any questions or wish additional information, please call 268-4421.

SEE REVERSE SIDE



Application Area



Most Restrictive



Least Restrictive

DISTRICT	NAME OF DISTRICT AND USES PERMITTED
R	RURAL RESIDENTIAL Agriculture and One Family Dwellings
R-1	SUBURBAN RESIDENTIAL Agriculture, One Family Dwellings, Schools and Churches
AA	ONE FAMILY DWELLING Agriculture, One Family Dwellings, Schools and Churches
BB	OFFICE All Uses Permitted in More Restrictive Zones and Business and Professional Offices
OC	OFFICE COMMERCIAL Offices, Limited Retail and Service Uses Operated Within a Building
LC	LIGHT COMMERCIAL All Uses Permitted in More Restrictive Zones and Purely Retail Businesses Operated Within a Building
C	GENERAL COMMERCIAL All Uses Permitted in More Restrictive Zones Plus All Commercial Uses
E	LIGHT INDUSTRIAL All Uses Permitted in More Restrictive Zones Plus Industrial Uses Which Do Not Create Hazards or Nuisance From Fire, Dust, Odor or Smoke***
F	HEAVY INDUSTRIAL -Any Use, Some as Conditional Uses***

***Mobile home parks and trailer camps are not permitted.

STATE OF KANSAS)
Sedgwick County) ss.

Larry Ricketts _____, being first duly sworn, Deposits

and says: That he is Publisher _____ of

THE DAILY REPORTER

a daily Newspaper printed in the State of Kansas, and published and
of general circulation in Sedgwick County, Kansas, with a general
paid circulation on a daily basis in Sedgwick County, Kansas, and that
said newspaper is not a trade, religious or fraternal publication.

Said newspaper is a daily published Monday through Friday and
has been so published continuously and uninterruptedly in said county
and state for a period of more than five years prior to the first
publication of said notice; and has been admitted at the post office of
Derby, Kansas, in said County as second class matter.

That the attached notice is a true copy thereof and was published in
the regular issue of said newspaper for 1 consecutive
times _____, the first publication thereof being

made as aforesaid on the 27th _____ day of

February _____, 1986 _____, with subsequent publications
being made on the following dates:

- _____ , 19_____
- _____ , 19_____
- _____ , 19_____
- _____ , 19_____
- _____ , 19_____

Subscribed and sworn to before me this 29th _____

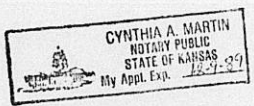
day of February _____, 1986 _____

Cynthia A. Martin
Notary Public

My commission expires: December 9, 1989 _____

Printer's fee \$ 18.31 _____

Additional copies \$ _____



Exo

(First Published In The Daily Reporter On
February 27, 1986)

OFFICIAL NOTICE
TO WHOM IT MAY CONCERN AND TO
ALL PERSONS INTERESTED

NOTICE IS HEREBY GIVEN that on
Thursday, March 20, 1986, at 7:00 p.m., the
DERBY CITY PLANNING COMMISSION,
meeting at Derby Municipal
Building, 229 North Baltimore Street, Der-
by, Kansas, will consider the following
items for purposes of making a recommenda-
tion to the Metropolitan Area Planning
Commission and Board of County Com-
missioners:

CASE NO. SCZ-0559
Zone Change from the "R"
Rural Residential District to the
"F" Heavy Industrial District
AND

CASE NO. DR 86-4
Special Use Permit to Establish
a Demolition Construction Land
Fill Site on Property to be
Zoned "F" Heavy Industrial
District

Commencing at a point 418 feet west and
1330 feet south of the NE corner of the SW $\frac{1}{4}$
of Section 13, Township 29 South, Range 1
East of the 4th P.M., Sedgwick County,
Kansas; thence east parallel to the north
line of said SW $\frac{1}{4}$, 323 feet; thence
southwesterly 1010 feet, more or less, to the
centerline of Spring Creek, said point be-
ing 190 feet west of the east line of said
SW $\frac{1}{4}$; thence southwesterly along the
centerline of said Spring Creek to a point
250 feet, more or less, south and 80 feet
west of the northeast corner of said SW $\frac{1}{4}$;
thence northwesterly, 550 feet to a point
2010 feet south and 642 feet west of the
northeast corner of said SW $\frac{1}{4}$; thence
northwesterly 315 feet to a point 850 feet
west of the east line of said SW $\frac{1}{4}$; thence
northeasterly to a point 1330 feet south and
198 feet west of the northeast corner of said
SW $\frac{1}{4}$; thence east parallel to the north line
of said SW $\frac{1}{4}$, 80 feet to the point of begin-
ning; AND

Commencing at a point 418 feet west and
1330 feet south of the northeast corner of
said SW $\frac{1}{4}$; thence S90 degrees 00'W
parallel to the north line of said SW $\frac{1}{4}$, 40
feet; thence N0 degrees 00'E, 161.46 feet;
thence N12 degrees 30'E, 384.66 feet to the
south line of Lot 1, Block 1, Lusk Industrial
Addition, an Addition to the City of Derby,
Sedgwick County, Kansas; thence
S28 degrees 10'E along the south line of
said Lot 1, 40.97 feet to the southeast corner
of said Lot 1; thence N12 degrees 30'W,
389.21 feet; thence S10 degrees 00'E, 440 feet
to the point of beginning.

Generally located south of 91st Street
South in an area between K-15 Highway
and the Arkansas River.

If this matter is not deferred for further
hearings by the Derby City Planning Com-
mission, it will appear on the agenda for
the regular meeting of the WICHITA-
SEDGWICK COUNTY METROPOLITAN
AREA PLANNING COMMISSION which
begins at 1:30 p.m., Thursday, April 3,
1986, in the City Commission Meeting
Room, First Floor, City Hall, 405 North
Main, Wichita, Kansas, at which time you
may appear either in person or by agent or
attorney, if you so desire.

As provided in Section 17-C of the
Sedgwick County Zoning Regulations, the
same will there be discussed and con-
sidered by the said MAPC and 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 propo-
sed application will be considered as by law
provided.

WITNESS MY HAND AND SEAL the
25th day of February, 1986.

Michael E. Lindback, Secretary
Wichita Sedgwick County
Metropolitan Area Planning Commission
(SEAL)
(Feb. 27)

Published in the Daily Reporter on February 27, 1986 (One Time)

OFFICIAL NOTICE

TO WHOM IT MAY CONCERN AND TO ALL PERSONS INTERESTED:

NOTICE IS HEREBY GIVEN that on Thursday, March 20, 1986, at 7:00 p.m., the DERBY CITY PLANNING COMMISSION, meeting at Derby Municipal Building, 229 North Baltimore Street, Derby, Kansas, will consider the following items for purposes of making a recommendation to the Metropolitan Area Planning Commission and Board of County Commissioners:

CASE NO. SCZ-0559
Zone Change from the "R" Rural Residential District
to the "F" Heavy Industrial District

AND

CASE NO. DR 86-4
Special Use Permit to Establish a Demolition Construction
Land Fill Site on Property to be Zoned "F"
Heavy Industrial District

Commencing at a point 418 feet west and 1330 feet south of the NE corner of the SW $\frac{1}{4}$ of Section 13, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence east parallel to the north line of said SW $\frac{1}{4}$ 323 feet; thence southwesterly 1010 feet, more or less, to the centerline of Spring Creek, said point being 190 feet west of the east line of said SW $\frac{1}{4}$; thence southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, south and 640 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly, 550 feet to a point 2010 feet south and 642 feet west of the northeast corner of said SW $\frac{1}{4}$; thence northwesterly 315 feet to a point 850 feet west of the east line of said SW $\frac{1}{4}$; thence northeasterly to a point 1330 feet south and 498 feet west of the northeast corner of said SW $\frac{1}{4}$; thence east parallel to the north line of said SW $\frac{1}{4}$, 80 feet to the point of beginning; AND

Commencing at a point 418 feet west and 1330 feet south of the northeast corner of said SW $\frac{1}{4}$; thence S90°00'W parallel to the north line of said SW $\frac{1}{4}$, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the southeast corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning.

