

PLAT NO. 75-11 MAP NO. W-2-B

NAME WILDWOOD ADDITION

LOCATION North side of 69th St. North in an area  
west of Meridian.

ENGINEER K. O. Taylor

OWNER Ray Woods

APPLICATION FILED 2-6-75

SKETCH PLAT FILED 2-6-75

PRELIMINARY FILED 5-23-75

S/D ACTION 6-5-75 Approved

FINAL FILED \_\_\_\_\_

S/D ACTION 7-17-75 Approved

MAPC ACTION 7-24-75 Deferred two weeks

Bd of Com 8-14-75 Deferred two weeks

ACTION 9-24-75 Defer for attorney's consent (Opini

6-2-76 Deferred for one week.

RECORDED 6-9-76 Defer for one week

6-16-76 Approved as recorded with Floodings

REMARKS June 22, 1977 street

MIAPC 8-28-75 Deferred 2 weeks

MAPC 9-11-75 Approved as recommended and sub to  
after bond dedication.

S/D 75-11 - WILDWOOD ADDITION -  
North side of 69th St. North in  
an area west of Meridian. Taylor

POSTED  
2-12-75

# ACTION

	DATE
S/D COMMITTEE	6-5-75
<i>Palmer</i>	Approved
<i>James</i>	Approved
M.A.P.C.	7-24-75
<i>Refered</i>	
MAPC	8-14-75
<i>Refered 2 weeks</i>	
<del>MAPC</del> / B. CO. C.	9/21/75
<i>Refer for actions</i>	
<i>General System</i>	
MAPC	8-28-75
<i>Deferred 2 weeks</i>	
MAPC	9-11-75
<i>Approved as recommended</i>	
<i>+ minor town declaration</i>	
Bdy C & Lm	6-2-76
<i>Deferred for one week.</i>	
Bdy C & Lm	6-7-76
<i>Refered for one week.</i>	
Bdy C & Lm	6-16-76
<i>Approved as recommended with</i>	
<i>Flooding event</i>	





STATE OF KANSAS

**Office of the Attorney General**

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612



**Curt T. Schneider**  
Attorney General

June 10, 1976

ATTORNEY GENERAL OPINION NO. 76- 171

Mr. Theodore Hill  
Sedgwick County Counselor  
Office of the Board of  
County Commissioners  
Sedgwick County Courthouse  
Wichita, Kansas 67203

Re: Counties--Planning Commission--Flood Protection and  
Drainage

Synopsis: It is within the power of a joint city-county planning  
commission to require a dedication of property for pur-  
poses of flood control and drainage, prior to approval  
of a plat of real property.

\* \* \*

Dear Mr. Hill:

You have requested my opinion regarding whether the Metropolitan  
Area Planning Commission (MAPC) has authority to require land-  
owners wishing to subdivide property to dedicate a portion of  
that property for drainage and flood control prior to approval  
of the plat for the subdivision.

The City of Wichita and Sedgwick County have joined to create the  
Metropolitan Area Planning Commission. Comprehensive plans have  
been developed and subdivision regulations promulgated, including  
regulations governing the subdivision of land. Under K.S.A. 1975  
Supp. 12-705 and K.S.A. 19-2905, zoning boards of both the city  
and county are each required to adopt regulations governing the  
use and subdivision of land within their respective jurisdictions.  
These regulations may provide for the proportionate area of streets  
in relation to other existing or planned streets and with respect

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to adequate and convenient open spaces for traffic, utilities, access for fire-fighting apparatus, recreation, light and air or the avoidance of congestion of population, including minimum width and area of lot and minimum ground for area for residences; and such regulations may also provide for the minimum standards and requirements for adequate drainage, flood protection and floodplain regulations and the location and paving of sidewalks, streets, or other public ways which are or may be required by the board to be included in any plat, replat or dedication or deed of dedication for public use which may be presented for approval. In Sedgwick County and the City of Wichita, the board referred to is the Metropolitan Area Planning Commission. In addition to the requirements to be met for the Metropolitan Area Planning Commission, plats must also be considered by the County Commission in the event the area under consideration is not within the corporate limits of the city. K.S.A. 19-2905 requires that no plat or replat or dedication or deed of a street or a public way shall be filed with the Register of Deeds as provided by law until such plat or replat or dedication or deed shall have endorsed thereon, approval by the zoning board of the Board of County Commissioners, and the Wichita City Commission may have jurisdiction in which case approval of both governing bodies is necessary. The Metropolitan Area Planning Commission is given subdivision jurisdiction within the City of Wichita and the unincorporated area within three miles thereof and/or such other unincorporated areas as may be determined appropriate by the Board of County Commissioners of Sedgwick County.

In this regard, K.S.A. 12-705 provides in pertinent part:

"No such regulations or changes or amendments thereto adopted by a city planning commission shall become effective unless and until the same has been submitted to and approved by the governing body of the city and no such regulations or changes or amendments thereto adopted by a joint committee as hereinafter provided, shall become effective unless and until the same has been submitted to and approved by both the board of county commissioners and the governing body of the city. Such regulations may provide for the harmonious development of the community, including the proper location and width of streets, and for building lines, open spaces, safety and recreational facilities, flood protection and floodplain regulations and for the avoidance of congestion

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of population, including minimum width, depth and area of lots and compatibility of design." [Emphasis supplied.]

K.S.A. 19-2905 further provides:

"Before exercising the powers referred to above, the zoning board shall adopt regulations governing the subdivision and use of land within its jurisdiction. Such regulations may provide for the proportionate area of streets in relation to other existing or planned streets with respect to adequate and convenient open spaces for traffic, utilities, access for fire-fighting apparatus, recreation, light and air and for the avoidance of congestion of population, including minimum width and area of lots and minimum ground floor area of residences; and *such regulations may also provide for minimum standards and requirements for adequate drainage, flood protection and flood-plan regulations and the location and paving of sidewalks, streets or public ways which are or may be required by the board to be included in any plat or replat or dedication or deed of dedication for public use which may be presented for approval.*" [Emphasis supplied.]

K.S.A. 19-2918 states:

"The planning board may adopt regulations governing the subdivision of land within that portion of the unincorporated area of the county, and the incorporated area of any city upon the written request by resolution of the governing body of such city, when the same shall have been designated by resolution of the board of county commissioners for that purpose. No such regulations or changes or amendments thereto adopted by a county planning board shall become effective unless and until the same has been submitted to and approved by the board of county commissioners and no such regulations or changes or amendments thereto adopted by a joint committee as herein-after provided shall become effective unless and

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until the same has been submitted to and approved by both the board of county commissioners and the governing body of the city. *Such regulations may provide for the location and width of streets, building lines, open spaces for traffic, utilities, access for fire-fighting apparatus, recreation, light, and air, for the avoidance of congestion of population, including minimum width and area of lots and for flood protection and flood-plain regulations.* Such regulations may also, as a condition to the approval of any plat, require and fix the extent to which and the manner in which streets shall be graded and improved, and water, sewers, drainage and other utility services and public improvements shall be provided, to protect public health and general welfare." [Emphasis supplied.]

The creation of the Metropolitan Area Planning Commission is permissible under K.S.A. 1975 Supp. 12-716 which authorizes two or more cities or counties of this state having adjoining planning jurisdictions or any county or city or cities within or adjacent to that county to join and cooperate in the exercise and performance of planning powers, duties and functions as provided by state law for cities and counties. The law relating to cities in regard to requirements is found, among other places, at K.S.A. 1975 Supp. 12-705 quoted above, which authorizes the "city planning commission" which has adopted a comprehensive plan to adopt and amend regulations governing the subdivision of land located within an area which shall be designated by resolution of the governing body of the city for this purpose. This area has to include the incorporated area of the city and may include any unincorporated territory lying outside of, but within three miles of the nearest point of the city limits provided that such territory is in the same county in which the city is located. The creation of the Metropolitan Area Planning Commission resulted from joint ordinance-resolution adopted by the city and county in 1967 and the "joint agreement," as amended, entered into by the governing bodies. This "joint-agreement" provides in part:

". . . The Planning commission shall cause to be prepared recommendations governing the control of subdivisions within the area of its jurisdiction . . ." and ". . . shall assume and perform all of the powers, duties and functions hereto vested in the Wichita City Planning Commission, in the Sedgwick County Planning

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Commission and in the previously constituted  
Wichita-Sedgwick County Metropolitan Area  
Planning Commissions."

Appropriate subdivision rules and regulations, as amended, have been approved and adopted by both governing bodies. The purposes are expressly stated to include provisions for "drainage" and "to exercise the powers conferred by K.S.A. 12-705 and K.S.A. 19-2918."

The precise question which has been presented for my opinion is stated thus:

"Under the 5th and 14th Amendments to the Constitution of the United States, does a board of county commissioners have the authority to require a landowner, in the process of platting his land, to dedicate a portion of said land to the public for flood control, riverbank, bank maintenance and river beautification purposes, as a prerequisite to obtaining final approval of his plat from said commission when said commission is authorized by K.S.A. 82a-307 to enter upon private property for the same purposes?"

A further question is stated as follows:

"If the public's right to acquire land and enter upon private property for flood control, riverbank, bank maintenance and river beautification purposes protected under K.S.A. 82a-307, K.S.A. 12-635 and K.S.A. 19-3307 to the extent that the action of the board of county commissioners in requiring the landowner to make the dedication as indicated above would constitute an unlawful taking of private property without just compensation and due process of law."

Clearly, in my judgment, it is fully within the power of the Metropolitan Area Planning Commission and of the board of county commissioners to require dedication of easements or property for drainage and flood protection purposes prior to granting approval of plats

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of land proposed to be filed. In *Hudson Oil Co. v. City of Wichita*, 193 Kan. 623, 396 P.2d 271 (1964), the court upheld a requirement by the Wichita city commission that, prior to granting a change of zoning, the tract first be platted and that a ten foot strip first be dedicated to be added to the existing right of way as necessary to maintain uniformity in a service or frontage street.

The power of the governing body and of the planning commission to require a dedication of property for drainage and flood control purposes under the cited statutes above rests upon precisely the same statutory base as was involved in the *Hudson Oil Co.* decision. There seems little basis upon which to distinguish the power of the planning commission and the governing body to impose dedication requirements for streets and other public ways from the exercise of the same power for another stated statutory purpose, flood protection and drainage.

It is apparently the argument of interested parties with matters presently before the board of county commissioners that a requirement that property be dedicated or easements granted for flood control and drainage purposes is *per se* unreasonable and therefore a denial of rights under the Fifth and Fourteenth Amendments to the United States Constitution, because other statutes provide means whereby governing bodies may deal with flood protection and control, as well as drainage.

The argument is not persuasive. K.S.A. 82a-307 authorizes the board of county commissioners, upon the petition of fifty taxpayers owning land in the flood plain of any river in the county, to "clean and maintain the banks and channels of the streams and watercourses within definitely established bank lines," and "to keep said streams free of drift, trees and other obstructions, for the purpose of reducing floods and overflows . . . ." Under K.S.A. 19-3301 *et seq.*, the board of county commissioners may exercise the power of eminent domain

"where it is required by the federal government as a condition to the construction of any flood control works as provided in this act [works authorized by the Congress to be constructed by the Corps of Engineers of the United States Army or other department or agency of the federal government]." K.S.A. 19-3302.

K.S.A. 12-635 authorizes any city in or near which there flows a natural watercourse from which overflow in the event of high water is liable to cause injury to any bridge, street, alley, public or

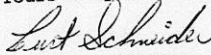
Mr. Theodore Hill  
Page Seven  
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private property to acquire by condemnation or eminent domain the land or easements necessary, within or without the city limits to the extent of ten miles therefrom, to construct drains, canals and artificial watercourses, levees and embankments, and other works and improvements deemed necessary to relieve the threat of damage from overflowing waters.

Each of these statutes provides a specialized tool, as it were, for a city or county to deal with particularized problems of drainage and flood control. Nothing in any of these statutes suggests, even remotely, that the planning and zoning power of the city may not also be used in the interests of drainage and flood control, or that in the review of plats of property proposed to be filed, that land may not be required to be dedicated for purposes of drainage or flood control in the exercise of the planning and zoning authority of the city or county. Certainly, the powers of the city and county under these particular statutes are highly restricted, and in no fashion do they provide adequate substitutes for the broad authority needed by cities and counties, and granted to them under the statutes cited earlier in this opinion, to make adequate provision for flood and drainage control and protection in the exercise of statutory planning powers and the adoption of appropriate subdivision regulations.

Accordingly, it is my opinion that under the Fifth and Fourteenth Amendments to the United States Constitution, it is fully within the power of the Metropolitan Area Planning Commission and of the board of county commissioners to require dedications of easements or of property for drainage and flood protection purposes prior to granting approval of plats of land which are proposed to be filed for approval.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:HTW:kj



SEDGWICK COUNTY COURTHOUSE

**COUNTY OF SEDGWICK**  
DEPARTMENT OF PUBLIC WORKS

1018 STILLWELL  
WICHITA, KANSAS 67213

PHONE 268-7901

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

DATE: October 16, 1979  
TO: Paul Johnston - Wichita-Valley Center Flood Control  
FROM: Phillip Dietrich *P.E.*  
SUBJECT: Grading Plan, Wildwood Addition

Please be advised that the grading plan for above addition (Dated 2-24-77) has been revised in that all lot drainage east of Edwards Avenue now flows in a westerly direction from the high bank of the Little River to the easterly road ditch of Edwards Avenue. This arrangement was agreed upon verbally by the owner, the owners Engineer, Flood Control and County Public Works Engineering Personnel.

In addition the street plans for Edwards Avenue were revised to reflect this change in the drainage plan in that the ditches were widened, lowered and graded so that all lot drainage is intercepted and conveyed in a southerly direction to 69th Street North.

This department has field checked the above referenced lots and has found that they have been filled and the drainage is generally flowing in a westerly direction as per agreement.

I am hoping this information will be of benefit to you, and if you should desire additional information, please call,

cc: Louise Olivarez - MAPD  
File

TEMPORARY EASEMENT FOR CUL-DE-SAC

We, the owners of the property platted as Wildwood Addition, Sedgwick County, Kansas, hereby grant a temporary cul-de-sac easement to and for the use of the public at the Northerly end of Chaparral Avenue in said addition for the purpose of providing sufficient area to turn school buses, emergency vehicles and other vehicles without backing.

This easement shall include all the area lying outside the platted roadways and within a 75 foot radius circle whose center point is 122 feet East of the West boundary line following the North boundary line of Lot One, Block One, thence 5 feet South from said North boundary line, all in Lot one, Block One, Wildwood Addition to Sedgwick County, Kansas.

No building shall be constructed closer than 30 feet to the boundary of the temporary cul-de-sac as long as the temporary easement remains in effect.

This easement shall remain in effect until such time as Chaparral Avenue is extended as a public roadway to the West of Wildwood Addition, at which time this easement for the temporary cul-de-sac shall become void.

Dated this 23<sup>rd</sup> day of May, 1977.

*Laverne W. Strong*  
LAVERNE W. STRONG

*Ray T. Woods*  
RAY T. WOODS

*Pearl L. Strong*  
PEARL L. STRONG

*Lynna J. Woods*  
LYNNA J. WOODS

STATE OF KANSAS )  
                  ) SS.  
SEDGWICK COUNTY )

Before me, a Notary Public, in and for the County and State aforesaid came LaVerne W. Strong, Pearl L. Strong, Ray T. Woods, and Lynda J. Woods who are personally known to me to have executed their signatures to the above instrument as their own free act and deed and they duly acknowledged the same.