Generally located south of 91st Street South in an area between K-15 Highway and the Arkansas River.

If this matter is not deferred for further hearings by the Derby City Planning Commission, it will appear on the agenda for the regular meeting of the WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION which begins at 1:30 p.m., Thursday, April 3, 1986, in the City Commission Meeting Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at which time you may appear either in person or by agent or attorney, if you so desire.

As provided in Section 17-C of the Sedgwick County Zoning Regulations, the same will there be discussed and considered by the said MAPC and 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 application will be considered as by law provided.

WITNESS MY HAND AND SEAL this 25th day of February, 1986.

Michael E. Lindebak, Secretary
Wichita-Sedgwick County
Metropolitan Area Planning Commission

(SEAL)

APPLICATION FOR SPECIAL PERMIT

WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION

This is an application for a Special Permit. The form must be completed and filed at the Planning Department, Tenth Floor, City Hall, 455 North Main Street, Wichita, Kansas, in accordance with directions on the accompanying instruction sheet. AN INCOMPLETE APPLICATION CANNOT BE ACCEPTED.

- 1. The names of the owners of all property included in this application must be listed as applicants. Contract purchasers, leasees or others directly associated with the property may also be listed if they desire to be advised of the proceedings.

DR 86-4

A. APPLICANT Larry Lusk
ADDRESS 5001 E. 71st St. So. Zip Code 67037 PHONE 788-2295
AGENT Lowell D. High
ADDRESS 1542 So. St. Francis Zip Code 67211 PHONE 264-0341
B. APPLICANT
ADDRESS Zip Code PHONE
AGENT
ADDRESS Zip Code PHONE
C. APPLICANT
ADDRESS Zip Code PHONE
AGENT
ADDRESS Zip Code PHONE

(Use separate sheet if necessary for names of additional applicants).

- 2. A. The applicant proposes to establish a Demolition Construction Land Fill Site (use) on property legally described as Lot(s) Block(s) of the Addition.

(If appropriate, metes and bounds description may be provided in the space below or on an attached sheet).

SEE ATTACHED LEGAL DESCRIPTION

same as associated zoning request

- B. There are 13.5 acres (round to nearest tenth) in the above described property.

FOR OFFICE USE ONLY

DPC 3-20-86

Map No. J836C Zoning (N) R1M1(S) R (E) R1M1(W) R MAPC 4-3-86

T9-212-2

Revised 1/85

advertise in Daily Reporter 2-26-86

3. This property is located at (address) _____.

THE GENERAL LOCATION IS (USE APPROPRIATE SECTION)

A. At the _____ corner of _____ and _____, OR

B. On the South side of 91st St. South (Ave.) Street between K-15 Highway (Ave.) Street and The Arkansas River (Ave.) Street.

4. The property included in this application is zoned R-1 (proposed F) (ZONING DISTRICT CLASSIFICATION).

5. We request this special permit for the following reasons:
To complete an area which was abandoned at an earlier date.

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

[Signature]
APPLICANT'S SIGNATURE

BY _____ AUTHORIZED AGENT (IF ANY)

APPLICANT'S SIGNATURE

BY _____ AUTHORIZED AGENT (IF ANY)

APPLICANT'S SIGNATURE

BY _____ AUTHORIZED AGENT (IF ANY)

OFFICE USE ONLY

This application was received at the Planning Department at _____
(AM, PM) on 2-13-86 (day, month, year). It has been checked and found to be complete and accompanied by required documents and the appropriate fee of \$ filed with zone change

Louise Oliva Name
Senior Planner Title

LEGAL DESCRIPTION

Commencing at the ^{NE} Northeast Corner of the ^{SW 1/4} Southwest Quarter of Section 13, T29S, R1E of the ~~Sixth~~ ^{Sixth} Principal Meridian, ^{6th} P.M., Sedgwick County, Kansas; thence West 285 feet along the north line of said ^{SW 1/4} Southwest Quarter; thence South 270 feet, at right angles from said North line; thence Southwest 614.57 feet, with a deflection of 12 degrees, 30 minutes right from the preceding course; thence South 460 feet, with a deflection of 12 degrees 30 minutes left from preceding course, to a point of beginning, said point being 418 feet west and 1330 feet south of said ^{NE} Northeast corner of the ^{SW 1/4} Southwest Quarter;
→ thence parallel to the north line of said SW 1/4, 323 feet; thence Southwesterly 1010 feet, more or less, to the centerline of Spring Creek, said point being 190 feet west of the ^{east line} NE corner of said SW 1/4; thence Southwesterly along the centerline of said Spring Creek to a point 2560 feet, more or less, South and 640 feet West of the NE corner of said SW 1/4; thence Northwesterly, 550 feet to a point 2010 feet South and 642 feet west of the NE corner of said SW 1/4; thence Northwesterly 315 feet to a point 850 feet west of the ^{NE} NE corner of said SW 1/4; thence Northeasterly to a point 1330 feet South and 498 feet west of the NE corner of said SW 1/4; thence east parallel to the north line of said SW 1/4, 80 feet to the point of beginning. AND

see next page

Commencing at a point 418 feet west and 1330 feet south of the NE corner of the SW 1/4 of Section 13, Township 29S, Range 1 East of the 6th P.M., Sedgwick County, Kansas,

revised
DESCRIPTION FOR ACCESS

Beginning at a point 1330 feet South and 418 feet West of the NE corner of the SW 1/4 of ~~Section 15~~^{Section 18}, T29S, R1E of the 6th P.M., Sedgwick County, Kansas; thence S90°00'W parallel to the north line of said SW 1/4, 40 feet; thence N0°00'E, 464.46 feet; thence N12°30'E, 384.66 feet to the south line of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence N90°00'E along the south line of said Lot 1, 40.97 feet to the SE corner of said Lot 1; thence S12°30'W, 389.23 feet; thence S0°00'E, 460 feet to the point of beginning.

Commencing at a point 418 feet west and
1330 feet south of the NE corner of said
SW 1/4;

5 yrs
Construction demolition landfill
Class I & II materials

2-13-86

OWNERSHIP LIST

Property Description

Property Owner

Government Lots 3 and 4 and that part of the SE $\frac{1}{4}$ of Sec. 13, Twp. 29S, R1E of the 6th P.M., lying W of the W'ly r/o/w line of the Atchison, Topeka and Santa Fe Railroad, exc. therefrom the (2) tracts described below.

def Larry Lusk
5001 E. 71st St. South
Derby, KS 67037

Beginning at a pt. approx. 270' S and 50' E of the center of Sec. 13, Twp. 29, R1E of the 6th P.M., Sedg. Co., KS, th. in a S'ly direction parallel to the $\frac{1}{2}$ Sec. ln. a distance of 600', th. in an E'ly direction at an angle of 90° a distance of approx. 400' to the intersection with the Atchison, Topeka & Santa Fe Railroad West r/o/w ln. at Bridge 224 A, Station 11836 69, thence in a N'ly direction alg. sd. r/o/w to a pt. approximately 390' E and on the $\frac{1}{2}$ Sec. ln. of sd. Sec. 13, th. W alg. sd. $\frac{1}{2}$ Sec. ln. a distance of 30', th. in a S'ly direction parallel to sd. Railroad r/o/w to a pt. approx. 270' S and 380' E of the center of sd. Sec. 13, th. in a W'ly direction a distance of approx. 330' to the p.o.b.