In testimony whereof, I do hereby affix my notarial seal this 33<sup>rd</sup> day of May, 1977.

Lenora G. Jalenak  
Notary Public

My Commission Expires: March 11, 1978

LENORA G. JALENAK  
NOTARY PUBLIC  
SEDGWICK COUNTY, KANSAS  
MY COMM. EXP. MAR. 11, 1978

Agreement by and between Lange Brothers Excavating (Contractor) and Ray T. Woods, and Vern Strong (Owners).

Subject: Street Construction (Chaparrel Street) in Wildwood Addition, Sedgwick County, Kansas.

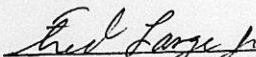
The Contractor agrees to construct a street in accordance with furnished plans and specifications and applicable Government Specifications on the above described real property.


The construction schedule will be based on the following:

Initiate construction after completion of the work being done by the Wichita City County Flood Control Department per instructions from Mr. Mitchell of that department.

Complete construction as soon as possible after initiation.

Costs of said construction to owners to be based on actual time and material required by the contractor to complete construction to owners satisfaction.

  
Lange Brothers Construction

  
Ray T. Woods (Owner)

N.P.                      6-16-77  
TITLE                                      DATE

6-17-77  
5-18-77  
China called  
to say the  
owner had given her  
a copy of the  
contract for street  
improvements

Still Need:

1. ~~ok. from Engineering on sheet petition submitted by the applicant~~
2. ~~Temporary turn around dedication or easement~~
3. ~~Title and tax opinion.~~
4. ~~Final plat tracing.~~

TO THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS

PETITION FOR STREET IMPROVEMENTS IN  
CERTAIN PLATTED LANDS IN THE COUNTY  
AND OUTSIDE OF ANY INCORPORATED CITY

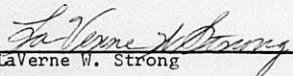
COME NOW the undersigned and respectfully Petition the Board of County Commissioners of Sedgwick County, Kansas, to provide for the construction and macadamizing, including drainage, of all the streets, roads and avenues which abut upon and are contained within the following described real property, to wit:

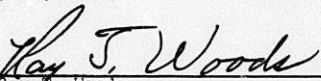
Wildwood Addition to Sedgwick County, Kansas.

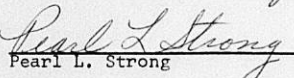
Your Petitioners further state that the realty aforesaid lies within Sedgwick County, Kansas, and outside the limits of any incorporated city, and that they are the owners of all the property contained in said addition.

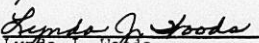
WHEREFORE, your Petitioners pray that the Board of County Commissioners by Resolution declare such work or improvements necessary to be done and cause such Resolution to be published for three (3) consecutive weeks in the official paper of Sedgwick County, Kansas, and if the owners of more than one-half of the property liable for taxation for the macadamizing or drainage or remacadamizing or redraining of such roads shall not within twenty (20) days from the date of such last publication file with the County Clerk their protest against such improvements, then that the Board of County Commissioners cause such work to be done and contract therefore and levy taxes as provided by law.

Dated this 19<sup>th</sup> day of April, 1977.

  
LaVerne W. Strong

  
Ray E. Woods

  
Pearl L. Strong

  
Lynda J. Woods

TO THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS

PETITION FOR STREET IMPROVEMENTS IN  
CERTAIN PLATED LANDS IN THE COUNTY  
AND OUTSIDE OF ANY INCORPORATED CITY

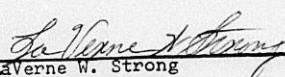
COME NOW the undersigned and respectfully Petition the Board of County Commissioners of Sedgwick County, Kansas, to provide for the construction and macadamizing, including drainage, of all the streets, roads and avenues which abut upon and are contained within the following described real property, to wit:

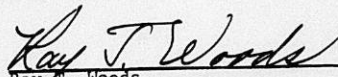
Wildwood Addition to Sedgwick County, Kansas.

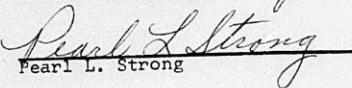
Your Petitioners further state that the realty aforesaid lies within Sedgwick County, Kansas, and outside the limits of any incorporated city, and that they are the owners of all the property contained in said addition.


WHEREFORE, your Petitioners pray that the Board of County Commissioners by Resolution declare such work or improvements necessary to be done and cause such Resolution to be published for three (3) consecutive weeks in the official paper of Sedgwick County, Kansas, and if the owners of more than one-half of the property liable for taxation for the macadamizing or drainage or remacadamizing or redraining of such roads shall not within twenty (20) days from the date of such last publication file with the County Clerk their protest against such improvements, then that the Board of County Commissioners cause such work to be done and contract therefore and levy taxes as provided by law.

Dated this 19<sup>th</sup> day of April, 1977.

  
Laverne W. Strong

  
Ray T. Woods

  
Pearl L. Strong

  
Lynda J. Woods

LAW OFFICES OF  
BLASE AND BLASE  
CHARTERED  
BRYNWOOD PLACE - 2302 NORTH HOOD  
WICHITA, KANSAS 67204

ROBERT E. BLASE  
HENRY H. BLASE  
ANTONIO L. ORTEGA

May 23, 1977

TELEPHONE  
(316) 838-7733

Metropolitan Area Planning Commission  
City Hall - Tenth Floor  
455 North Main  
Wichita, Kansas 67202

Re: Wildwood Addition

Dear Sirs:

This is to advise that we have this date examined the Abstract of Title and examined the title records to the following described real property, to wit:

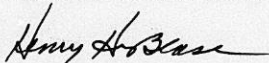
A tract in the Southeast Quarter of Section 1, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, bounded by the center line of the Little Arkansas River on the North and the East, by the section line on the South, and by the following described line on the West: Commencing at the Southeast corner of said Southeast Quarter; thence West 630 feet for a place of beginning; thence with an angle to the right  $86^{\circ}00'$  a distance of 239.58 feet to the point of curvature of a curve to the left having a central angle of  $83^{\circ}00'$  and a radius of 79.28 feet; thence along said curve 114.85 feet to a point of reverse curvature of a curve having a central angle of  $67^{\circ}00'$  and a radius of 254.0 feet; thence along said curve 297.02 feet to point of tangency of said curve; thence continuing on tangent to said curve 190 feet; thence with an angle to the right of  $15^{\circ}00'$  a distance of 150 feet; thence with an angle to the left of  $28^{\circ}00'$  a distance of 224 feet; thence with an angle to the right of  $27^{\circ}00'$  a distance of 44 feet more or less to the center line of said Little Arkansas River.

We find title to said property to be in the name of LaVerne W. Strong, Pearl L. Strong, Ray T. Woods and Lynda J. Woods.

Metropolitan Area Planning Commission  
May 23, 1977  
Page Two

The real estate taxes for the year 1976 and prior years  
show as being paid.

Respectfully submitted,



Henry H. Blase  
of BLASE & BLASE

HHB:bb

Wichita, Kansas  
April 19, 1977

Metropolitan Area Planning Department  
City Hall-10th Floor  
455 N. Main Street  
Wichita, Kansas 67202

Re: S/D 75-11  
Wildwood Addition

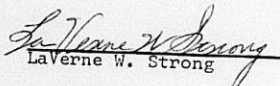
Dear Sirs:

Please be advised that the mobile home indicated on the preliminary plat in the above referenced matter has been removed from the street right-of-way.

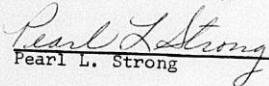
This letter is being written to you pursuant to Paragraph Three of your letter to Mr. Henry Blase dated June 17, 1976.

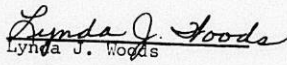
If we may be of further assistance in this matter, please advise.

Sincerely,

  
Laverne W. Strong

  
Ray T. Woods

  
Pearl L. Strong

  
Lynda J. Woods

**KENNETH O. TAYLOR**  
*Consulting Engineer*  
1542 SOUTH ST. FRANCIS  
WICHITA, KANSAS 67211

April 25, 1977

Mr. Curtis Newby  
MAPD-10th Floor  
City Hall  
455 North Main  
Wichita, Kansas 67202

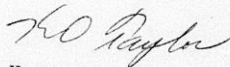
Dear Curt:

RE: Wildwood Addition

Enclosed is that part of my file of Wildwood Addition pertaining to the Continental Pipe Line Company pipe line over subject property.

Please note that in a letter dated February 17, 1977, the Continental Pipe Line Company has agreed to restrict their right of way to an area that corresponds to what I have shown on the plat. Neither I nor Henry Blase have yet received the documents accepting this easement, however, it is requested that the plat be released for recording based on their letter showing their intent to do so.

Very truly yours,



K. O. Taylor

KOT/at

Enclosures



June 23, 1976

Mr. Jim Higginbottam  
Area Superintendent  
Continental Pipe Line Co.  
South Tank Farm  
Box 1267  
Ponca City, Oklahoma 74601

Dear Mr. Higginbottam:

I am enclosing two prints of a topographic survey, showing a proposed subdivision located in the SE 1/4 of Section 1-26-1W, Sedgwick County, Kansas, also two prints of the plat of the proposed subdivision.

As can be seen on the topographic map (preliminary plat) your company has two pipe lines crossing this property. We located the lines as best we could from evidence on the surface of the ground.

Before the platting can be completed, the following requirements have to be met:

1. Appropriate easements shall be indicated on the face of the plat for your pipe lines. A letter from Continental Pipe Line Company setting forth that easement as shown on the final plat is acceptable.
2. Any raising or lowering of the pipe lines necessitated by the improvement of Edwards Avenue shall be at the sole expense of the property owner.

I don't know whether or not your company has any kind of easement over this property. If you have a blanket easement, the owner would like to have the easement confined to whatever you need. If you do not have an easement of record to cover your pipe lines, the owner will grant one.

We would like to have some one from Contintal Pipe Line Company to locate the pipe lines and we will be glad to do the necessary surveying work to establish the easement boundaries.

Very truly yours,

K. O. Taylor, P.E.

**CONOCO**

Continental Pipe Line Company  
P.O. Box 1267  
Ponca City, Oklahoma 74601  
(405) 762-3456

*File: Wildwood Add.*

November 15, 1976

Mr. Kenneth O. Taylor  
Consulting Engineer  
1542 S. St. Francis  
Wichita, Kansas 67202

Dear Mr. Taylor:

SE/4-Sec. 1-T26S-R1W, Sedgwick County, Kansas

Reference is made to your letter addressed to our Mr. Jim Higginbotham regarding the proposed Wildwood Addition to be located in the SE/4 of Section 1, T26S, R1W, Sedgwick County, Kansas.

By copy of this letter, I am requesting our Mr. Stace Peet to trace out lines in this 1/4 section, which according to our records are as shown on the attached drawings. Mr. Peet will stake the line and advise you when the staking is complete so that you can make a centerline survey of the location of the line. Apparently only one of our lines crosses the west side of the proposed addition. This is a 4" gathering line serving the tank battery in the NE/4-NE/4 of Section 1. The three tank batteries just west of your proposed addition is also served by this line.

Please complete your survey promptly as soon as Mr. Peet advises you that he has staked the line, as these stakes have a way of being displaced.

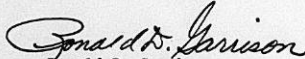
If you will furnish me with the centerline description bearing your licensed land surveyors seal, I will have the partial release prepared. We will wish to retain 25' either side of the line within the platted boundaries of Wildwood Estates. We will wish to retain 25' either side of the line as permanent right-of-way with a provision that there be no buildings or appurtenances constructed on the right-of-way and that the lowering of the line across Edwards Avenue will be at the property owners expense.

I am attaching a penciled copy of the preliminary plat as well as a sketch made from our records indicating the location of this line.

Mr. Kenneth O. Taylor  
November 15, 1976  
Page 2

Please note an easement 25' either side of lot 1 would almost render this lot useless. For this reason the landowner might wish to pay for relocating the line along the west edge of the Development. I estimate the cost of such a relocation, including a casing across Edwards Avenue would not exceed \$3,500.00.

Yours very truly,



Ronald D. Garrison  
District Engineer

LYS-cb  
Attachment

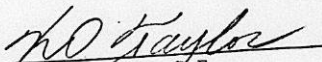
CC: Jim Higginbotham  
Stace Peet

November 29, 1976

State of Kansas ) ss  
County of Sedgwick)

I, K. O. Taylor, a licensed professional engineer in the State of Kansas and a competent surveyor, do hereby certify that I did on the 29th day of November, 1976, locate a Continental Pipe Line Company pipe line in the SE 1/4 of Section 1, T26S, R1W of the 6th P.M., Sedgwick County, Kansas based on stakes set by said Company.

The attached plat is a true and correct exhibit of said survey.

  
K. O. Taylor, P.E.



December 21, 1976

Mr. Ronald D. Garrison  
District Engineer  
Continental Pipe Line Co.  
P. O. Box 1287  
Ponca City, Oklahoma 74601

Dear Mr. Garrison:

Please refer to your letter to me dated November 5, 1976 concerning your pipe line in the SE 1/4 of Section 1, T26S, R1W, Sedgwick County, Kansas.

We have located your pipe line from stakes set by personnel from your Lyons, Kansas office. The center line is shown in red on the enclosed two prints, and is referenced to the west line of the proposed plat of Wildwood Addition, Sedgwick County, Kansas.

Since the plat will be filed of record in the Register of Deeds Office in Sedgwick County, Kansas, the suggested legal description of an easement is tied to the lots and blocks in this Addition. Please note that the proposed easement clears the pipe line in excess of 25 feet on the east side of the pipe line. Also, the plat as shown is all of the land owned by my clients in this quarter section.

The suggested easement descriptions are as follows:

The west 55 feet of Lot 1, Block 2, Wildwood Addition, Sedgwick County, Kansas.

and

Beginning at the NW corner of Lot 1, Block 1, Wildwood Addition, Sedgwick County, Kansas; thence S6°00'E on the west line of said Lot 1, Block 1, 20 feet; thence 33°00'E on said west line, 121.15 feet; thence N6°00'W, 127.94 feet to the north line of said Lot 1, Block 1; thence west 55 feet to the point of beginning.

We are providing a temporary turn around for Chaparral Avenue, therefore there will be no road improvements over your pipe line until such time as the road is extended to the west beyond the limits of this plat.

Ronald D. Garrison  
December 21, 1976  
Page 2.

Enclosed are two prints showing the location of your pipe line in reference to the plat and a print of the road plans for Chaparral Avenue.

Very truly yours,

K. O. Taylor, P.E.

KOT/at

Enclosures.

cc: Henry Blase, 2302 Hood, Wichita, Ks.

COPY

March 2, 1977

Mr. Ronald D. Garrison  
District Engineer  
Continental Pipe Line Company  
P. O. Box 1267  
Ponca City, Oklahoma 74601

Dear Mr. Garrison:

Enclosed are two copies of 8 1/2 x 11 prints of Wildwood Addition showing the location of your pipe line and proposed easement and also the legal description of said easements.

Very truly yours,

K. O. Taylor, P.E.

KOT:at  
Enclosures

COPY

**SURVEY FOR LOCATION OF CONTINENTAL PIPE LINE COMPANY  
EASEMENT**

The westerly 55 feet of Lot 1, Block 2,  
Wildwood Addition, Sedgwick County,  
Kansas

and

Beginning at the NW corner of Lot 1, Block 1,  
Wildwood Addition, Sedgwick County, Kansas;  
thence  $S6^{\circ}00'E$  along the west line of said  
Lot 1, Block 1, 20 feet; thence  $S33^{\circ}00'E$  along  
the westerly line of said Lot 1, Block 1, 121.15  
feet; thence northerly 127.95 feet to a point  
on the north line of said Lot 1, Block 1, 55  
feet east of the point of beginning; thence west  
55 feet to the point of beginning.

---

K. O. Taylor, P.E.  
March 2, 1977



Continental Pipe Line Company  
P.O. Box 1267  
Ponca City, Oklahoma 74601  
(405) 762-3456

February 17, 1977

Kenneth O. Taylor  
1542 South St. Francis  
Wichita, Kansas 67211

Dear Mr. Taylor:

Re: Wildwood Addition: Sedgwick County, Kansas

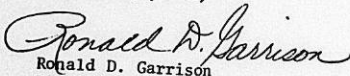
I am proceeding with the necessary documents for restricting our right-of-way across the Wildwood Addition to the easement description as outlined in your letter to me dated December 21, 1976.

In order to complete the documents, our Right-of-Way & Claims Division desires an 8 1/2" x 11" or an 8 1/2" x 14" plat of Wildwood Addition showing the pipeline location such that the plat can be attached to the Release document as an "attachment." The plat should contain the easement description and bear a registered land surveyors seal. Two copies of the plat would be sufficient.

Please send the plats to my attention and I'll proceed with the completion and approval of the release.

Thank you for your cooperation.

Very truly yours,

  
Ronald D. Garrison  
District Engineer

cb  
CC: Henry Blase, 2302 Hood, Wichita, Kansas 67204  
Jim Clymer, Right of Way & Claims





SEDGWICK COUNTY COURTHOUSE

**COUNTY OF SEDGWICK**  
DEPARTMENT OF PUBLIC WORKS

1019 STILLWELL  
WICHITA, KANSAS 67213

PHONE 268-7201

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

April 18, 1977



Curtis Newby, Junior Planner  
MAPD  
City Hall - Tenth Floor  
455 North Main  
Wichita, Kansas 67202

Re: Wildwood Addition

Dear Curtis:

The drainage and street plans for the above addition have been received by this office and are acceptable to ourselves and to the Wichita-Valley Center Flood Control Office.

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

By *C. M. Brennenstuhl*  
C. M. Brennenstuhl, E.I.T.  
Civil Engineer II

GCM/CMB/bd

cc: K. O. Taylor  
M. S. Mitchell



FOSTER & ASSOCIATES - PLANNING CONSULTANTS  
2818 N. EDWARDS AVE.  
WICHITA, KANSAS 67204

PHONE 316/838-7563  
C. BICKLEY FOSTER, A.I.P.

Bob -

6/19

I'm amazed how often out-of-town papers respond to developments in Wichita.

Here's such a clipping. -

Bick



07-1-01

# The McPherson Sentinel

K. R. Krehbiel, Editor  
Published By McPherson Sentinel, Inc.

90th Year

Friday, June 18, 1976

No. 144

## A land steal

Wichita and Sedgwick County are in the process of what looks to many as a plain theft of land without paying the lawful owners for the land taken.

Some Wichita development people had been trying to get a permit to develop 21 acres they own. Kansas Attorney General Curt Schneider says the county or the city can take this land without paying for it because the land is needed to properly control floods.

There may be other factors involved, but the facts so far indicate the 21 acres would be taken by the county without paying for it. The county's feeble excuse for refusing to pay for the land is that the county doesn't have enough money to buy this 21 acres and also buy other land in a flood control plan for the area.

Not whether the land steal is just but that the county didn't have the money.

If the laws do permit such a land steal, how could a similar government takeover of thousands of acres be stopped?

Maybe there are better reasons for what looks like a simple theft. If it's really legal to steal land, the deed to your own home would become worthless.

That's too close to pure Communism for all true Americans.

June 17, 1976

Mr. Henry Blase  
Attorney at Law  
2302 Hood  
Wichita, Kansas 67204

Re: S/D 75-11 - WILDWOOD ADDITION

Dear Mr. Blase:

The above referred to plat was considered by the Board of County Commissioners at their regular meeting of June 16, 1976. The action of the Commission was to approve the plat as recommended by the Metropolitan Area Planning Commission with the exception of the requirement for a dedication on the plat of the drainage, riverbank maintenance, flood control and river beautification dedication. The Commission required that this dedication be changed to an "easement" to be indicated on the plat.

At such time as all the conditions of approval have been complied with we will be able to release the plat to you for recording. The conditions of approval are:

- 1. The deflection angles referred to in the legal description of the engineer's text shall be indicated on the face of the plat.
- 2. A temporary cul-de-sac shall be granted by separate instrument at the north end of Edwards Avenue. A temporary 30-foot building setback from said cul-de-sac shall be included in said instrument. The properly executed instrument shall be submitted to the Planning Department for forwarding with the plat to the Board of County Commissioners. *submitted on 5-24-77*
- 3. The applicant shall be advised that the existing mobile home indicated on the preliminary plat shall be removed from the street right-of-way prior to recording of the plat. A letter stating that this has been done shall be submitted to the Planning Department. *received letter on 4-19-77*

Mr. Henry Blase  
June 17, 1976  
Page 2

4. The applicant shall contact Kansas Gas & Electric relative to making satisfactory arrangements for relocation or removal of the existing electric service line serving the existing mobile home on subject property. A letter obtained from said company stating that said arrangements have been made shall be submitted to the Planning Department.
5. *petitioned for*  
The applicant shall guarantee the improvement of Edwards Avenue in accordance with suburban street standards since subject plat is a suburban subdivision. The County Engineer shall be contacted regarding this matter. In addition, appropriate road plans and profiles shall be submitted to the County Engineer for his approval. *OK*
6. *letter to be submitted from Co. Eng.*  
The applicant's engineer shall submit a site grading plan and closure data to Don Yelton of the Building, Planning and Inspection Office. A letter obtained from Mr. Yelton approving said plan shall be submitted to the Planning Department.
7. Appropriate easements shall be indicated on the face of the plat for the Continental Pipeline Company's pipelines crossing subject property. A letter from the Continental Pipeline Company shall be submitted to the Planning Department setting forth that easement as shown on the final plat is acceptable.
8. Any raising or lowering of the Continental Pipeline necessitated by the improvement of Edwards Avenue shall be at the sole expense of the applicant.
9. The drainage way as shown on the final plat, shall be labeled as a drainage, riverbank maintenance, flood control and river beautification easement on the face of the plat, with the appropriate language in the plat's text.
10. *OK* Submission of the fully completed and signed tracing of the subdivision to the Metropolitan Area Planning Department.
11. *received 5-24-77*  
Certification by an attorney that fee title is vested in the plat.
12. *received 5-24-77*  
Certification that all taxes due and payable for 1975 and prior years have been paid.
13. Recording of the plat within 30 days after approval by the Board of County Commissioners.

Mr. Henry Blase  
June 17, 1976  
Page 3

As most of these conditions have not been complied with, if you have any questions on completing the various requirements, please advise.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:CLM:rme

cc: K. O. Taylor, Engineer, 1542 S. St. Francis, 67211  
Ray Woods, 4707 Sullivan Road, 67204  
M. S. Mitchell, Maintenance-Flood Control  
Don Yelton, County Building, Planning & Inspection

6-15-76

WILDWOOD plat

# County can take land for free

By JEFFREY STINSON  
Staff Writer

County officials were informed Monday that they can take a person's land for flood control and beautification without paying him for it.

And it appears that county commissioners will exercise that power Wednesday to take title to six or seven acres owned by Ray Woods and Vernon Strong, part of a proposed subdivision along the Arkansas River near 69th Street, North, west of Meridian.

In an opinion received by county officials Monday, Atty. Gen. Curt Schneider ruled that the Metropolitan

Area Planning Commission (MAPC), with the approval of the city or county commissions, can make an owner turn over property for purposes of flood control and drainage before an overall plan on that property is approved. The plan, or plat, must be approved before a building permit can be obtained.

Woods and Strong propose that the land — a 2½-acre tract in the Wildwood addition — be divided into lots for residential development.

They have been unable to develop the land pending approval or platting, which has been held up by the attorney general's opinion, which was re-

quested in September 1975 by commissioners.

The opinion was requested after Woods and Strong's attorney, Henry Blaise, told the MAPC and commission that the two should be paid for the land they were to turn over to the county.

Blaise argued that the requirement to give the land to the county before approval of the plat was taking private property without just compensation. He said the only ways that government could get the land was by outright gift, condemnation with the court setting the price of the land, or by buying it.

Planning and county officials, however, said they would have to pay all property owners in similar situations for land acquired in the "public interest" if they paid Woods and Strong — something the county said it couldn't afford.

The public interest, in this case, was to assure that steps flood control, riverbank maintenance and river beautification, officials said.

Blaise further argued that the county's taking the property was unnecessary because statutes already gave the county an automatic easement to go on the property for flood

control. Under an easement arrangement, the property owner maintains ownership.

But planners contend the property should be turned over to the county because public workers have more difficulty dealing with property owners who have property rights under an easement arrangement.

Blaise said Monday his clients' decision to take the matter to court to test the attorney general's opinion depended on the commission's action.

County counselor Ted Hill will recommend that the commission take the property.



**WOODS (LEFT) AND STRONG AWAIT DECISION**  
 . . . They object to dedication of land for development

## Required by Governments

# 'Gift' Land Practice Attacked

By RICH HALL  
 Staff Writer

Can the government take your land without paying for it?  
 "Yes, under certain circumstances, the government traditionally has said by its actions.

"No," say Ray Woods and his father-in-law, Vernon Strong, partners in a proposed subdivision between Valley Center and Wichita.

There are a number of issues involved, and no one appears to have the answer locally.  
 So it will be up to the attorney general's office to provide an opinion. If that doesn't satisfy them, the next likely step is to take it to court.

Sedgwick County commissioners asked for an opinion in September, 1975, and they're still waiting.  
 Ramifications of the case are immense, not because of the specific case but because traditionally, government has required dedication of large amounts of land without compensation as a condition of platting.  
 Dedication is turning over of land to the government for a specific use, in

this case, flood control. A plat is a map showing proposed lots and improvements for a piece of land. An approved plat is required in order to get a building permit.

Specifically, the county asked the attorney general's office if it could require such a dedication of some of Woods' and Strong's land along the Little Arkansas River without compensation, as a condition of plat approval.

Hal Walker, the assistant attorney general assigned to the case, said he expects to complete work on the opinion in about a week.

In the meantime, Woods and Strong have been prevented from building or selling about 21 acres at 68th North west of Meridian.

Metropolitan Area Planning Commission last August approved the plat with the traditional dedication, but Woods and Strong decided to fight the requirement. About half of each of the six riverfront lots would have had to be dedicated.

Henry Blaise, attorney for the partners, contended such a requirement is unconstitutional because it

would be taking private property without just compensation.

He further argued during MAPC meetings last summer that dedication is unnecessary because state statutes already give the county an automatic easement to go on the property for flood control.

Whether there is a legal difference between easement and dedication is one of the issues that will have to be decided.

Blaise says state law provides only three ways for the government to take private property: outright gift, condemnation (with value determined by the court) and purchase.

Beyond this, Blaise said seizure of land without compensation is allowed only if the seizure gives the state something it needs and can't get from another source.

He adds that the automatic easement is that other source.

As to the delay, Walker said all he could do is apologize.

"I must take full responsibility for the delay. It seems like the hardest decisions to make are the ones which always find their way to the bottom of the stack."

He said he began preliminary research on the question last fall after receiving the request from Earl Rush, then county commission chairman. Rush's letter is dated Sept. 30.

"It's a difficult question to answer because there's a real Kansas precedent that speaks to the issue. Therefore, I've had to look to issues, and there are lots of cases. Unfortunately, there seem to be about as many decisions favoring the landowner as government."

**People DO  
 Read Small Ads  
 YOU DID!**

3 Copies

MAPC Meeting  
August 14, 1975  
Re: Wildwood Addition

HENRY BLASE: Appearing for the applicant. I would like to restate the position I brought to you the last meeting and that is that the requiring of an outright dedication of ground for riverbank and flood control purposes is contrary to state law. It cannot be done. The statutes I cited to you the last time have not been changed; they are still in effect. Those were KSA 12-635 - states that the governing body of any city of the state of Kansas in or near or through which flows a natural water course, the overflow from which in the event of high water is liable to cause injury to any bridge, street, alley, public or private property, may in order to prevent said injury, acquire by condemnation and eminent domain, gift or purchase within or without the city limits within 10 miles therefrom, the land and easements necessary to construct the drains and canals and whatever is needed. It doesn't say that they may acquire and require land through dedication. It just gives that as one alternate. It doesn't say it must be imposed.

The other one is KSA 82a-307 and it states that it gives the governing body the authority to enter upon private property for the purpose of cleaning and maintaining banks and channels, keep streams free of drift, trees and other obstructions and for the purpose of reducing floods and overflows.

This means that the governing body at the present time has an easement into said land through this statute. It doesn't need another easement and I think this is really what we are getting at. Flood control feels they should have the property to use for removing obstructions, cleaning the banks and preventing floods. Well the same powers to do so are granted by state statute, but the state statute does not give them the land that is in question. It merely says they have the right to enter on that land.

And to go a little bit farther, there are also some case law on this subject in Kansas which states that, I quote from Carvella (?) Drainage District vs. Missouri Pacific, 99 Kansas 188, says it may therefore be said generally that when a state creates an agency to serve its public needs and confers administrative powers upon it, whatever be the language of the statute conferring such powers, a just and reasonable exercise of such powers is intended, and the power to make or exercise unreasonable, arbitrary and confiscatory orders is not intended, and I submit that what is happening here is a confiscatory order against this land owner to take his property without due process of law.

This brings me to another point and that is the 14th amendment of the Constitution of the United States, which says no state shall make or enforce any law which shall abridge the privileges or amenities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law.

And that is what we are talking about here. This landowner has not had due process of law. The State statutes tells you how that can be done. You can have through condemnation process, he can make it a gift and that is due process, or it can be done through an outright purchase.

Requiring his dedication of this property does not give due process of law, violates the 14th amendment of the Constitution and cannot legally be done. For this reason, I request this Planning Commission to delete the requiring of this drainage dedication on this plat prior to its approval.

*Curt*

September 12, 1975

Jack Turner, County Counselor

Robert A. Lakin, Director of Planning

S/D 75-11 - Final Plat of  
WILDWOOD ADDITION

The Planning Commission considered the Wildwood Addition at its meeting of September 11, 1975. This is the case, you may remember, where the issue of river dedication is involved. Your opinion and that of Hub Kuhn were furnished to the Planning Commission. Mr. Blase still does not believe that the opinions are sufficient in citing the law and do not overcome his objections, including Constitutional ones. He has formally requested that this matter be placed on the County Commission agenda as an appeal under the Subdivision Regulations appeal provisions. This is the appropriate course of action as he disagrees with the Planning Commission decision. I advised him that it would be impossible to place it on the agenda for the 17 due to our turnaround time in preparing agenda items. It may be possible that we will have this available for you on the 24th of September; or it may be more appropriate that it be on the agenda in one of the following weeks - October 1 or October 8. As you remember, you and I will be out of town on October 1. It's my hope that we would be able to provide the County Commission and your office minutes of yesterday's meeting, as well as earlier meetings concerning these proceedings. As soon as we have the minutes prepared, we will forward the item to you for placing on the County Commission agenda.