def The City of El Paso
(Derby), KS, a
municipal corporation
Derby, KS 67037

A tract in the S $\frac{1}{2}$ of Sec. 13, Twp. 29S, R1E, desc. as beg. at the intersection of the S ln. of sd. Sec. and the W'ly r/o/w ln. of the Atchison, Topeka & Santa Fe Railroad, sd. pt. being 2055.54' W of the SE/c of sd. Sec. 13; th. W alg. the S ln. of sd. Sec. 13, 1370'; th. with an angle to the rt. of 141°00' a distance of 340'; th. with an angle to the right of 18°00' a distance of 810'; th. with an angle to the left of 24°00' a distance of 190'; th. with an angle to the left of 33°00' a distance of 190'; th. with an angle to the left of 38°00' a distance of 190'; th. with an angle to the left of 74°00' a distance of 290'; th. with an angle to the right of 59°00' a distance of 150'; th. with an angle to the right of 30°00' a distance of 150'; th. with an angle to the right of 75°00' a distance of 400'; th. with an angle to the left of 66°00' a distance of 415' m/l to the S line of a tract as recorded in Deed Book 1230 at pg. 91; th. E alg. sd. S ln. 170' m/l to the W'ly r/o/w ln. of sd. railroad; th. S'ly alg. sd. railroad r/o/w to beg.

✓ Lester D. Moore
Norma D. Moore
Route 1
Derby, KS 67037

9339 ~~415~~
Southeast Blvd.

include
7 CARDS
✓ POSITIVE WORKS
DEEDS
9529 ~~415~~
Southeast Blvd.

Property DescriptionProperty Owner

Lot 1, Block 1, Lusk Industrial Addition, an addition to the City of Derby, Sedgwick County, KS

OK Larry Lusk
5001 E. 71st St. South
Derby, KS 67037

Government Lots 6, 7 and 8, Section 13, Twp. 29, R1E

Charles W. Glaser
Naomi F. Glaser
✓ 9419 S. Bluff St.
✓ Wichita, KS 67236

✓ Beg. at a point 450' N of center of Sec. 13, Twp. 29, R1E; th. N. alg. the 1/2 Sec. ln. 360'; th. W parallel with S ln. of the NW $\frac{1}{4}$ Sec. 180'; th. S parallel with E ln. of NW $\frac{1}{4}$ 360'; th. E to beg.

William C. Bennett
✓ Georgia L. Bennett
✓ 9101 S. 55 St. East
Derby, KS 67037

✓ Government Lot 2, except above description

R. E. McHenry
✓ Nellie McHenry
✓ 5900 E. 91st St. South
Derby, KS 67037

✓ Beg. at a pt. on the S ln. and 1320' W of the SE/c of the SE $\frac{1}{4}$ Sec. 13, Twp. 29, R1E; th. N parallel with the E ln. of sd. 1/4 Sec. 60'; th. W parallel with S ln. of sd. 1/4 Sec. to the E ln. of K-15 Hwy; th. SE'ly alg. E ln. of sd. Hwy. to the S ln. of sd. 1/4 Sec.; th. E alg. the S ln. of sd. 1/4 Sec. to p.o.b.

✓ Richard L. Fleming
✓ Imogene Gick Fleming
Derby, KS 67037
9451 So. 63rd E.

✓ W $\frac{1}{2}$ of the NE $\frac{1}{4}$ exc. the N. 1320' and exc. the railroad r/o/w in Sec. 13, Twp. 29, R1E

R. E. McHenry
OK Nellie McHenry
5900 E. 91st St. South
Derby, KS 67037

✓ Government Lot 1, exc. Santa Fe Railroad r/o/w and the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ lying W of Santa Fe Railroad, in Sec. 24, Twp. 29, R1E

Kenneth C. Cherry
✓ 9715 S. 63rd St. East
Derby, KS 67037
✓ AND
Laura M. Bunyan
Address Unknown

Lot	Block	Addition	Property Owner
<i>see addition</i> Lots 3 3, 4, 5, 6, 7, 8, 9, 10, 11, 13 & 14	Block 4	El Paso Heights Addition (Derby)	Henry J. Phillips Judy A. Phillips c/o Phillips Southern Electric Company 1822 S. Mead Wichita, KS 67211
Lot 12	Block 4	"	David S. Udden Andra A. Udden 703 N. Buckner Derby, KS 67037
Lot 18	Block 3	"	<i>del</i> Henry J. Phillips Judy A. Phillips <i>OK</i> c/o Phillips Southern Electric Company 1822 S. Mead Wichita, KS 67211
Lot 19	Block 3	"	Same As Above
Lot 26	Block 3	"	"
Lot 1	Block 5	"	"
Reserve A & Reserve B		"	"

We hereby certify the foregoing to be a true and correct list of the property owners of the hereinbefore described lots and tracts within a 1000 foot radius:

Governments Lots 3 and 4 in Southwest
Quarter of Section 13, Township 29,
Range 1 East, Sedgwick County, Kansas.

as shown by the last deed of record on file in the Office of the Register of Deeds, Sedgwick County, Kansas, on the 4th day of December, 1984, at 7:00 o'clock A.M.

THE SECURITY ABSTRACT AND TITLE
COMPANY, INC.

By *Mary Gable*
Sr. Vice-President

Order No: 341240
ns

*see
next
page*

UPDATE
OWNERSHIP LIST
#341240

We hereby update the foregoing ownership list of the hereinbefore described lots and tracts from the 4th day of December, 1984, at 7:00 o'clock A.M. to the 24th day of September, 1985, at 7:00 o'clock A.M. without change except:

Lot 2	Block 4	El Paso Heights Addition (Derby)	✓ Patrick Shane Phillips ✓ 1822 S. Mead ✓ Wichita, KS 67211
-------	---------	-------------------------------------	---

THE SECURITY ABSTRACT AND TITLE COMPANY, INC.

Mary Cable

By
Sr. Vice-President

Order No: 351557
nj

HISTORY

Derby Landfill operated by City of Derby
Land Sold to Lusk who took over landfill operations

State law was passed requiring all landfills to be licensed after 7-1-76.

Lusk had D-F-S design & write operative manual.
This was approved by ~~state~~ KDHE 3-4-76.

By then Lusk had leased the land & the landfill operation to someone else.

1976 (July) KDHE issued Derby Land Plant
97th & Buchner
a permit Kansas
Water Pollution Control Permit and
Authorization to Discharge under the
National Pollutant Discharge Elimination
System.

? expansion
covered what
area?

On 11-21-83 plans were approved by KDHE for
expansion of the Derby Landfill. Prior to
commencing on the expansion area, the completed
areas of the existing landfill were to receive final
cover & be graded to provide surface water drainage.
Finished areas were to be seeded.

1-26-84 inspection by KDHE showed fill was to a
greater depth than approved plans specified. A large
area had not received the required daily ~~fill~~ cover
and much litter was evident. The site was declared
unusable
full and site closure work was ordered begun immediately.
To be completed by 7-1-84.

Final site inspection by KDHE 11-13-84 & approved.
Owner to provide long-term care for at least 10 years
to maintain final grades so that surface drainage
is maintained.

Why is there no "F" zoning
or Special Permit for the old
landfill? (was it outside of zoning when
it began?)



February 11, 1986

Larry Lusk
5001 E. 71st St. South
Derby, KS 67037

RE: Lusk Demolition Site

Dear Larry:

We have now received final plans on the above, from Lowell High, and also your amendments to the operation plan. This completes the preliminary review of the permit.

You should now proceed to contact Metropolitan Area Planning Department to put in motion the process to obtain a special use permit. Once that is received we will arrange to have the permit submitted to the Sedgwick County Solid Waste Committee.

If there are any questions, please contact myself or John Davis at 268-8351.

Sincerely,

Jack A. Brown
Chief, Environmental Quality

JAB/lk

cc: Louise Olivarez, MAPD ✓
John M. Davis, Environmental Health

Nichita-Sedgwick County Department of Community Health
1900 East Ninth Street-Nichita, Kansas 67214-3198 (316)268-8401



December 9, 1985

Larry Lusk
5001 E. 71st St. South
Derby, KS 67037

RECEIVED

DEC 09 1985

METROPOLITAN PLANNING

ROUTE _____

RE: Larry Lusk Landfill Application

Dear Mr. Lusk:

Your landfill application has now been reviewed and there are a number of points that require clarification before final local approval can be obtained.

1. The drawings and application do not clearly indicate which 14+ acres is to used; when revised plans are submitted this needs better delineation. As part of that revision, the location of fencing must be clearly shown.
2. In a number of sections, specifically 12, 13 and 15, there is reference to the 1976 engineering specifications. While the bases of these is unchanged, there was considerable disparity between original drawings and plans, and the final close-out, and thus there should be amendments to these specifications to make them represent the current situation.
3. Item number 16 states that cover material is on-site and will comprise of "waste and dirt from sand pit operation." The Planning Department is unable to find a conditional use permit which would allow a sand operation to exist. In addition the Department is concerned as to whether material from a sand pit operation would be of suitable quality to provide adequate top cover.
4. The preliminary plat shows a floodway easement of 100' for Spring Creek along the southern property line. The same floodway easement should affect the site along its eastern property line where Spring Creek nears the property. This will further define the limits of possible contour changes.

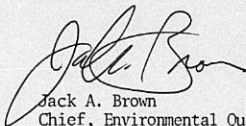
Nichita-Sedgwick County Department of Community Health
100 East Ninth Street - Nichita, Kansas 67214-3198 (316)268-8401

Larry Lusk
December 9, 1985
Page Two

5. As shown, it is impossible to obtain the contour lines as proposed. Changes in elevations have to be resolved within the property lines. The contour lines as shown, could only occur if a retaining wall is to be built along the east and south property lines.
6. The application states that you anticipate a daily receipt of 200 cu. yards of waste from private collection vehicles, but you do not enumerate these in Section 22.
7. The summary in Section 29 should reflect that this fill is to close out an area abandoned in 1976 when the new area was opened.

If you have any questions on the above please call me or Mr. John Davis at 263-8351.

Sincerely,



Jack A. Brown
Chief, Environmental Quality

JAB/lk

cc: John M. Davis, Health Department
✓ Jack Galbraith, Planning Department
Chief Gary Nichols, County Fire Department
Ron Worley, County Zoning
Lowell High, 1542 S. St. Francis

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

DATE: November 4, 1985

TO: Jack Brown, Chief, Environmental Quality
FROM: Terrence T. Smythe, Senior Planner, Current Plans
SUBJECT: Landfill Permit Request (Larry Lusk)

Although the majority of our comments will concern land use and potential conditions of approval and will be presented when the application for heavy industrial zoning and a conditional use permit is received by this department, the following are comments and/or questions that are apparent now:

1. It is unclear as to exactly what 14+ acres are to be used. I assume it is the area in the southeast corner of the preliminary plat. The area needs to be clearly defined.
2. Item number 16 in the application states that cover material is on-site and will comprise of "waste and dirt from sand pit operation". Based upon a cursory review of our files, I don't find a conditional use permit which would allow a sand operation to exist. If I remember, the existing pond on the site was caused by the flooding of the Arkansas River. What kind of "waste" from this sand operation exists and can currently be used for cover material?
3. The preliminary plat shows a floodway easement of 100' for Spring Creek along the southern property line. The same floodway easement should affect the site along its eastern property line where Spring Creek nears the property. This will further define the limits of possible contour changes.
4. As shown, it is impossible to obtain the contour lines as proposed. Changes in elevations have to be resolved within the property lines. The contour lines as shown, could only occur if a retaining wall is to be built along the east and south property lines.
5. Location of fencing could be delineated as well.

Terrence T. Smythe
Senior Planner

TTS:blw

cc: John Davis, Health Department
Chief Gary Nichols, County Fire Department
Ron Worley, County Zoning Administrator
Richard Hunter, Environmental Health Director

THE WICHITA-SEDGWICK COUNTY DEPARTMENT OF COMMUNITY HEALTH

OFFICE OF Environmental Health

DATE October 28, 1985

TO See Distribution

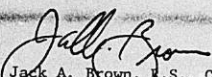
FROM Jack Brown, Chief, Environmental Quality

SUBJECT Landfill permit application

I am enclosing a copy of an application for a demolition and construction landfill that we have received from Larry Lusk.

Please let me have your comments on this in writing as soon as possible so that I may refer it to the Sedgwick County Solid Waste Committee.

If you have any questions on this call me or John Davis at 268-8351.


Jack A. Brown, R.S., Chief
Environmental Quality

JAB/cb

Encl.

Distribution: John Davis, Health Department
Jack Galbraith, Planning Department ✓
Chief Gary Nichols, County Fire Department
Ron Worley, County Zoning

cc: Richard Hunter, Environmental Health Director

RECEIVED

OCT 29 1985

METROPOLITAN PLANNING

ROUTE

State of Kansas . . . John Carlin, Governor

DEPARTMENT OF HEALTH AND ENVIRONMENT

Barbara J. Sabol, Secretary

Forbes Field
Topeka, Kansas 66620
913-862-9360



APPLICATION FOR APPROVAL TO ESTABLISH AND OPERATE
INDUSTRIAL OR CONSTRUCTION LAND DISPOSAL AREA

1. Applicant's Name Larry Lusk
Address 5001 East 71st. South Derby, Kansas 67037
(Street or Rural Route) (City & State) (Zip)
Telephone 316 - 788-2295
2. Political Subdivision none
(Unit of Government - County, City, Township)
3. State Agency none Private Individual or Firm yes Other _____
If other - explain _____
4. Site Location
County Sedgwick, Section 13, Township 29S, Range 1E
5. Is this facility part of an officially adopted solid waste management plan?
Yes X No _____ If yes, identify that plan Sedgwick County
6. Type of site applied for:
Industrial _____ Construction Demolition X Other _____
If other, explain _____
7. Site Address 9201 South 55th. Street East
(Street Number, Road, Highway)
8. Site Area (acres) ~~xxx~~ ¹⁴⁺ Area to be used for disposal (acres) 14+
9. Provide Sketch of Site (attach)

10. Site owned by applicant X Site leased by applicant _____

If site is leased, please fill in the following information:

Owner of Record _____

Address _____ City _____ State _____ Zip _____

Lease negotiated (Date) _____

11. Is the site an existing disposal site? X Is the site a proposed new site? _____

12. Land characteristics (general description)

See Operations Manual and Design Details previously submitted and

_____ approved on March 9, 1976

13. Drainage (Provide sketch of drainage facilities and contour map) see original plans ref above

a. Natural yes _____ Acres

b. Storm Sewers no _____ Acres

c. Farm Tile no _____ Acres

d. Open Ditch no _____ Acres

14. Estimate site acreage devoted to following uses:

a. Heavily Wooded 0

Light Brush 0

Grasses or Pasture 0

Cultivated 0

b. Estimated acreage to be cleared 0

c. Proposed method of clearing none

15. Soil Classification - From soil conservation district or county agent
(Do not complete if soil survey or drill logs are attached)

_____ % Sand see operations and design details
March 9, 1976

_____ % Silt Texture Classification

_____ % Clay

16. If sufficient cover material is not available at the site, where will it be
obtained? on site

What kind of cover material is on-site? waste and dirt from SAND PIT
operation

17. Land use permitted under official land use plan within one mile radius (If there is a land use map please attach).

	South	West	North	East
a. Residential	_____	_____	_____	_____
b. Commercial	_____	_____	_____	_____
c. Light Industrial	_____	_____	_____	_____
d. Heavy Industrial	_____	_____	_____	_____
e. Rural	<u> v </u>	<u> v </u>	<u> v </u>	<u> v </u>
f. Mixed	_____	_____	_____	_____