Robert A. Lakin  
Director of Planning

RAL:ber

cc: Henry Blase  
2302 Hood 67204

WICHITA-SEDGWICK COUNTY

DATE Sept. 24, 1975

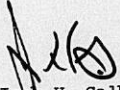
**METROPOLITAN AREA PLANNING DEPARTMENT**

TO The Files

FROM Jack H. Galbraith, Chief Planner

SUBJECT S/D 75-11 WILDWOOD ADDITION

The Board of County Commissioners at its regular meeting of September 24, 1975, considered the above captioned plat. Their action was to defer subject plat for an Attorney General's opinion.

  
Jack H. Galbraith  
Chief Planner

JHG:el

THE CITY OF WICHITA  
OFFICE OF CITY ATTORNEY

DATE August 12, 1975

THE  
ROAD TO  
SAFETY



TO Robert A. Lakin, Director of Planning  
FROM H. R. Kuhn, Assistant City Attorney

SUBJECT Drainage Right-of-Way Dedication

Your memo of July 29, 1975 directed to Jack Turner, County Counselor, was handed to me for attention. I have reviewed the memo of Lawrence E. Curfman dated April 15, 1964, and I don't feel that I can add anything to the comments made by him, since I am in complete agreement therewith. I further concur in the opinions expressed by you which are reflected in the memo to Mr. Turner. I will be interested in the comments or opinions expressed by Mr. Turner if and when they are available and I will be visiting further with you about the matter in greater detail.

HRK:bs

cc: John Dekker

A handwritten signature in cursive script, appearing to read "H. R. Kuhn".



THE CITY OF WICHITA  
OFFICE OF CITY ATTORNEY

DATE August 12, 1975



TO Robert A. Lakin, Director of Planning  
FROM H. R. Kuhn, Assistant City Attorney

SUBJECT Drainage Right-of-Way Dedication

Your memo of July 29, 1975 directed to Jack Turner, County Counselor, was handed to me for attention. I have reviewed the memo of Lawrence E. Curfman dated April 15, 1964, and I don't feel that I can add anything to the comments made by him, since I am in complete agreement therewith. I further concur in the opinions expressed by you which are reflected in the memo to Mr. Turner. I will be interested in the comments or opinions expressed by Mr. Turner if and when they are available and I will be visiting further with you about the matter in greater detail.

HRK:bs

cc: John Dekker

A handwritten signature in dark ink, appearing to read "H. R. Kuhn". The signature is written in a cursive style with a long horizontal flourish underneath.



9. S/D 75-11 - Final plat of WILDWOOD ADDITION, generally located on the north side of 69th Street North in an area west of Meridian.

NEWBY outlined the area on the map and stated that this plat was approved in preliminary form subject to the applicant contacting M. S. Mitchell of the Flood Control Office relative to the appropriate language used in reference to the "floodway" on subject property. He pointed out that subject plat proposes the lot lines to extend to the center of the Little Arkansas River and it is recommended that the river area be an outright dedication, and the lots redesigned to the two acre minimum size and not extend into the river dedication. It was suggested that the applicant could file for a zone change for "R-1" Suburban Residential zoning which would permit smaller lot sizes than the required 2 acres if the applicant is interested in platting a larger number of lots.

KENNETH O. TAYLOR, engineer for the applicant, stated that at the preliminary plat stage an outright dedication was not asked for, and they are opposed to the drainage dedication.

TIM HAMILTON, County Building, Planning & Inspection, spoke in reference to comment "E" (guaranteeing the improvement of Edwards Avenue in accordance with suburban street standards since subject plat is a suburban subdivision) said that road plans for the street would be required by the County Engineer's Office.

MAX GREENE, Maintenance-Flood Control, stated for the record that Flood Control was asking for an outright river dedication. He referred to an April 15, 1964 memo written to Jack Galbraith from the then Assistant City Attorney, Lawrence Curfman, regarding river right-of-way dedications on another portion of the Little Arkansas River involving extending lot lines into the river dedication, and he quoted Curfman as saying, "it would therefore, be the writer's recommendation that wherever possible, in connection with a plat, the landowner should be required to dedicate to the public such portion of the river or stream, bank or bed as the Flood Control authorities deem necessary, such dedication to be a broad general dedication for street, public utility, drainage, river bank maintenance, flood control, and river beautification purposes." GREENE said that Flood Control had stricken "street and public utilities" and asked that such rights-of-way be dedicated for drainage, river bank maintenance, flood control and river beautification purposes.

HENRY H. BLASE, attorney, representing the applicant, stated for the record that K.S.A. 82a-307 which gives the counties the authority to designate a bank line along the rivers, which has been done and a bank line has been established, and the statutes gives to the counties the authority to enter on private property

to clean and maintain banks and channels with definite established bank lines. He said a dedication is not warranted, and in effect an easement already exists within the established bank lines, so there is no need to have anything dedicated on the plat.

GREENE said that they had established bank lines and at that time it contained just the area for the normal flow of the river. They now cannot get a design section within the bank lines to contain the present design flow of the river.

BLASE responded that it was the intent of the statutes in cases such as this to provide access to whatever Flood Control needs to provide maintenance, that the statutes say nothing pertaining to a dedication for public use.

GREENE stated again that there was not sufficient right-of-way within the established bank line to put in a channel section that would contain the flood flow.

BLASE quoted the State Statute K.S.A. 12-635 which gives Flood Control authority to acquire the land necessary for such purposes. He said the Statutes does show three different methods to use to acquire the land, 1) condemnation and eminent domain, 2) gift, 3) purchase; and from the standpoint of the applicant, he's not inclined to make it a gift.

GREENE stated that from the standpoint of Flood Control they would request a deferral of the plat unless dedication of right-of-way necessary for drainage is provided on the plat.

BLASE requested that the plat be submitted to the Planning Commission in light of that request for a determination.

TAYLOR felt that the plat should be forwarded to the Planning Commission for a determination concerning the request for the drainage dedication.

**MOTION:** It was moved, seconded and carried unanimously that the plat be forwarded to the Planning Commission for a determination on the requirement for flood control right-of-way to be dedicated with this plat and in addition to recommend to the Planning Commission that this plat be approved subject to the following additional requirements:

- A. The deflection angles referred to in the legal description of the engineer's text shall be indicated on the face of the plat.

- B. A temporary cul-de-sac shall be granted by separate instrument at the north end of Edwards Avenue. A temporary 30-foot building setback from said cul-de-sac shall be included in said instrument. The properly executed instrument shall be submitted to the Planning Department for forwarding with the plat to the Board of County Commissioners.
  - C. The applicant shall be advised that the existing mobile home indicated on the preliminary plat shall be removed from the street right-of-way prior to recording of the plat. A letter stating that this has been done shall be submitted to the Planning Department.
  - D. The applicant shall contact Kansas Gas & Electric relative to making satisfactory arrangements for relocation or removal of the existing electric service line serving the existing mobile home on subject property. A letter obtained from said company stating that said arrangements have been made shall be submitted to the Planning Department.
  - E. The applicant shall guarantee the improvement of Edwards Avenue in accordance with suburban street standards since subject plat is a suburban subdivision. The County Engineer shall be contacted regarding this matter. In addition, appropriate road plans and profiles shall be submitted to the County Engineer for his approval.
  - F. The applicant's engineer shall submit a site grading plan and closure data to Don Yelton of the Building, Planning and Inspection Office. A letter obtained from Mr. Yelton approving said plan shall be submitted to the Planning Department.
  - G. Appropriate easements shall be indicated on the face of the plat for the Continental Pipeline Company's pipelines crossing subject property. A letter from the Continental Pipeline Company shall be submitted to the Planning Department setting forth that easement as shown on the final plat is acceptable.
  - H. Any raising or lowering of the Continental Pipeline necessitated by the improvement of Edwards Avenue shall be at the sole expense of the applicant.
  - I. Recording of the plat within 30 days after approval by the Board of City Commissioners.
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EXCERPT FROM PLANNING COMMISSION MINUTES OF JULY 24, 1975:

12. S/D 75-11 - Final Plat of WILDWOOD ADDITION, generally located on the north side of 69th Street North in an area west of Meridian.

GALBRAITH pointed out that this plat is in the County area, zoned "R" Rural Residential and requires 2 acres for a minimum size lot for residential use. The issue before the Subdivision Committee and only one concerned with is the matter of having to dedicate from the center line of the river to the bank line for riverbank maintenance, beautification and flood control protection. He said that property owners on the Arkansas River do not own out to the center of the river, but on the Little Arkansas River ownership is different and it is to the center line. He stated that it has been the policy for a number of years to require an outright dedication for the necessary area along the Little Arkansas River.

GALBRAITH continued that it was his understanding that in this case the applicant feels that if he is required to make such a dedication then he can't maintain the 2 acre minimum lot size, but he did not believe it was the intent of the regulations that where much of the property was actually in the riverbed, that area be calculated as meeting the required lot size. As an example, he pointed out that if there was "R-1" requiring 40,000 square feet for a septic tank installation, it would not appear logical that half of the lot area could be claimed if it was in the river.

GALBRAITH felt that the usual dedication should be required the same as was done on a plat directly on the east side where platted and dedicated the same as being required in this case. The same requirement was made on Rancho del Rio in an area farther north.

GALBRAITH said that if the applicant wants a change of zoning to "R-1" which requires only 40,000 square feet, such a change might be appropriate because there is such zoning on the south side of 69th Street, but none north. This would let development occur on only 40,000 square feet, which standard could be met even though the dedication was made.

JOE BOGLE, representing the City Department of Law, said that inasmuch as subject area is in the County, the County Counselor probably should be the one to advise the Commission in this case. However, he felt that the same question might arise in the future in the City area, and he has already talked to the attorney for the applicant and the Planning Department staff.

HENNESSY asked if there was the possibility of something similar to a minor street privilege such as in the city, whereby the owner could utilize the area dedicated, or if it had to be used exclusively for maintenance of the riverbank, flood control or beautification.

GALBRAITH said he was not aware of anything like the minor street privilege in the County, but that this area is to be used for residential purposes and he felt adjacent properties would have use of the area, but that no structures could be erected in the dedicated area. He continued that if dedicated for a certain designated purpose, in the event it is no longer needed by the public for that purpose, then it could revert back to adjacent property the same as a street that is vacated. When asked if the property could be used if granted as an easement, GALBRAITH doubted that there would be any complaint if the owner planted the banks and took care of it as a part of the yard, but that there could be no structure or obstruction of any nature in an easement. HENNESSY concluded that while they possibly could put up a no trespassing sign, they would not have the right to ask people to leave if there was intrusion.

HENRY BLASE, attorney for the applicant, said when the plat was first submitted as a preliminary, it was suggested to the applicant that he dedicate an easement along the riverbank for flood control purposes. In the meantime, however, between the preliminary and final plat submission, the request was changed to reflect a dedication, which is actually a transfer of title, which the applicant in this case does not desire to do. He has the land for residential along the river for his own enjoyment and by dedication they will be prohibited from using that property for any use whatsoever... BLASE said he pointed out at the Subdivision Committee meeting that under Kansas law the county does have the authority to enter upon that property through easements rights for maintenance of the riverbank and he referred to the statute which grants this right to the county. He said this statute authorizes the county engineer to determine the definite bank lines along a stream, and it has been done in Sedgwick County, and the county does at this time have an easement on that bank line to maintain the riverbank.

BLASE also referred to another statute which gives the flood control agency or county the authority to acquire land for flood control by three means - condemnation, by reason of a gift, or by negotiated purchase. BLASE maintained, however, that there is no Kansas law which gives authority to take from someone his land for flood control purposes. If an owner wanted to give it as a dedication, the county could accept; otherwise there must be condemnation or purchase. For this reason, BLASE said he does not consider it a valid request to ask for dedication, and his client declines to give it.

CHAIRMAN KAMEN asked if anyone had checked on the statutes referred to. GALBRAITH said the city has been requiring dedication for riverbank and drainage for years and if there is a legal question, perhaps this plat should be deferred until an opinion is obtained from the Legal Department and the County Counselor.

BLASE said that at the Subdivision Committee he was requested to contact the Legal Department, and he had obtained a copy of a memorandum written in 1964 to the Planning Department. He briefly reviewed the contents of the memo, which is summarized in the last paragraph as follows:

"It would, therefore, be the writer's recommendation that wherever possible, in connection with a plat, the landowner should be required to dedicate to the public such portion of the river or stream bank and bed as the flood control authorities deem necessary, such dedication to be a broad general dedication for "street, public utility, drainage, riverbank maintenance, flood control and river beautification purposes."

BLASE further pointed out that while the paragraph just quoted says "in connection with a plat", no authority is cited for giving them that authority.

Hopper arrived.

M. S. MITCHELL, Flood Control Supervisor, said that Mr. Curfman of the Legal Department in 1964, and who wrote the memorandum referred to by Mr. Blase, had pointed out the history of acquisition of right-of-way along the Little Arkansas River and until late 1950, there was no policy. The land as patented by the government made no exceptions for streams in this county, except for the Arkansas River, so the Arkansas River is not a part of the government survey. On other streams in the county and a part of the original federal patent, the common practice was to divide ownership of a river to the center as a matter of convenience, and the center line of the Little Arkansas River and many of the smaller streams has arbitrarily become a boundary line. MITCHELL said that as the city grew, the necessity for obtaining public responsibility and right to maintain streams grew. In some cases easements or dedications were taken to the mean high water bank line, to the

left bank, to the low water line or to the center line, and in going through descriptions of earlier days, it is impossible to locate those dedications or easements because they are so ambiguously drawn.

Referring again to Mr. Curfman's memo, MITCHELL pointed out that in an attempt to prevent channel blocking, and to enable full stream carrying capacity, the legislature in 1931 provided for determination of established bank lines by G.S. 1949 82a307(a), et seq. The Sedgwick County Engineer has established bank lines, with the approval of the Division of Water Resources and the State Board of Agriculture, along a number of streams. Establishing bank lines does not change legal title, however, but merely permits removal of obstructions placed between the established bank lines after their establishment, and without cost to the county, except in a few instances.

Further from the memo, MITCHELL said that because the preservation of the carrying capacity of the river is important to the proper functioning of the entire flood control system, the Wichita-Valley Center Flood Control organization feels it should have a clear right to remove obstructions, clean, widen and straighten the channel, and generally ensure that the rivers will perform the function planned for them in connection with the flood control project. If abutting owners have legal title, and the city or county a mere drainage easement, questions frequently arise of whether an obstruction is really an interference with the paramount and dominant use. Such items as ornamental shrubs, flowers, trash burners, fences, boat docks, steps and ladders can be said not to interfere with the drainage easement, but also from the standpoint of the flood control authorities, they may constitute obstructions. Since millions of dollars of property is protected by the flood control system, interference with it in any respect should not be permitted.