(If land is not zoned, use "0"; if land use agrees with zoning, mark "Z"; if land use and zoning do not agree, mark "V")

18. Are there any nearby wells? Yes _____ No x

19. Access roads serving the site

a. City _____	d. State <u> x </u>
b. Township <u> x </u>	e. Interstate _____
c. County _____	f. Other (explain) _____

20. Types of road surface on site.

a. Concrete _____	e. Gravel _____
b. Asphalt _____	f. Crushed Stone <u> x </u>
c. Seal Coat _____	g. Dirt _____
d. Soil Cement _____	h. Other _____

21. Type of Operation

a. Trench _____
 b. Cut and Cover _____
 c. Area x
 d. Ramp _____
 e. Other or combination _____

(Attach detailed recommendations)

22. Service Areas

a. Disposal site to serve:

City _____ Township _____ County _____ Business x Others _____

b. Will site be open to the general public? Yes _____ No x

22. Service Areas (contd)

c. List public and private collectors who are expected to use the landfill.
(If city or county issues collection licenses, attach list of licensees.)

COLLECTOR	PRIVATE	PUBLIC
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

23. Restrictions

a. Types of solid wastes accepted:

Residential _____	Industrial _____
Commercial _____	Demolition <u>x</u>
Agricultural _____	Other _____

b. Materials accepted at disposal site:

All Putrescible _____	Junked Automobiles _____
All Noncombustibles _____	Large Appliances _____
All Combustibles _____	Demolition Wastes <u>x</u>
Garbage _____	Construction Debris <u>x</u>
Dead Animals _____	Street Sweepings _____
Waste Oil _____	Tires _____
Sewage Solids _____	Hazardous Materials _____

Other (specify) _____

24. Employees and Equipment

a. Number of employees on site (average daily) 2

b. Equipment on site (average usage) 3

1. Dragline or shovel excavator none
2. Scraper (self-propelled) 619 cat self-propelled
3. Tractors (track or rubber tire, bulldozer, or highlift loader)
2 crawler dozer 1 rubber loader
4. Trucks (other equipment - specify) 1 dump truck

25. Estimated Number of Loads Daily (estimate quantities in tons or cubic yards)

	TONS	CUBIC YARDS
a. From public collection vehicles	_____	_____
b. From private collection vehicles	_____	200
c. From other vehicles (specify)	_____	

26. Estimated Capacity of Site

a. In cubic yards _____ b. In years 3

27. Proposed Completed Site Use

a. Parks _____ d. Parking _____
b. Playgrounds _____ e. Light Industrial _____
c. Agriculture x

28. Proposed Maximum Finished Elevation (show finished contours on plan):

See Plans

29. Summary

This application is to complete land fill area 14+acres
left when Derby Landfill sold to BFI and cover debris.

Permit Fee Enclosed _____ Performance Bond Posted (If required by local agency) _____

[Signature]
Signature of Applicant

[Signature]
Title

Organization

10-2-85
Date

APPLICANT WILL NOT WRITE BELOW THIS LINE

Review by Local Planning and Zoning Board Having Jurisdiction:

Approved _____ Disapproved _____

(If special permit is required by planning and zoning board, please attach a copy to this application.)

Signature of Zoning Administrator

County or City Board

Date

Review by County Commission or County Solid Waste Board if Available

Approved _____ Disapproved _____

Comments _____

Signature of Chairman

Date

Second: Bill Smith

Vote: all-yea

O-nay

Motion Carried

There were no other items of business, and the following action was taken;

Motion: "Move to adjourn." -Larry Sims-

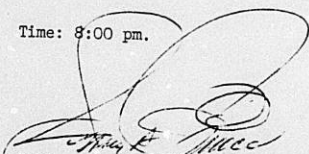
Second: Floyd Zollinger

Vote: All- yea

O-nay

Motion Carried

Time: 8:00 pm.



Jeffrey A. Prince, Acting Secretary
Derby Planning Commission

Dump Heads PC Agenda

Back once again on tonight's planning commission agenda is the Larry Lusk Addition . . . more commonly known as Derby's landfill. Tonight the commission members will take a look at the preliminary plat of the property, which is the first step toward making the property a part of the city.

But just because the process has started doesn't mean that the summer-long controversy over the landfill is over. It's merely taking a new turn.

The heart of the matter is whether or not the landfill should be re-opened, and if so under what restrictions. Landfills are licensed by the state to operate for a certain period of time. Once that time is expired, and the landfill area is declared full, the landfill owner's responsibility is to convert that land back to another use.

Lusk wants to turn his property back to agricultural use . . . but there's one small problem. The landfill has

been filled unevenly, leaving 20 foot holes in some sections. Lusk proposes re-opening the 14 acres containing the most of the holes and filling those holes with trash. He wants to accept anything the trash hauler won't take . . . from construction debris to tree limbs, from individuals and commercial operations.

The Wichita-Sedgwick County Department of Health has other ideas. Jack Brown, representative for the health department says yes there is a problem, but there are other ways of solving it besides re-opening the landfill. Other ways that in the end might prove more beneficial for the surrounding area.

He suggests that if the state re-issues a license for that section of the landfill, it won't include dumping of all kinds such as proposed by Lusk, but will be restricted to construction debris.

In among and through this entire discussion, which has lingered over several planning commission meetings

over the summer, the neighbors to the landfill have been very vocal in their protest of the proposal to re-open the dump. They site reasons ranging from trash in the streets, to fires in the dump.

Lusk, who had originally been asking for a special use permit to operate the dump, changed his request to one for annexation. That puts everything in an entirely different light.

The sketch and preliminary plats which were presented at that meeting in early August were mailed to all government agencies who have a concern with the property. Their comments will be heard tonight and another public hearing date will be set.

The Lusk property is the only item on tonight's published planning commission agenda. The planning commission meets at 7 p.m. at the city building, and its meetings are open to the public.

Trailers, Landfills On Tonight's Agenda

Tonight's planning commission meeting will include a public hearing on a proposed expansion of Deer Lake Estates Mobile Home Park and a final decision on Larry Lusk's request to re-open the Derby Landfill.

The Deer Lake Estates request is a courtesy hearing from the Metropolitan Area Planning Department. MAPD will have the final say on the request, but they have asked for the input of the local planning commission.

Deer Lake Estates is a mobile home park on the south side of 47th Street between Oliver and K-15. The owners of the park are proposing building spaces for eighteen mobile homes, along with two existing dwellings all on a 2.6 acre site. That allows for a density of 7.7 units per acre, compared with 6.7 units per acre in the section of the park that was developed earlier.

On the landfill, at a public

hearing held June 20, Lusk presented his plan to re-open a section of the Derby Landfill to take "anything the trash haulers would not take." Although the dump has been declared full, Lusk said there are deep holes in the area, that fill with water when it rains. The water seeps down through the trash and into the water table. He suggested that by opening the dump for a limited period of time, the holes could be filled in and eliminate the problem.

At the public hearing, neighbors on all sides of the property voiced their opposition to there-opening of the dump, citing problems of trash blowing onto their property and spilling over into the creek resulting in drainage problems.

The commission will make a decision on the matter at tonight's meeting.

The planning commission meets at 7 p.m. at the city building.

City of Derby



229 N. BALTIMORE • DERBY, KANSAS 67037 • 316/788-1519



PLANNING COMMISSION MEETING MINUTES

August 8, 1985

MEMBERS PRESENT: Dottie Janssens
Dick Loosen - Chairman
Larry Lusk
Red Rehburg
Richard Schaffer

MEMBERS ABSENT: Tate Butler
Okie Payne
Bill Smith

NEXT REPRESENTATIVE TO THE CITY COUNCIL: Red Rehburg.....August 20, 1985
Richard Schaffer.....September 3, 1985
Larry Sims.....September 17, 1985
Bill Smith.....October 1, 1985
Floyd Zollinger.....October 15, 1985

PUBLIC HEARING:

Lot #1 Block #5, School Addition - Zone Change Request - R-1 Single Family Residential - R-3 Multi-Family Residential - Roger Weast

The Public Hearing opened at 7:00 p.m. for discussion and comments. Due to the lack of any further discussion and comments, the Public Hearing closed at 7:03 p.m.

C.T.O. at 7:04 p.m.

Business: Minutes of July 18, 1985 stand approved as mailed.

Lot #1 Block #5, School Addition- Zone Change Request - R-1 Single Family Residential - R-3 Multi-Family Residential - Roger Weast

Mr. Roger Weast presented this zone change request to the Planning Commission for their approval and comments. The area is located 120 feet on the north end of Woodlawn, directly next to the patio homes being constructed by CSI of Kansas.

Motion: "Move to approve the zone change request for Lot #1 Block #5, School Addition from R-1 Single Family Residential to R-3 Multi-Family Residential." - Larry Sims

Second: Dottie Janssens

Vote: All yea

-0- Nay

Motion Carried

August 8, 1985

Setting of Proper Property Pins - Jeff Prince - Bldg. Trades/Zoning Administrator

Jeff Prince, Building Trades/Zoning Administrator, reported to the Planning Commission that he had been in touch with City Planning Consultant, Bickley Foster. Mr. Prince noted that the setting of property pins is already covered in the Zoning Regulations, and additional information may be required in order to enforce the Zoning Regulations. If the information does not meet the requirements in the Zoning Regulations, the certificate of occupancy and building permit would be declared null and void, and all previous fees would be non-refundable. With the cancellation of the building permit and the certificate of occupancy, new applications for both would then be required.

Exemption From Platting - Greg Collins

This item was eliminated from the agenda as no applicant or representative was present to present this item to the Planning Commission.

Replat of Sewell Addition - Ray Sewell

Mr. Ray Sewell presented to the Planning Commission, a Final Plat of the Replat of Sewell Addition for their review and comments.

This property is identified as Sewell Addition - Lots 1, 2, & 3. The City of Derby requested that Mr. Sewell provide a 20 foot setback on the south side of Lots 1 & 2, due to future expansion of James Street. As the plans no longer include an extension of James Street, Mr. Sewell is requesting to the Planning Commission that the 20 foot setback be returned to him. Lots 1 & 2 have been extended 60 feet to the west, and the city still has a 20 foot utility easement.

Red Rehburg, Chairman for the Subdivision Committee, mentioned that this Replat of Sewell Addition had been reviewed by the Subdivision Committee prior to the Planning Commission meeting, and had met with their approval.

Motion: "Move to approve the Final Plat of the Replat of Sewell Addition." - Red Rehburg

Second: Richard Schaffer

Vote: All Yea

-0- Nay

Motion Carried

Update on Turnaround - Kensington Estates - Debbie McIlhenny

Debbie McIlhenny was present to publicly thank the Planning Commission and all other parties involved in helping to spare trees adjoining her property at the end of Oakforest Road.

1401 S. Buckner - Sketch Plat - Larry Lusk

Mr Larry Lusk asked that his previous request for a Special Use Permit be withdrawn. He is now presenting a Sketch Plat of Larry Lusk Addition.

Motion: "Move to approve the Sketch Plat of Larry Lusk Addition as presented and the Preliminary Plat for the mailout to governmental agencies." Larry Sims

PC MEETING MINUTES

-3-

August 8, 1985

Second: Red Rehburg


Vote: All Yea

-0- Nay

Motion Carried

Motion: "Move to adjourn." - Larry Sims

Second: Red Rehburg



Karen A. Susta, Secretary
Derby Planning Commission

Time: 8:13 P.M.

/ks

Dump May Re-Open

Larry Lusk wants to reopen a small part of the Derby Landfill, but judging from the neighbors' response at last night's planning commission meeting, it may be over their dead bodies.

About a dozen of the dump's neighbors turned up at the public hearing to voice their disapproval of the plan to add more trash to the dump. Some said they'd dealt with all the problems of living next to a landfill for 20 years and that was long enough.

Lusk wants to re-open a section of the dump to accept "anything the trash hauler won't take". Although the landfill was declared full and the operating permit not renewed when it expired June 30, 1984, Lusk said the dump area is not level. He noted that there are 20 feet deep holes in the area. When it rains, the water collects in these holes, seeps down through the trash and into the water table. He wants to fill the holes and make the whole area level.

The plan is to cover the trash daily with sand to be pumped from the river, and when the area is full, put on a final cover of dirt.

But the neighbors contend the area is full, in fact over filled, and they don't want any more trash in there.

"When it was finally closed you were pushing trees into the creek with trash," said Norma Moore, who owns 16 acres adjoining both the landfill and Spring creek which runs along the edge of the dump.

Marshall McHenry who owns property on the north side of the dump said the dump is already filled to 12-15 feet above the natural lay of the land and that's high enough.

"It's (the sunken area) not a two story building high like it is against our property where it can't drain anymore but it's high. Enough is enough," he said.

Those at the meeting cited a number of problems that go with living next to a dump...any dump, and some problems that are unique to the Derby Landfill. Problems like fires, speeding trash trucks and trash constantly blowing on to the adjoining property, were listed.

"I've picked up all the trash I care to," said Moore.

But Lusk pointed out he had done everything he could to keep the landfill from spilling over to the neighboring properties.

"You can't control the wind but you can get out and pick it (the trash) up," he said.

The neighbors for the most part agreed that Lusk had tried, but trying just wasn't enough.

"Mr. Lusk has been a good neighbor . . . the dump has not," said Bob McHenry who lives south of the landfill.

Drainage on this property was the main obstacle to giving the go ahead for temporarily re-opening the dump. By making the dump site higher than the adjoining properties, the natural drainage flow is altered. The

run-off into Spring Creek is increased, to the point that the neighbors question whether the creek can handle it. Add to that the problems of trash and even fallen trees in the creek that impede the flow and there could be problems.

But despite all the objections, Lusk told the commission, of which he is also a member, that finishing the dump by filling and covering the sunken areas would be to the advantage of all the neighbors.

"It's to their benefit that this is filled and closed out properly," he said.

The commission members seemed to see some points on both sides of the argument, but were a little overwhelmed with all the information that had been presented at the meeting. They voted to table the question until their next meeting, July 18, when they will make a final decision.

The landfill lies outside the Derby city limits in county area. The decision made by the local planning commission will take the form of a recommendation to the county zoning board who will in turn make recommendations to the state. The state will have the final say so in whether or not the landfill is re-opened.



City of Derby



229 N. BALTIMORE • DERBY, KANSAS 67037 • 316/788-1519




June 27, 1985

Dear Planning Commission Member/ Council Member:

Please accept the attached copy of Planning Commission Meeting Minutes as the CORRECTED ones for your review. Kindly dispose of the original copy that was mailed to you.

I apologize for any confusion this may have caused.

Sincerely,



Karen A. Susta, Secretary
Derby City Planning Commission

RECEIVED

JUN 28 1985

METROPOLITAN PLANNING

ROUTE _____

City of Derby



229 N. BALTIMORE • DERBY, KANSAS 67037 • 316/788-1519

PLANNING COMMISSION MEETING MINUTES

June 20, 1985

MEMBERS PRESENT: Dick Loosen
Larry Lusk
Okie Payne
Red Rehburg
Richard Schaffer
Larry Sims
Floyd Zollinger

MEMBERS ABSENT: Tate Butler
Dottie Janssens
Bill Smith

NEXT REPRESENTATIVE TO THE CITY COUNCIL: Dick Loosen.....July 2, 1985
Larry Lusk.....July 16, 1985
Okie Payne.....August 6, 1985
Red Rehburg.....August 20, 1985
Richard Schaffer.....September 3, 1985

PUBLIC HEARING: Special Use Request - 1401 S. Buckner - Larry Lusk

The Public Hearing opened at 7:00 P.M.