MITCHELL explained that with an easement, as long as the owner of the property and the flood control people agree that there is a need for maintenance, there is little difference than with a dedication. The question as to the value of a dedication over an easement is when there is disagreement, where possibly a patio or boat docks have been constructed which, while causing no problem so far as the owner is concerned, could be an obstacle which causes damage either upstream or downstream, and a multitude of the same type of structures placed in the channel would definitely affect the flow of water and cause the river to raise. MITCHELL said that a profile was established by the Corp of Engineers when the flood waters were diverted northwest of Valley Center, and at all times the water should stay well within the general bank elevation of the Little Arkansas River and in order to do that, a channel capacity must be provided to the extent that was there at the time the Corp of Engineers established the profile.

MITCHELL said he considered it imperative that provisions be made for maintenance, and in no instance have they ever gone into a riverbank dedication and performed work in opposition to the de-

sires of the owner. Often there is opposition initially, but eventually it is resolved. As to whether the adjacent owner can use a dedication area for his own recreation and beautification, MITCHELL said they are encouraging people to do just that. He continued that they will do everything they can to remove objections and to be fair and work with the owner. As to use of the property by the general public, MITCHELL said the general public has no business in the area, and is being excluded from the drainage dedications along the Little Arkansas River, with assistance of the law enforcement officers.

CHAIRMAN KAMEN asked the staff to obtain a legal opinion on the matter from the County Counselor.

**MOTION:** That a decision on this case be deferred until the meeting of August 14, 1975, and in the interim period the staff request a legal opinion from the County Counselor and Department of Law. Hennessy moved, Bayouth seconded and it carried unanimously. Rising and Goebel were absent.

BLASE was asked to supply the staff with the Kansas statutes referred to in his presentation.

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EXCERPT FROM PLANNING COMMISSION MINUTES OF AUGUST 14, 1975:

5. S/D 75-11 - Final Plat of WILDWOOD ADDITION, generally located on the north side of 69th Street North in an area west of Meridian.

GALBRAITH pointed out that the Subdivision Committee, as one of the conditions of approval, had discussed the dedication of a portion of subject area for flood control maintenance, beautification, etc., such area actually being located in the river. He said that the land in this plat is zoned "R" and needs a 2-acre minimum size for residential development, and with the dedication as indicated, half of the lot size is in the river. GALBRAITH said the issue to be discussed is that of making such a dedication a requirement.

GALBRAITH indicated that a zone change to "R-1" Suburban Residential zoning would be appropriate in this area, if the applicant desired, and in such zoning a lot size of only 40,000 square feet is required for residential lots.

At a previous hearing on this plat, the County Counselor and City Department of Law were requested to review the policy of requiring such dedication.

LAKIN reported that the City Department of Law has provided a written opinion indicating that there is no legal reason why such should not be required as a part of the platting process. The County Counselor, while not providing a written opinion, has verbally agreed that it would be an appropriate action for the Commission as a policy matter.

HENRY BLASE, attorney for the applicant restated his position presented at the previous hearing, that the requiring of an outright dedication of ground for riverbank and flood control purposes is contrary to State law and cannot be done. Statutes cited the last time were KSA 12-635, which provides authority that the governing body of a city may acquire by condemnation, gift or purchase, the land necessary to construct drains and canals or whatever is needed to prevent injury to the public by reason of overflow of a natural water course. He stressed that the law does not say such may be acquired or required through dedication in a plat.

BLASE reminded the Commission that KSA 82a-307 also gives the governing body authority to enter upon private property for the purpose of clearing and maintaining banks and channels, keeping streams free of drift, trees and other obstructions and for the purpose of reducing floods and overflows. By this statute, BLASE maintained that the governing body presently has an easement into subject land and doesn't need a dedication or even another easement.

He related that while the Flood Control Office feels they need the land for maintenance of the river and its banks and to take such action as needed to prevent floods, they already have that right,

although the State statute does not give them the land, but merely says they have the right to enter onto the land.

Reference was made by BLASE to a case law on this subject in Kansas, and he quoted from the Drainage District vs. Missouri Pacific, 99 Kansas 188, wherein it was brought out that when a State creates an agency to serve its public needs and confers administrative powers upon it, whatever be the language of the statute conferring such powers, a just and reasonable exercise of such powers is intended, and the power to make or exercise unreasonable, arbitrary and confiscatory orders is not intended. He claimed that what is being required in this plat is confiscatory and an effort to take the land from the owner without due process of law.

BLASE referred also to the 14th Amendment to the Constitution of the United States, wherein it is stated that no state shall make or enforce any law which shall abridge the privileges or amenities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law. It was his claim that his client has not had due process of law; it violates the 14th Amendment of the Constitution and cannot legally be done.

For the above reasons, BLASE asked the Planning Commission to delete the requirement of the drainage dedication from the plat approval. Referring to the opinion from the City Legal Department, BLASE noted that no statutes are cited on which the opinion is based, while he has presented the statutes and laws to support his opinion.

HENNESSY commented that he, too, believed in due process of law.

MOTION: That this plat be approved with the deletion of the requirement for river dedication, but that other conditions of approval as recommended by the Subdivision Committee be included. Hennessy moved.

HENNESSY felt that by this action, the City and County Counselors may feel the need for litigation, which would give the applicant due process of law.

There was brief discussion of the fact that such a dedication has been required in the past, and that one right across the river was required in connection with platting. HENNESSY was favorable to the acceptance of the attorney's presentation and much in favor of protection for the landowner's rights.

LAKIN said he would not get into a position of arguing law, and if the motion passes, he did not believe either the City or County Counselors would be inclined to litigate the issue unless so directed by the governing body. In this case, it would be the County Commission's prerogative to bring such litigation, since the area is located in the County platting jurisdiction.

The above motion was not seconded.

BLASE brought up the fact that this item was deferred at a previous meeting pending submission of opinions from the City and County Counselors and now three or four weeks later complete opinions have still not been submitted, but only a written statement from the City staff, but not citing specific authorization by law. He felt the reason for not citing such is because there are none, and that an effort is being made to perpetuate a policy which has been carried on in the past which is not in accordance with the law. He referred again to the three methods of obtaining such rights - purchase, gift or eminent domain, and maintained that the effort being made in this case is coercion.

LAKIN said he would not presume to tell Mr. Kuhn (City legal staff) how to write a legal opinion, and suggested that if Mr. Blase desired to debate the issue of legal rights, then he should deal with Mr. Dekker and Mr. Kuhn of the City Department of Law.

One of the Commissioners suggested another deferral for a written opinion from both the City and County. CHAIRMAN KAMEN said that might be unfair to the applicant and that the attorneys had their chance to make such submission. He did not consider the requirement as coercion, but no different than the regular procedure for platting.

There was some question as to exactly what action the Commission should take, and some displeasure expressed that the City and County legal departments were not represented at the meeting after being asked to attend. LAKIN pointed out that they do not normally attend Planning Commission meetings.

MOTION: That this matter be deferred until the next meeting of the Commission on August 28, 1975 and that more information be obtained from the legal counsels. Bayouth moved, Gragg seconded and it carried by a vote of 5 in favor (Bayouth, Gragg, Kamen, Goebel, and Hopper) and 1 opposed (Hennessy). Savina, Taylor and Rising were absent.

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EXCERPT FROM PLANNING COMMISSION MINUTES OF SEPTEMBER 11, 1975:

5. S/D 75-11 - Final Plat of WILDWOOD ADDITION, generally located on the north side of 69th Street North in an area west of Meridian.

LAKIN recalled that at the meeting on August 14, 1975, a decision on this plat was deferred and he was asked to provide legal opinions from the City and County Counselors concerning authority to require dedication of area along the river. Such opinions have been provided to the Commissioners and to the attorney for the applicant. In summary, LAKIN said the opinions both indicate that the Commission does have legal authority to require the dedication should it choose to do so. It was his suggestion that if the dedication is required, as recommended by the Subdivision and Utility Advisory Committee, that the Commission also consider instructing the staff to initiate a zone change for subject property from the "R" Rural Residential District to the "R-1" Suburban Residential District, which would then permit development of the property on smaller lots. In the "R" District, as presently zoned, the lot size would not qualify if the dedication is required.

HENRY BLASE, attorney for the applicant, asked the Commissioners to closely review the two opinions to see exactly what they say. He asked the Commissioners to note that the County Counselor's opinion in the beginning recites the statutes which had been discussed briefly with the Commission at a previous meeting on this matter. The second paragraph states that they are not applicable to this situation, but in no way does the County Counselor justify why they are not applicable, and BLASE contended that the reason he does not believe he cannot, and he maintained that they are applicable and do apply to this particular situation.

BLASE commented that the balance of the opinion deals with the authority of this Commission to promulgate rules and regulations, and at no time has his position been that the Commission could not. Statutes referred to in the opinion so far as authority to promulgate regulations are KSA 1974 Supp. 12-705 (related to cities) and KSA 19-2901 (related to counties). However, BLASE stressed that while authority is given to establish regulations, at no place is it stated in the statutes that there is the authority to promulgate regulations which are contrary to the established law. BLASE insisted that the State law provides that when a political subdivision desires to acquire land for flood control, drainage, river beautification and maintenance, it may do so by condemnation (eminent domain), by gift of the owner or by purchase, and it does not prescribe that as a part of the platting function. He maintained that this is covered in the statutes cited and also in the 14th Amendment to the Constitution which he had read to the Commission at a previous meeting, as well as the 5th Amendment of the Constitution which provides that private property in no case shall be taken for public use without full compensation, and to require a dedication as suggested would be a taking of the land without compensation and a violation of the Constitutional rights.

BLASE said the same provisions are covered in the State statutes (KSA 26-513), as in the Constitutional Amendments. And he stated again that nowhere in the opinions submitted is any statute cited whereby this Commission has that authority. BLASE pointed out that after a long dissertation, the County Counselor still does not get specific as to the authority to promulgate regulations in the manner proposed.

In the last paragraph, BLASE pointed out, the opinion states that it appears that this body has ample authority to require dedication for drainage, yet he has not shown the Commission where they have that authority, yet he (Blase) has cited statutes to show that acquisition of land for the purposes intended, must be by one of three methods - purchase, gift or condemnation.

BLASE recalled that he had previously cited to the Commission the statutes which grant this body an easement along the riverbank and the right to enter upon for purposes of cleaning the bank and channels or removing obstructions which reduce the flow of water, which is what is attempting to be accomplished by an outright dedication of the land.

BLASE next discussed the City Attorney's opinion, pointing out that it is a little more specific than the County Counselor's and cites the same statutes as the County Counselor. The opinion states that flood control is referenced specifically in both statutes (KSA 12-705 and KSA 19-2918); however, BLASE said such is not correct in that KSA 12-705 makes no mention of flood control.

In another paragraph, BLASE noted that while it is stated that the Subdivision Rules and Regulations implement the authority and powers granted by State statutes, the opinion does not support just how the implementation uses the authority, and it was his contention that it does not.

BLASE stated that the statutes he cited give only the broadest power to promulgate regulations and does not say any specific thing bearing directly on flood control protection. Reference was made to 7-103a, and BLASE read the wording that "no land subject to periodic flooding or 100-year flood, where delineated, shall be subdivided for residential use or any other use" which would be incompatible with such flooding. He maintained that subject land is not subject to flooding since the construction of the flood control ditch. Statute 7-103b provides that if improvements meeting the standards and requirements of the Flood Control project and designed so as to render such land safe for residential occupancy are made on the land, then provisions of 701a does not apply. He maintained that construction of the Big Ditch has made this land safe for residential occupancy and, therefore, 701a and b do not apply in this case.

7-205b, BLASE stated, really pertains to easements and not outright dedications and provides that if a subdivision is transversed by a water course then a storm water easement or drainage right-of-

way shall be provided; however, subject plat is not transversed by a water course - it is adjacent, but not transversed; therefore, 7-205b does not apply.

The rest of the opinion, BLASE pointed out, essentially states that the supreme court has approved the language of the statutes which is plainly directory to the City, and cases are cited, but there is no question on that. At the end of the opinion, it is stated that for the foregoing reasons and because the requirement of dedication confers considerably more effective control in the authority charged with the responsibility of adequate flood control (as compared with the granting of an easement), the required conditions in the instance at hand seem proper.

BLASE continued to maintain that the opinion is not supported with authority, nor with case law, the statutory law or the Constitutional law, and that it doesn't show anything. Again, BLASE contended that the case, statutes and Constitutional amendments he has previously cited are in affect and cover this situation, and the imposition of a requirement of a dedication violates the applicant's Constitutional rights, and the Commission does not have the authority to make such a requirement.

LAKIN pointed out that the legal opinions as presented are what the City and County legal counsels believe to be an opinion about the rights of the Commission to make the requirement, and they do not intend to make this issue a legal brief or a debate of the law before the Planning Commission. Those are things that are done beyond the citing of a legal opinion.

LAKIN said that Mr. Mitchell of the Flood Control Office was present if there were questions about the flooding, 100-year flood or river conditions.

There was discussion at this point concerning the difference between dedication of a street and a flood control easement. LAKIN pointed out that dedications are required on the basis of public need and in exchange for the platting of property; the same situation exists so far as sewer easements or access control. It all relates to public rights, and the courts and legislature have found it appropriate that when land is developed and placed into a different category of use, in the public interest, these are reasonable types of actions.

BLASE pointed out that while a street is required to provide public access to lots being platted, in this particular situation, the governing body already has the right of access to the land granted by State statutes, which give them authority to enter private property for the purpose of cleaning banks and maintaining the flood control. He stressed again that it does not require a special dedication or easement on subject plat and that a dedication would be taking private property unlawfully.

LAKIN said that a verbatim transcript was furnished both the City and County legal departments of Mr. Blase's previous presentation and citations of statutes as to ways in which the desired results

in this case could be accomplished. It was LAKIN's belief that it was the opinion of both counselors that the ways cited by Mr. Blase are not exclusive and that there were other authorizations. They are not saying the ways cited are wrong or unconstitutional, but that there are other supplemental and appropriate ways.

When asked for his suggestion as to the situation, LAKIN commented that obviously all people would not be appeased; however, it has been the staff's position as a long standing policy, that reasonable dedication on the Little Arkansas River should be provided as a condition of platting. It has been done over a period of time in one of two ways - by easement or dedication, and one difference between the two is a matter of who has the control. If dedicated, then the public has the prime use and control; if an easement the property owner has the prime use, subject to the public being able to enter onto the property when necessary. However, it is more difficult for the public to carry out its purpose if an easement rather than a dedication, which is the reason for preferring a dedication. LAKIN pointed out that legal opinions by Mr. Curfman discussing the difference between an easement and dedication have been furnished the Commissioners previously.

For clarification, GRAGG asked Blase if he had stated in his earlier remarks that dedication for flood control could not be required. BLASE answered that he had not made that statement, but only that in this case the dedication being requested is not authorized and would be a taking of private property without just compensation. This involves property along the riverbank and the governing body already has authority to enter onto the private property for purposes of maintaining the flood control channel.

GRAGG commented that apparently it is a matter of a debate as to the law. BLASE spoke again to point out that he had cited the statutes and Constitutional amendments, and while they are recited in the County Counselor's opinion, neither the City or the County Counselor made any comment pertaining to them; they shied away from making any comment pertaining to those cases because the only comment that can be made is that they are valid laws, cases and amendments, and cannot be refuted.

GOEBEL asked Mitchell if it would be possible to maintain the flood control channel with only an easement, in that if a dedication, it would be public and possibly open the river up for public fishing.

MITCHELL answered that they could and do in many instances; however, there are more conflicts between adjacent property owners when ownership extends to some point in the river rather than being only to the edge of the maintenance dedication. He said that is the main point of contention over the years. The job is made easier when property owner's rights are clear cut, and there is less chance that something will be constructed that will have to be removed later. MITCHELL pointed out also that when a dedication is made for drainage or flood control beautification, it does not mean public use or public access. Such a dedication does not provide any rights to the

public other than those specifically enumerated in a dedication.

GOEBEL thought if it is a dedication of property the City would be the owner. MITCHELL said that was not his interpretation and referred to a memo written by Lawrence Curfman several years ago when he was a member of the City's legal staff, and he said he did not believe that was Mr. Curfman's interpretation. He did not find that the word "dedication" gives all rights to the City. In his memo, he did recommend inclusion of utility easement and street right-of-way in a river dedication because he foresaw the time when we might want to do other things with the right-of-way than be limited by the language that related to the riverbank and flood control maintenance and beautification. However, MITCHELL stated, such wording has not been included or have street dedications been requested along the riverbanks unless there was some need, and as a matter of blanket policy, the recommendations of Mr. Curfman have not been followed in that instance because there has not been a demonstrated need for other uses.

BLASE stated that by dedication, the land would be open to everyone. He said he could produce innumerable people owning land on riverbanks which had been either condemned or acquired by the City or County for riverbank purposes, who have no control of the land and are continually harrassed by people on the riverbank, sometimes with motorcycles, hunting, etc. In one particular case, the sheriff has been called many times, but with no response from the sheriff's office.

Such occurrences are dangerous as well as a harrassment for the residents, whereas if the property was in private ownership, the owner would have the right to control such activities.

HENNESSY agreed with Mr. Blase that there should not be the taking of property without compensation.

When asked how such had been handled in the past - whether by easement or dedication, LAKIN pointed out that a plat just across the river had been required to dedicate.

CHAIRMAN BAYOUTH was in favor of following the policy and let the City and County Commissions decide if it should be handled differently, and if the applicant is not satisfied with the decision, it could be taken to court.

PORTER pointed out that it would be more customary to follow the opinions of the legal counsels for the Commission, especially if this matter should be taken to court.

SAVINA spoke in favor of a dedication for protection of life and property down the river; if only an easement, there could be fences built or docks, etc., which could hamper the water flow. He considered it necessary to have a dedication especially along the Little Arkansas River, and the Big Ditch is not a cureall for everything and may not be there forever.

MOTION: That the Planning Commission approve the plat subject to the conditions recommended by the Subdivision Committee as follows:

- A. The deflection angles referred to in the legal description of the engineer's text shall be indicated on the face of the plat.
- B. A temporary cul-de-sac shall be granted by separate instrument at the north end of Edwards Avenue. A temporary 30-foot building setback from said cul-de-sac shall be included in said instrument. The properly executed instrument shall be submitted to the Planning department for forwarding with the plat to the Board of County Commissioners.
- C. The applicant shall be advised that the existing mobile home indicated on the preliminary plat shall be removed from the street right-of-way prior to recording of the plat. A letter stating that this has been done shall be submitted to the Planning Department.
- D. The applicant shall contact Kansas Gas & Electric relative to making satisfactory arrangements for relocation or removal of the existing electric service line serving the existing mobile home on subject property. A letter obtained from said company stating that said arrangements have been made shall be submitted to the Planning Department.
- E. The applicant shall guarantee the improvement of Edwards Avenue in accordance with suburban street standards since subject plat is a suburban subdivision. The County Engineer shall be contacted regarding this matter. In addition, appropriate road plans and profiles shall be submitted to the County Engineer for his approval.
- F. The applicant's engineer shall submit a site grading plan and closure data to Don Yelton of the Building, Planning and Inspection Office. A letter obtained from Mr. Yelton approving said plan shall be submitted to the Planning Department.
- G. Appropriate easements shall be indicated on the face of the plat for the Continental Pipeline Company's pipelines crossing subject property. A letter from the Continental Pipeline Company shall be submitted to the Planning Department setting forth that easement as shown on the final plat is acceptable.
- H. Any raising or lowering of the Continental Pipeline necessitated by the improvement of Edwards Avenue shall be at the sole expense of the applicant.
- I. Recording of the plat within 30 days after approval by the Board of City Commissioners;

and subject to the dedication of the drainage, riverbank maintenance, flood control and river beautification dedication being indicated on the

plat as requested by the Flood Control Office, and with the appropriate wording for said dedication being added to the plat's text. Gragg moved, Savina seconded and it carried by a vote of 8 in favor (Gragg, Savina, Taylor, Bayouth, Kamen, Porter, Goebel and Collier) and 1 opposed (Hennessy). Rising was absent.

LAKIN asked the Commission to consider authorizing the initiation of a zone change for subject property from "R" to "R-1" in case this Commission's action is sustained by the County Commission. A change of zoning would permit development on a lesser lot size, which would exist if the dedication is required.

BLASE commented that a dedication would take half of the property and that if it is required, it would reduce the lot size, and they would like to have whatever zoning would be applicable to permit development.

MOTION: That the staff be authorized to initiate a zone change from "R" to "R-1" for subject property if the condition for dedication is sustained by the County Commission. Kamen moved, Porter seconded and it carried by a vote of 8 in favor (Kamen, Porter, Gragg, Taylor, Collier, Goebel, Bayouth and Savina) and 1 opposed (Hennessy). Rising was absent.

-----

September 16, 1975

Mr. Henry Blase, Attorney  
2302 Hood  
Wichita, Kansas 67204

Re: S/D 75-11 - WILDWOOD ADDITION

Dear Mr. Blase:

On September 11, 1975, the Metropolitan Area Planning Commission considered the above-captioned plat. The action of the Commission was to approve the plat subject to the conditions recommended by the Subdivision Committee as listed in our letter of July 18, 1975 to K. O. Taylor, of which you received a copy. In addition, the Planning Commission approved the plat subject to the dedication of the drainage, riverbank maintenance, flood control and river beautification dedication being indicated on the plat as requested by the Flood Control Office, and with the appropriate wording for said dedication being added to the plat's text. This wording may be obtained from the Flood Control Office.

In addition, the following conditions must also be complied with prior to the tracing being released for recording:

1. Compliance with the requirements of the Metropolitan Area Planning Commission.
2. Submission of the fully completed and signed tracing of the subdivision to the Metropolitan Area Planning Department.
3. Certification by an attorney that fee title is vested in the plat.
4. Certification that all taxes due and payable for 1974 and prior years have been paid.

As it was pointed out to the Commission that, after dedication for the river area, subject lots would not meet the 2-acre minimum lot size required in the "R" Rural Residential District, the Planning Commission instructed that we initiate a zone change for your client without cost to him. Based on this instruction, should the Board of County Commissioners concur with the conditions of platting, we will initiate a zone change to "R-1" Suburban Residential,

page 2 - Mr. Henry Blase  
September 16, 1975

which will permit a minimum lot size of 40,000 square feet. Subject lot lines should then be adjusted to provide that each lot have a minimum of 40,000 square feet.

Based on your letter to Mr. Lakin, requesting that subject plat be forwarded on to the Board of County Commissioners, this is to advise you that we are working on the minutes associated with this case and are hoping that we will have them completed in time for this plat to be considered by the County Commission on October 1, 1975. Should we not meet that date, then their next meeting will be on October 8.

We will keep you advised when subject plat is to be considered and will furnish you copies of the minutes.

If you have any questions, please call.

Sincerely yours,

Jack H. Galbraith  
Chief Planner

JHG:ber

cc: Kenneth O. Taylor, 1542 South St. Francis 67211  
Ray Woods, 4707 Sullivan Road 67204  
Verna Strong, 1315 Sullivan Circle 67204  
Dean Sellers, Assistant City Engineer  
M. S. Mitchell, Flood Control Supervisor

LAW OFFICES OF  
BLASE, BLASE & GRIFFITH  
CHARTERED  
BRYNWOOD PLACE - 2302 NORTH HOOD  
WICHITA, KANSAS 67204

ROBERT E. BLASE  
HENRY H. BLASE  
WILLIAM R. GRIFFITH

TELEPHONE  
(316) 838-7733

September 11, 1975

Mr. Robert A. Lakin  
Director of Planning  
City Building Annex  
104 South Main  
Wichita, Kansas 67202

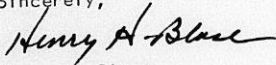
Re: S/D 75-11  
Wildwood Addition

Dear Mr. Lakin:

As a result of the action taken by the Metropolitan Area Planning Commission today, the applicant in the above referenced matter desires that you place this matter on the agenda of the Board of County Commissioners for their next regularly scheduled meeting.

Thank you for your time and attention to this matter.

Sincerely,



Henry H. Blase  
of Blase, Blase & Griffith

HHB:lj  
cc: County Clerk


September 4, 1975

Wichita-Sedgwick County Metropolitan  
Area Planning Commission

Robert A. Lakin, Director of Planning

S/D 75-11 - Final Plat of WILDWOOD ADDITION

As requested, legal opinions have been obtained relative to the MAPC's authority to request dedications in the Wildwood Addition. Attached is an opinion from the County Counselor and one from the Assistant City Attorney assigned to MAPD. Each has confirmed the MAPC's legal basis for making such a dedication. Each attorney was furnished verbatim extracts of Mr. Blase's presentation which included his citation of the law.

  
Robert A. Lakin  
Director of Planning

RAL:ber

Attachments

cc: Henry Blase, Attorney, 2302 Hood 67204  
H. R. Kuhn, Assistant City Attorney  
Jack Turner, County Counselor



**COUNTY OF SEDGWICK  
COMMISSIONERS OFFICE**

JACK N. TURNER - County Counselor  
FREDRICK J. DODDS, III - Assistant  
THEODORE HILL - Assistant  
CLAY COX - Assistant

ROOM 320

COUNTY COURTHOUSE, WICHITA, KANSAS 67203

TELEPHONE 268-7411

August 26, 1975

Mr. Robert A. Lakin  
Director of Planning - MAPD  
104 South Main  
Wichita, Kansas 67202

RE: Wildwood Addition

Dear Bob:

I have gone over the comments of Henry Blase, Counsel for the applicant in regard to the Wildwood Addition Platting and Development. In going over this I note that Mr. Blase cites K.S.A. 12-635, K.S.A. 82a-307, 99 Kansas 188 and the 14th Amendment to the Constitution of the United States. Apparently Mr. Blase contends that the Metropolitan Area Planning Commission has no authority to require the dedication of drainage right of way as a condition of platting for the Wildwood Addition.

Unfortunately for Mr. Blase, the statutes and the case cited are not applicable to the situation in which his client finds himself. According to my understanding, Metropolitan Area Planning Commission is authorized by K.S.A. 1974 Supp. 12-716 which authorizes two or more cities or counties of this State having a joining planning jurisdictions or any county or city or cities within or adjacent to the county to join and cooperate in the exercise and performance of planning powers, duties and functions as provided by State law for cities and counties. The law relating to cities in regard to requirements is found, among other places, at K.S.A. 1974 Supp. 12-705 which authorizes the "city planning commission" which has adopted a comprehensive plan to adopt and amend regulations governing the subdivision of land located within an area which shall be designated by resolution of the governing body of the city for this purpose. This area has to include the incorporated area of the city and may include any unincorporated territory lying outside of but within three miles of the



PAGE 2  
ROBERT LAKIN  
Aug. 26, 1975

nearest point of the City limites provided that such territory is in the same county in which the City is located. Counties, pursuant to K.S.A. 19-2901, et seq. have similar powers. The City of Wichita and Sedgwick County has, under the two statutes above quoted, combine to make up the Wichita - Sedgwick County Metropolitan Area Planning Commission. In this regard, comprehensive plans have been developed and sub-division regulations promulgated. Among the regulations promulgated are the regulations governing the sub-division of land, among these regulations, under both the City statutes, K.S.A. 1974 Supp. 12-705 and the county statutes, K.S.A. 19-2905 both zoning boards of the city and county are required to adopt regulations governing the sub-divisions and use of land within its jurisdiction. Applying this to our present case, it simply means that the Wichita - Sedgwick County Metropolitan Area Planning Commission has the authority to adopt regulations governing the sub-division and use of land within its jurisdiction. These regulations may provide for the proportionate area of streets in relation to other existing or planned streets and with respect to adequate and convenient open spaces for traffic, utilities, access for firefighting apparatus, recreation, light and air or the avoidance of congestion of population, including minimum width and area of lot and minimum ground for area for residences; and such regulations may also provide for the minimum standards and requirements for adequate drainage, flood projection and flood plain regulations and the location and paving of sidewalks, streets or other public ways which are or maybe required by the board to be included in any plat, re-plat or dedications or deed of dedication for public use which may be presented for approval. The board just referred to is the Wichita - Sedgwick County Metropolitan Area Planning Commission. In addition to the requirements to be met by the Wichita - Sedgwick County Metropolitan Area Planning Commission, plats must also be considered by the County Commission in the event the area under consideration is not within the corporate limits of the city. K.S.A. 19-2905 requires that no plat or re-plat or dedication or deed of a street or a public way shall be filed with the Register of Deeds as provided by law until such plat or re-plat or dedication or deed shall have endorsed thereon, approval by the zoning board and the Board of County Commissioners, addition to approval by the Board of County Commissioners, the Wichita City Commission may have a certain jurisdiction in this area in which case approval of both governing bodies is necessary. In going over the City of Wichita ordinances I note that the Wichita - Sedgwick County Metropolitan Area

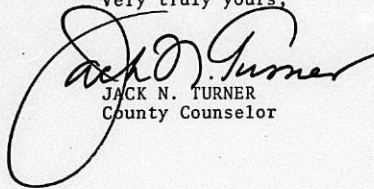
PAGE 3  
ROBERT LAKIN  
August 26, 1975

Planning Commission is given sub-division jurisdiction within the City of Wichita and the unincorporated area within three miles thereof and/or such other unincorporated areas as may be determined appropriate by the Board of County Commissioners of Sedgwick County, (Code of the City of Wichita 2.12.390).

Thus, in going over the merits of the Wildwood Addition matter, it appears that the Wichita - Sedgwick County Metropolitan Area Planning Commission has ample authority to require dedication for drainage as a prerequisite to platting.

Should you have any further questions about this matter please let me hear from you.

Very truly yours,

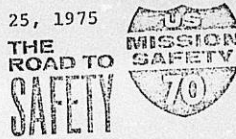


JACK N. TURNER  
County Counselor

JNT/nal

THE CITY OF WICHITA  
OFFICE OF Planning Dept.

DATE August 25, 1975



TO Bob Lakin, Director of Planning, MAPC  
FROM H. R. Kuhn

SUBJECT Drainage right-of-way dedication-  
Wildwood Addition

Does the planning commission have the authority to require and recommend to the governing body for final action the dedication of the drainage right-of-way for the reasons stated?

The statutory authority and jurisdiction of the planning commission in the matter of approving subdivision plats is based on the statutory provisions of KSA 12-705, KSA 19-2918 and KSA 12-716 et seq. The creation of MAPC resulted from the joint ordinance-resolution adopted by the City and County in 1967 and the "joint agreement", as amended, entered into by the governing bodies. The "joint-agreement" provides in part:

"...The planning commission shall cause to be prepared recommendations governing the control of subdivisions within the area of its jurisdiction..." and "...shall assume and perform all of the powers, duties and functions hereto vested in the Wichita City Planning Commission, in the Sedgwick County Planning Commission and in the previously constituted Wichita-Sedgwick County Metropolitan Area Planning Commissions."