Larry Lusk, 5001 E. 71st Street South, presented a proposed Special Use Request for a construction and wrecking material dumping site located at 1401 S. Buckner, Derby, commonly known as the Derby Landfill.

Mr. Lusk wishes to re-open a section of this property to handle any type of trash that trash haulers would not take. Larry further explained that when it rains, the water collects in holes on the property, seeps down through the trash & into the water table. By filling the holes the whole area would then be level.

Marshall McHenry, property owner on the north side of the landfill voiced his opposition with the feeling that the landfill is already filled 12 - 15 feet above the natural lay of the land & that is high enough.

Norma Moore, 9339 S. K-15, Derby who owns 16 acres which joins both the landfill & Spring-Creek which runs along the edge of the landfill, voiced total opposition to the request stating the numerous unique problems that had arisen in the past, & can see no reason in starting these problems up again. Those problems being trash blowing in the wind, fires, and her having to be outside constantly picking up trash blown onto her property from the landfill.

Bill Bennet, 9151 S. K-15, echoed the same reasons for opposing the special use request as Mrs. Moore adding that on weekends with people dragging tree limbs and whatever to the dump, those that live over in that area cannot even be outside with all the dust and dirt that is in the air from all the traffic coming in and out of the landfill.

*How can Derby
review a special
use request w/o it
being filed with MAPC first?*

K-15 Industrial Park - Dale Kuhn

Mr. Dale Kuhn presented the Preliminary Plat of the K-15 Industrial Park to the Planning Commission. This industrial park is located in the County, south of 63rd Street. The Subdivision Committee met with Mr. Kuhn prior to this Planning Commission meeting, and Committee member Red Rehburg explained to the Commission what Dale's intentions were regarding this property. Dale also requests that the lots be split. The City Engineer recommends that a 10 foot easement along the north side & a 25 foot easement on the west side. The County requests that Dale draw up a restrictive covenant indicating that he will not sell any land until such time that city sewer and water is out there. The applicant is in agreement of easement recommendations and the restrictive covenant.

Red Rehburg speaking on behalf of the Subdivision Committee, stated that the Preliminary Plat of this property had been approved at their meeting earlier with certain conditions listed in the following motion.

Motion: "Move to approve the Preliminary Plat of K-15 Industrial Park subject to red line markings of easements & a proposed restrictive covenant with regard to the sale or development of the property prior to city sewer and water being obtained."
- Red Rehburg

Second: Larry Sims

Vote: All Yea -0- Nay Motion Carried

K-15 Plaza - 2nd Addition - Michael Harding

Michael Harding, Engineer for the applicant presented to the Planning Commission, a replat of an existing lot on the plat of K-15 Plaza. All that is being done is redefining the access control on the east side of the lot. The existing plat now shows access control to a specific location which restricts the use of the property. The purpose of this replat is to provide complete access control for two (2) openings on the east side of the plat, which would allow the developer of the lot to place his own location of the existing openings.

After careful study of the submitted plat, the Planning Commission noted that the plat as presented, was not what the Planning Commission had requested be submitted at their Planning Commission meeting of February 7, 1985, at which time they had requested that an amended plat be submitted showing the two (2) opening as they now exist.

Motion: "Move to accept the re-drawn plat of K-15 Plaza 2nd Addition as provided to the Planning Commission secretary & Planning Commission Chairman subject to the plat being accepted." - Red Rehburg

Second: Larry Sims

Vote: All Yea -0- Nay Motion Carried

Appointment of Subdivision Committee Chairman - Dick Loosen

Dick Loosen, Planning Commission Chairman, appointed Red Rehburg as the new Subdivision Committee Chairman for the new term.

Amended Agreement - Bickley Foster

The Planning Commission discussed the Amended Agreement submitted by Mr. Bickley Foster, Planning Consultant for the City. The Agreement was amended to increase an additional \$1,000 for Mr. Foster's services to the city.

Motion: "Move to accept the Amended Agreement for an additional \$1,000 for Bickey Foster's services to the City of Derby." - Red Rehburg

Second: Floyd Zollinger

Vote: All Yea

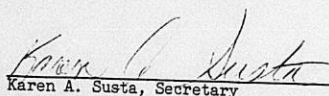
-0- Nay

Motion Carried

Motion: "Move to adjourn." - Larry Sims

Second: Red Rehburg

Time: 8:25 P.M.