The Subdivision Rules and Regulations, as amended, and which are controlling here were approved and adopted by both governing bodies. The purposes are expressly stated to include provisions for "drainage" and "to exercise the powers conferred by KSA 12-705 and KSA 19-2918." (See Article 2). Said statutes authorize the adoption of rules and regulations that may provide as a condition to the approval of any plat compliance with requirements fixing the extent to which and the manner in which protection to the public health and general welfare is assured. Flood control is specifically referenced in both statutes.

The Subdivision Rules and Regulations implement the authority and power granted by the State statutes and particularly Sections 7-103(A)(B) and 7-205(B). Either dedication or easement requirements are authorized. The fact that property in a given locality is not specifically identified in the Rules and Regulations covering proposed subdivision plats does not detract from the authority imposing easement or dedication requirements in the case at hand. Nor does the fact that the Rules and Regulations may appear to be general and lacking to some degree in formality detract from the

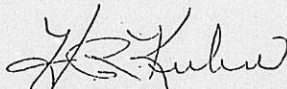
Mr. Bob Laken  
Page 2.  
August 25, 1975

authority to impose easement or dedication requirements.

The statutes and regulations referred to are, in my opinion, plainly directory and sufficiently declare a broad policy directed toward the objectives sought to be effected, i.e., the protection and preservation of the safety, health and general welfare of the community and its inhabitants which could be adversely affected by flood waters. Our Kansas Supreme Court has addressed itself to the question presented when reviewing dedication requirements imposed as a condition to subdivision plat approval. In clear and concise language it recognized that the statutes are "plainly directory". They declare broad policy but leave the details to administrative discretion. In adopting subdivision rules and regulations a commission cannot be expected to prescribe regulations in advance to meet every conceivable situation which might be presented to it nor can it be expected to have regulations available covering all conditions precedent to approval. (Burke & McCaffrey, Inc. v. City of Merriam, and Hudson Oil Co., v. City of Wichita). This is particularly true where it has been recorded as a general policy by the governing body ...even though the recorded policy does not have the dignity of a rule or regulation.

In connection with the matter at hand, it cannot be seriously argued that flood control requires the assurance of the preservation of the river's carrying capacity. This consideration is essential to the proper function of the whole area flood control system. Millions of dollars of property and numerous lives are protected by the flood control system so it is imperative that obstructions of every kind and nature must be avoided. Any interference, however minor, could result in disastrous consequences to property and life.

Because of the foregoing reasons and because the requirement of dedication confers considerably more effective control in the authority charged with the responsibility of adequate flood control (as compared with the granting of an easement), the required conditions in the instance at hand seem proper.



H. R. Kuhn  
Assistant City Attorney

HRK:mb  
cc: John Dekker

August 29, 1975

Mr. Henry Blase, Attorney  
2302 Hood  
Wichita, Kansas 67204

Re: S/D 75-11 - Final Plat of  
WILDWOOD ADDITION

Dear Mr. Blase:

At its regular meeting on August 28, 1975, the Metropolitan Area Planning Commission considered the above plat, and inasmuch as you had requested a deferral of two weeks, its action was to continue the matter to the next regular meeting on September 11, 1975, the meeting to start at 1:30 p.m. in Room 401 City Building Annex, 104 South Main.

Please call if you have any questions.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:ber

cc: Ray Woods, 4707 Sullivan Road 67204  
Verne Strong, 1315 Sullivan Circle 67204  
Kenneth O. Taylor, 1542 South St. Francis 67211  
Dean Sellers, Assistant City Engineer  
M. S. Mitchell, Flood Control Supervisor

MAPC FILE Copy

J. Copie

MAPC Meeting  
August 14, 1975  
Re: Wildwood Addition

HENRY BLASE: Appearing for the applicant. I would like to restate the position I brought to you the last meeting and that is that the requiring of an outright dedication of ground for riverbank and flood control purposes is contrary to state law. It cannot be done. The statutes I cited to you the last time have not been changed; they are still in effect. Those were KSA 12-635 - states that the governing body of any city of the state of Kansas in or near or through which flows a natural water course, the overflow from which in the event of high water is liable to cause injury to any bridge, street, alley, public or private property, may in order to prevent said injury, acquire by condemnation and eminent domain, gift or purchase within or without the city limits within 10 miles therefrom, the land and easements necessary to construct the drains and canals and whatever is needed. It doesn't say that they may acquire and require land through dedication. It just gives that as one alternate. It doesn't say it must be imposed.

The other one is KSA 82a-307 and it states that it gives the governing body the authority to enter upon private property for the purpose of cleaning and maintaining banks and channels, keep streams free of drift, trees and other obstructions and for the purpose of reducing floods and overflows.

This means that the governing body at the present time has an easement into said land through this statute. It doesn't need another easement and I think this is really what we are getting at. Flood control feels they should have the property to use for removing obstructions, cleaning the banks and preventing floods. Well the same powers to do so are granted by state statute, but the state statute does not give them the land that is in question. It merely says they have the right to enter on that land.

And to go a little bit farther, there are also some case law on this subject in Kansas which states that, I quote from Carvella (?) Drainage District vs. Missouri Pacific, 99 Kansas 188, says it may therefore be said generally that when a state creates an agency to serve its public needs and confers administrative powers upon it, whatever be the language of the statute conferring such powers, a just and reasonable exercise of such powers is intended, and the power to make or exercise unreasonable, arbitrary and confiscatory orders is not intended, and I submit that what is happening here is a confiscatory order against this land owner to take his property without due process of law.

This brings me to another point and that is the 14th amendment of the Constitution of the United States, which says no state shall make or enforce any law which shall abridge the privileges or amenities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law.

And that is what we are talking about here. This landowner has not had due process of law. The State statutes tells you how that can be done. You can have through condemnation process, he can make it a gift and that is due process, or it can be done through an outright purchase.

Requiring his dedication of this property does not give due process of law, violates the 14th amendment of the Constitution and cannot legally be done. For this reason, I request this Planning Commission to delete the requiring of this drainage dedication on this plat prior to its approval.

LAW OFFICES OF  
**BLASE, BLASE & GRIFFITH**  
CHARTERED  
BRYNWOOD PLACE - 2302 NORTH HOOD  
WICHITA, KANSAS 67204

TELEPHONE  
(316) 838-7733

ROBERT E. BLASE  
HENRY H. BLASE  
WILLIAM R. GRIFFITH

August 26, 1975

Mr. Jack H. Galbraith  
Chief Planner  
Metropolitan Area Planning Department  
City Building Annex  
104 South Main Street  
Wichita, Kansas 67202

Re: S/D 75-11 - Final Plat of  
WILDWOOD ADDITION

Dear Mr. Galbraith:

The above referenced plat is scheduled to be on the agenda of the Metropolitan Area Planning Commission's meeting for the 28th day of August, 1975. Due to the fact that I must be out of town on that date, I would like to request that this matter be deferred until the next regularly scheduled meeting of said Commission on the 11th day of September, 1975.

If this is not possible, please advise by telephone. Thank you for your time and attention to this matter.

Very truly yours,

*Henry H. Blase*

Henry H. Blase  
of BLASE, BLASE & GRIFFITH

HHB/lj

*Advised by phone on 8/27/75  
that I believe the P.C. would  
grant his request. JHD*



Timmermeyer 1-1-1  
File

Received

APR 13 1964

THE CITY OF WICHITA  
OFFICE OF Assistant City Attorney

DATE April 15, 1964

TO Jack H. Galbraith, Senior Planner  
FROM Lawrence E. Curfman

SUBJECT L. J. Timmermeyer Addition -  
Stream and Drainage Right-  
of-Way Acquisition

This is in reply to your memorandum of March 13, 1964, to which was attached a memorandum dated March 4 from Mr. Wilton, containing the ideas and comments of M. S. Mitchell with reference to the subject problem. We have discussed this matter with Mr. Mitchell and yourself, and I shall attempt to outline in this memo not only the applicable law, but some general observations on what appear to be desirable future policies.

The basic question is whether or not, in connection with a plat involving river banks, to require dedication to the public or permit legal title to remain in the landowner and secure only an easement. There are further problems with respect to the extent of the dedication or the extent of the easement. For example, if an easement only, should it be a drainage easement or should it include the right to plant and remove shrubs, trees and growing plants and also to remove man-made obstructions. If a dedication, should it be a dedication for drainage, river maintenance, flood control and river beautification, or should it include all reasonable and proper public purposes such as street right of way and public utility lines.

Policies in the past have not been consistent. The city owns legal title to some portions of some river banks, the Park Board owns title to other portions, stream maintenance has been undertaken in other instances apparently without any legal right, but with the acquiescence of the abutting riparian owners. In still other cases, there are various types of easements.

A brief examination of the historical aspects of river bank maintenance would probably be in order. Under the act admitting Kansas to the Union, legal title to the stream beds of streams regarded as being navigable passed to the State of Kansas. Determining, however, exactly what passed is difficult, because in the original government survey, river bank meander lines are difficult to retrace. Also, rivers have moved since the survey was made, well over 100 years ago. In the case of streams such

Jack H. Galbraith, Senior Planner  
Page 2  
April 15, 1964

as the Little Arkansas River, abutting owners own the entire stream bed, but deeds and other transfers made since the original government patents have confused this ownership, in that frequently a deed will be to the "high bank line", low water line", "center of the main channel" and similar ambiguous and impossible to relocate lines.

In an attempt to prevent channel blocking, and in order to enable the full stream carrying capacity of rivers to be utilized, the legislature in 1931 provided for determination of established bank lines. This is G.S. 1949 82a307(a), et seq. The County Engineer has in Sedgwick County established bank lines with the approval of the Division of Water Resources, State Board of Agriculture, along a number of streams. Establishing bank lines, however, does not change legal title, but merely permits the removal of obstructions placed between the established bank lines after their establishment and without cost to the county, except in a few instances.

Because the preservation of the rivers' carrying capacity is important to the proper functioning of the whole flood control system, the Wichita Valley Center Flood Control organization feels that it should have a clear right to remove obstructions, clean, widen and straighten the channel, and generally insure that the rivers will perform the function planned for them in connection with the flood control project. If abutting riparian property owners have legal title, and the city (or the county) a mere drainage easement, question is frequently presented whether an obstruction is really an interference with the paramount and dominant use. Such items as ornamental shrubs, flowers, trash burners, fences, boat docks, steps and ladders can be said not to interfere with the drainage easement, but, also, from the standpoint of the flood control authorities, they may constitute obstructions. Since literally millions of dollars of property are protected by the flood control system, interference with it in any minor respect should not be tolerated.

It would, therefore, be the writer's recommendation that wherever possible, in connection with a plat, the landowner should be required to dedicate to the public such portion of the river or stream bank and bed as the flood control authorities deem necessary, such dedication to be a broad general dedication for "street, public utility, drainage, river bank maintenance, flood control and river beautification purposes".

Respectfully submitted

Lawrence E. Curfman  
Assistant City Attorney

LEC/rlh  
cc: N.S. Mitchell  
John Dekker, Director of Law

## OBSTRUCTIONS IN STREAMS

the provisions of section 82a-301 and 82a-303 of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined any sum not exceeding one thousand dollars. In the event that any obstruction or structure is about to be constructed or created, or is constructed, created or maintained, or any change or diminution of the course, current, or flow of the river or stream or any change in the cross section of the bed or channel of any river or stream is created or caused to be created by any such person, firm, association or corporation, without the approval of plans by the chief engineer, then upon petition of the state of Kansas on relation of the attorney general, the construction or creation of any such obstruction or structure shall be enjoined by any court of competent jurisdiction and such court in its discretion may by mandatory injunction require the removal or modification of any such structure or obstruction. [L. 1929, ch. 203, § 5; L. 1945, ch. 389, § 1; June 28.]

## Research and Practice Aids:

Hatcher's Digest, Drains & Drainage Districts § 3; Levees § 1; Waters § 6.

## CASE ANNOTATIONS

1. Cited in holding 24-1071 valid. State, ex rel., v. Stonehouse Drainage Dist., 152 K. 188, 189, 102 P. 2d 1017.

2. Section authorizes preventive not mandatory injunction. State, ex rel., v. Ross, 159 K. 199, 200, 202, 203, 152 P. 2d 675.

3. State cannot maintain mandatory injunction proceeding for benefit of private parties. State, ex rel., v. Barnes, 171 K. 491, 492, 494, 233 P. 2d 724.

**82a-306.** [L. 1929, ch. 143, § 1; Repealed, L. 1931, ch. 318, § 6; March 12.]

## CASE ANNOTATIONS

1. 1929 act discussed; supervisory power over drainage districts conferred on division of water resources. State, ex rel., v. Dolese Bros. Co., 151 K. 801, 811, 812, 102 P. 2d 95.

**82a-307.** Cleaning and maintaining banks and channels by county; petition; claims for damages. Upon petition of fifty (50) taxpayers of any county of this state, owning land in the flood plain of any river in such county, the board of county commissioners of each county in this state are hereby authorized within their respective jurisdictions to clean and maintain the banks and channels of the streams and watercourses within definitely established bank lines, as provided in section 82a-307a of the General Statutes of 1949, and to keep said streams free of drift, trees and other obstructions, for the pur-

pose of reducing floods and overflows; and for the purposes aforesaid the said board of county commissioners may enter upon private property, if necessary, to clean and maintain such streams, doing as little damage as possible thereto, and when material damage shall be done to any property, said commissioners shall allow reasonable compensation therefor, when claimed by the owner thereof, if said claim is presented in writing to said board within ten (10) days from the date of the removal of said obstruction; and that nothing in this act shall be construed to permit the board of county commissioners of any county to remove or destroy any permanent improvement, including dams and bridges, in and over such streams, providing such improvements, dams or bridges have been lawfully placed thereon. [L. 1929, ch. 143, § 2; L. 1931, ch. 318, § 1; L. 1951, ch. 527, § 1; June 30.]

Source or prior law: 19-238.

Cross References to Related Sections:

Board of county commissioners, see ch. 19, art. 2.

Research and Practice Aids:

Hatcher's Digest, Drains & Drainage Districts §§ 7, 16; Levees § 3.

## CASE ANNOTATIONS

1. 1931 act discussed; supervisory power over drainage districts conferred on division of water resources. State, ex rel., v. Dolese Bros. Co., 151 K. 801, 812, 102 P. 2d 95.

**82a-307a.** Same; preliminary survey; approval of plan by state engineer. That before doing the work provided for in section 1 [82a-307] of this act the board of county commissioners shall, by resolution, duly passed, adopt this act, and shall cause a survey to be made showing definitely the bank lines to which said stream is to be cleaned and maintained, obstructions to be removed and the mileage of the banks of such streams in that county, and shall submit to the division of water resources, state board of agriculture, a map showing the bank lines so established to which it is proposed to clean and maintain the stream and showing obstructions which it is proposed to remove. Such plan shall have had the approval of the chief engineer of the division of water resources before the board is authorized to proceed with the work. [L. 1931, ch. 318, § 2; March 12.]

Revisor's Note:

Referred to in 82a-311.

**82a-303.** Same; expenses and damages; tax levy, when. Any expenses incurred in removing such obstructions as are mentioned



Sun photo by John Monroe

Ray Woods bought 21 acres of land bordering the river for building purposes — but now MAPD wants 7 acres for drainage right-of-way.

## Can government take his land?

By **LINDA CLEMENT**, special writer

Can city or county government make a citizen give away private land without compensation or due process of law?