Karen A. Susta, Secretary
Derby City Planning Commission

DR 86-4

ARKANSAS RIVER

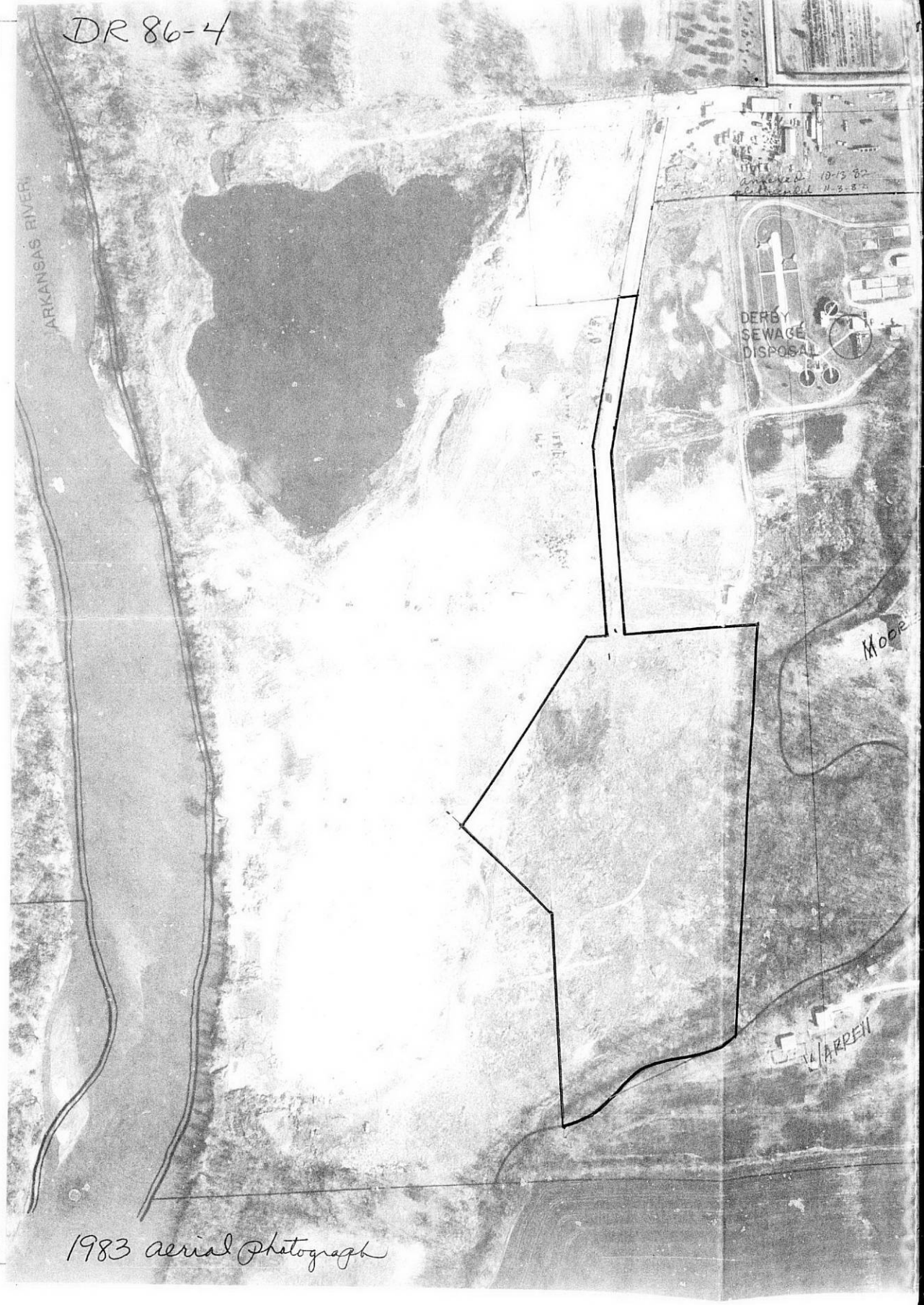
10-15-82
11-3-82

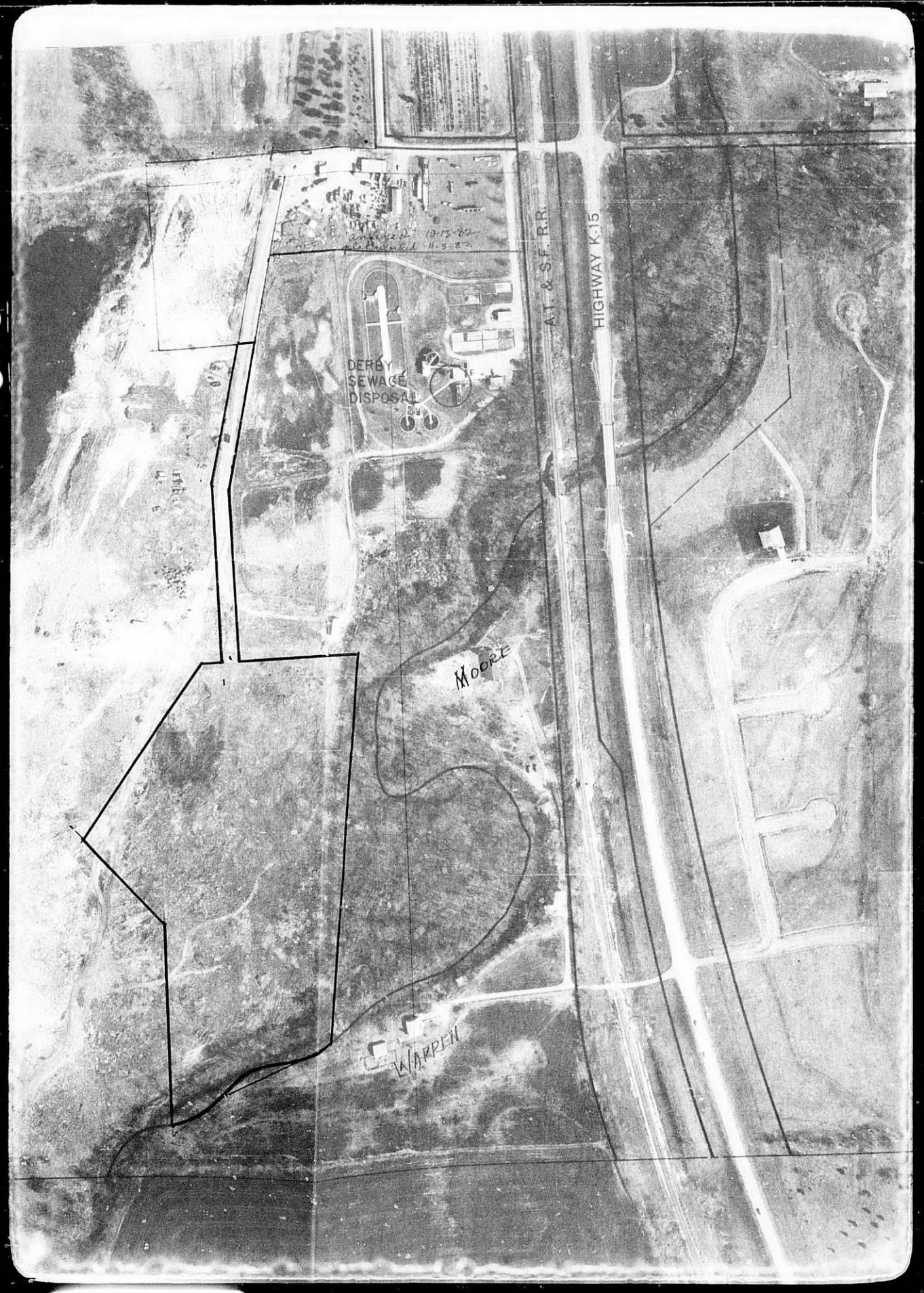
DERBY
SEWAGE
DISPOSAL

Moore

WARREN

1983 aerial photograph





DERBY
SEWAGE
DISPOSAL

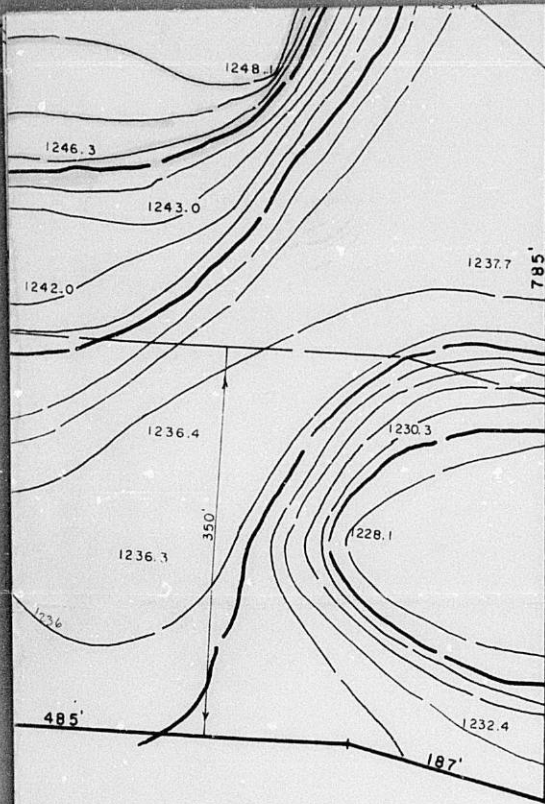
MODE

WARREN

AT. & S.F. R.R.

HIGHWAY K-15

10-15-82
11-3-82



CLARENCE K. CHERRY
 9715 S. 63rd ST. E.
 DERBY, KS. 67037

"R"

As submitted to MAPC

SK
 ST ST. SO.
 67037

LOWELL D. HIGH, L.S.
 1542 S. ST. FRANCIS
 WICHITA, KS 67211
 AUGUST 8, 1985

REVISED SEPT 18, 1985
 REVISED FEBRUARY 3, 1986

DR-86-4

1230
MAPD COPY 1 OF 2

DEMOLITION CONSTRUCTION LAND

DR 86-4

BOC APPROVED 4-15-87

RADING AND DRAINAGE PLAN

EAST LINE SW 1/4

SEWAGE TREATMENT PLANT
(CITY OF DERBY)

1244.2

ACCESS

1330' S. & 418' W.
NE COR. SW 1/4

1230

1237.6

MAPD COPY 2 OF 2

DEMOLITION CONSTRUCTION, LAND

DR 86-4

BOC APPROVED 4-15-87

GRADING AND DRAINAGE PLAN

EAST LINE SW 1/4

SEWAGE TREATMENT PLANT
(CITY OF DERBY)

1244.2

225.34'

ACCESS

1330' S. & 418' W.