Maybe so, at least in Wichita and Sedgewick County.

In a case currently being considered by the Metropolitan Area Planning Division (MAPD), one-third of some river property owned by Ray Woods of Wichita is being expropriated by the MAPD for drainage right-of-way, with no compensation to Woods for his loss, and no legal process.

Woods purchased about 21 acres of land bordering the Little Arkansas River just south of town for building purposes two years ago. Woods planned to build a house on each of the eight two-acre lots on the property, as well as a street running through the property. He hired a civil engineer to draw up a plat, or map of planned improvements, for the property and in July submitted it to the MAPD for approval of a building permit.

Woods was told he would not be given a building permit until he dedicated about seven acres of the portion of land bordering the river to the city for drainage right-of-way. Woods declined to estimate the value of the land.

MAPD officials told *The Sun* that Woods would not be given the permit until the land was dedicated.

Woods immediately obtained the services of a lawyer, Henry Blase, who appeared at a meeting of the MAPD and protested the dedication.

Blase cited a Kansas law that gives a governing body the authority to enter private property for the purpose of maintaining banks and channels, keeping streams free of debris,

trees and other obstructions and for the purpose of reducing floods and overflows.

"In other words," Blase said, "everything that can be done under existing state law can be done without anybody giving anybody anything." He also cited the Fifth Amendment to the U.S. Constitution, which states, "Nor shall

---

"If we've committed a wrong  
in this case, then we've committed  
the same wrong thousands of times."

---

private property be taken for public use without just compensation," and the Fourteenth Amendment, which states, "Nor shall any state deprive any person of life, liberty or property without due process of law."

According to state law, the government can expropriate private property in three ways: by condemnation and eminent domain (purchasing the land through a lawsuit), by direct purchase or by voluntary gift.

"What they're actually doing," said Blase, "is creating a fourth way to acquire land — coercion." Woods simply terms it "blackmail."

When Blase told this to the MAPD, he said they told him, "It happens in business every day."

MAPD asked for the opinions of Asst. City Atty. H.R.

Kuhn and county counselor Jack Turner. Both cited state law that "authorizes the city planning commission . . . to adopt and amend regulation and amend regulations governing the subdivision of land . . ." Also cited were two previous cases (Burke & McCaffrey, inc. vs. City of Merriam, and Hudson Oil Co. vs. City of Wichita) in which it was determined that "a commission cannot be expected to prescribe regulations in advance to meet every conceivable situation which might be presented to it."

With regard to the above state law, Blase said, "Sure, they have the power to promulgate regulations, but what I'm saying is that these regulations are illegal. They keep on saying they have the right to do this, but they don't say where they get the right."

Wednesday the case went before the county commissioners and Blase and Turner presented their arguments. The county commission decided to wait for an opinion from the attorney general, and at this moment the matter is pending.

Asked about the case, Asst. City Atty. Kuhn said, "Every time the word 'dedication' is used, some landowner is going to bring up his constitutional rights. We have a valid and reasonable case, in my opinion."

Dave Bayouth, Metropolitan Area Planning Commission chairman, said, "If we've committed a wrong in this case, then we've committed the same wrong thousands of times."

County counselor Jack Turner, who presented the case to the county commissioners, refused to comment.

## Right-of-Way Is Challenged

The city and county's ability to protect the banks along the Arkansas River was challenged Thursday by an attorney arguing against flood control right-of-way requests by the city-county planning commission.

The planning commissioners deferred action on the final plat of Wildwood Addition, which abuts the river in an area on the north side of 69th Street North, west of Meridian.

The Metropolitan Area Planning Commission was told that the city or county had no legal ground to require dedication of the right-of-way for flood control maintenance.

Attorney Henry Blaze, representing the landowner, quoted from several state statutes which he contended allowed government to maintain the river banks privately owned.

The law did not, he emphasized, grant powers to require dedication of land during the platting process.

Blaze had raised the same issue during a subdivision committee meeting where the plat was first reviewed. The platting consideration was deferred from a previous planning commission meeting to allow a legal opinion from the city and county attorneys.

Planning director Bob Lakin said that a written opinion from the city attorney's staff stated briefly that the planning commission could require the right-of-way.

Lakin said that the county counselor — in a phone conversation — also had indicated the planning commission could require the right-of-way.

Blaze said the city and county attorneys had provided opinions but did not cite statutes.

The city and county attorneys, Blaze said, "are trying to perpetuate a policy without basing their opinion on law."

Planning commission chairman Harlan Kamen suggested a deferral to allow the city and county attorneys an opportunity to prepare a case and present defense of their opinions at the next planning commission meeting.

City Commissioner James Donnell about a month ago had suggested that the city should consider what methods the city has in protecting the river banks for flood control and beautification purposes.

Planners and engineers, while reviewing the existing policy, told The Eagle that the protection was offered through routine platting procedures.

However, with the question raised during Thursday's planning commission meeting, those routine methods of protecting the river banks may be jeopardized.

"We have always in the past just had the landowner agree to the dedication," Kamen said. "This is the first time somebody has come and said we didn't have that right."

August 15, 1975

Mr. Henry Blase, Attorney  
2302 Hood  
Wichita, Kansas 67204

Re: S/D 75-11 - Final Plat of  
WILDWOOD ADDITION

Dear Mr. Blase:

At its regular meeting on August 14, 1975, the Metropolitan Area Planning Commission reconsidered the above-captioned plat. After considerable discussion, their action was to again defer this case for two weeks so that we could again request a written opinion from the County Counselor. The Commission also requested that we ask representatives from the City Department of Law and the County Counselor to attend the next Planning Commission meeting.

Based on this action, subject plat will be rescheduled for the next regular meeting of the Planning Commission, which will be on Thursday, August 28, 1975, the meeting to start at 1:30 p.m. in Room 401 of the City Building Annex, 104 South Main.

If you have any questions, please call.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:ber

cc: Ray Woods, 4707 Sullivan Road 67204  
Verne Strong, 1315 Sullivan Circle 67204  
Kenneth O. Taylor, 1542 south St. Francis 67211  
Dean Sellers, Assistant City Engineer  
M. S. Mitchell, Flood Control Supervisor

REFERENCE SLIP

6/11/75

TO

K. O. Taylor

FROM: Larry L. Henry

District Conservationist

- ACTION
- APPROVAL
- AS REQUESTED
- FOR COMMENT
- FOR INFORMATION
- INITIALS
- NOTE AND FILE
- NOTE AND RETURN
- PER PHONE CALL
- RECOMMENDATION
- REPLY FOR SIGNATURE OF
- RETURNED
- SEE ME
- YOUR SIGNATURE

REMARKS

Sent for your information.



FROM

Larry L. Henry

DC

MAPP

*Henry*

INVENTORY & EVALUATION

\* { INDIVIDUAL  
GROUP  
UNIT OF GOVERNMENT

REQUESTED BY Wildwood Addition LOCATION 69th N. & Meridian

ASSISTED BY Larry L. Henry, District Conservationist DATE 6/5/75

~~PROBLEM~~ SITUATION: Specific Problems: This area has a high wind erosion potential due to the soils on this area.

Solutions: 1. Disturb only the area needed for construction.  
2. Remove only those trees, shrubs, and grasses that must be removed for construction; protect the rest to preserve their esthetic and erosion-control values.

3. Temporarily stabilize each segment of graded or otherwise disturbed land, including the sediment-control devices not otherwise stabilized, by seeding and mulching or by mulching alone. Permanently stabilize these areas as work on the land is completed. Both temporary and permanent stabilization

~~SUGGESTED SOLUTIONS~~ practices are to be installed according to Sedgwick County Conservation District Standards and specifications.

The following are adapted perennial grasses and should be seeded at the following rates: Native bluestem mix, 2 pounds per 1,000 square feet, acre. Tall fescue, 2 pounds per 1,000 square feet, acre. Bromegrass, 2 pounds per 1,000 square feet, acre. Bluegrass, 2 pounds per 1,000 square feet, acre. Apply nitrogen fertilizer at the rates listed below or have the soil tested and fertilize accordingly. Tall fescue, 2 pounds per 1,000 square feet, acre.

\* Circle appropriate category.

# INVENTORY & EVALUATION

\* { INDIVIDUAL  
GROUP  
UNIT OF GOVERNMENT

REQUESTED BY \_\_\_\_\_ LOCATION \_\_\_\_\_

ASSISTED BY \_\_\_\_\_ DATE \_\_\_\_\_

SITUATION: Bromegrass, 2 pounds per 1,000 square feet, acre.

Bluegrass, 2 pounds per 1,000 square feet, acre. Adapted

perennial grasses for sodding are Zoysia, Fescue, and Bluegrass.

4. If additional information or on-site assistance is needed

relative to soils, seeding procedures, structure design or

related problems, call this number: 943-9471.

SUGGESTED SOLUTION(S): \_\_\_\_\_

\* Circle appropriate category.

SCCD-Cons-5 (6/75)

MAPD

RESOURCE MANAGEMENT INVENTORY FOR URBANIZING LAND

Property Name The Park

MAILED TO:

Location SE Corner Maize Road & Pawnee

Kenneth O. Taylor

Date 7/3/75

Name -

K. O. Taylor

Prepared by Larry L. Henry, District Conservationist,  
USDA-Soil Conservation Service,  
4100 Maple, Wichita, Kansas 67209  
Phone: 943 9471

Firm

Phone -- Date

111 \_\_\_\_\_

119 \_\_\_\_\_

102 \_\_\_\_\_

104 \_\_\_\_\_

Requested by: Wichita-Sedgwick County Metropolitan  
Area Planning Commission

\*\*\*\*\*

A. SOIL TYPE: Milan loam-1 to 3% slope. This is a deep well drained soil.

Moderate limitation for basements-severe limitation for septic tanks-  
severe limitation for roads and streets.

B. SITUATION: This is a large area that has a wind erosion potential if not  
covered with grass or development.

Conservation Starts When Construction Starts. A Ground Plan Outdoors Is As  
Important As A Floor Plan Inside.

C. EROSION CONTROL RECOMMENDATIONS: (The recommendations which apply to the above  
named property will be indicated by a checkmark.)

- 1. Disturb only the area needed for construction.
- 2. Remove only those trees, shrubs, and grasses that must be removed for construction; protect the rest to preserve their esthetic and erosion-control values.
- 3. Stockpile topsoil and protect it with anchored straw mulch or jute mat material.
- 4. Disturbing as small an area as possible, install streets, curbs, water mains, electric and telephone cables, storm drains, and sewers in advance of home or other building construction.
- 5. Install erosion and sediment control practices according to the Sedgwick County Conservation District standards and specifications.
- 6. Temporarily stabilize each segment of graded or otherwise disturbed land, including the sediment-control devices not otherwise stabilized, by seeding and mulching or by mulching alone. Permanently stabilize these areas as work on the land is completed. Both temporary and permanent stabilization practices are to be installed according to the Sedgwick County Conservation District standards and specifications.

\* CONTINUED \*



The following are adapted perennial grasses and should be seeded at the following rates:

STANDARD RATES:

Native bluestem mix, 3 pounds per 1,000 square feet  
Tall fescue, 3 pounds per 1,000 square feet  
Brome grass, 3 pounds per 1,000 square feet

SPECIAL RATES: \_\_\_\_\_

Apply nitrogen fertilizer at the rates listed below or have the soil tested and apply fertilizer accordingly.

STANDARD RATES:

Tall fescue, 2 pounds per 1,000 square feet  
Brome grass, 2 pounds per 1,000 square feet

SPECIAL RATES: \_\_\_\_\_

Adapted perennial grasses for sodding are fescue, zoysia, and bluegrass.

- 7. Loose-pile material that is excavated for building construction purposes. Keep it loose-piled until it is used for foundation backfill or until the lot is ready for final grading and permanent vegetation.
- 8. Stabilize each lot within 60 days after work starts on home or other building construction.
- 9. Backfill, compact, seed and mulch trenches within 60 days after they are opened.
- 10. Discharge water from outlet structures at nonerosive velocities.
- 11. If additional information or on-site assistance is needed relative to soils, seeding procedures, structure design or related problems, call this number: 316 943 9471.
- 12. Divert foreign runoff water around area during construction.
- 13. Remove all debris such as tree stumps, scrap lumber, mortar or concrete, and rocks. Do not bury them; wood will eventually rot and cause settling; rocks, mortar and concrete can cause real difficulties in lawn maintenance and later construction.
- 14. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Distribution: Original to Developer and/or Owner  
Copy to Metropolitan Area Planning Department Staff  
File Copy: Sedgewick County Conservation District

July 29, 1975

Jack Turner, County Counselor

Robert A. Lakin, Director of Planning

Drainage right-of-way dedications.

A Subdivision plat, S/D 75-11 - Wildwood Addition currently being processed by our office was recently considered by the Subdivision Committee and the Planning Commission. One of the requirements of the plat approval is that the applicant dedicate a drainage right-of-way for riverbank, flood control, bank maintenance and river beautification purposes. This dedication would involve approximately one-half of the applicant's property. The applicant's attorney has raised the question of the legality of requiring the dedication as a part of the platting process. The Planning Commission action on the plat was to defer the case until opinions could be obtained from the City and County legal departments concerning the authority of the Planning Commission or governing bodies to require the dedication of floodways, drainageways or riverbanks.

The subject property is located on the north side of 69th Street North along the west bank of the Little Arkansas River and is comprised of some 21.3 acres of land. The property is just beyond the 3-mile ring of the City of Wichita and therefore the final approval of the plat and the acceptance of the dedications thereon is vested in the County Commission. The applicant's attorney, Mr. Henry H. Blase, contends that under State Statute K.S.A. 12-635, the only way a city can obtain drainage right-of-way is by purchase, condemnation, or as a gift from the landowner. Therefore, the Planning Commission nor the governing body is empowered to require dedications of drainage rights-of-way. Mr. Blase also contends that under the provisions of K.S.A. 82a-307, the County already has the authority to enter on private property to clean and maintain banks and channels within definite established bank lines. We have advised both the applicant and his attorney Mr. Blase that the outright dedication of land for drainage and riverbank rights-of-way is provided for in the M.A.P.C. Subdivision Regulations under Sections 7-103(A) (B) and 7-205 (B). Section 7-103(A) (B) provides that no land subject to flooding shall be subdivided for residential use or any other use unless improvements meeting the requirements of the Flood Control Office or available published standards are made on the land.

Jack Turner  
County Counselor  
July 29, 1975  
Page 2

Section 7-205 (B) states in part: "If a subdivision is traversed by a water course, drainageway, channel or street, then a storm water easement or drainage right-of-way shall be provided." As you are aware, the MAPC Subdivision Regulations for the county were developed and adopted to exercise the powers conferred by K.S.A. 19-2918 and by the City of Wichita under K.S.A. 12-705. These two statutes provide for the adopting of platting regulations which contain provisions for minimum street widths, easements, open spaces, building lines, public right-of-way, flood protection and flood plain regulations, lot sizes, etc. Also attached herewith is a copy of a legal opinion provided by the City Law Department to the Flood Control office which discusses drainage dedications on plats.

A copy of this memorandum is being forwarded to the City Department of Law for their response and we would appreciate you reviewing this matter and giving us your opinion on the question of whether or not the Planning Commission and governing bodies have the power to require dedications of drainage rights-of-way on plats as a part of plat approval. If we can be of any assistance in aiding your review or if you have any questions concerning this matter, please call.

RAL:CLN:rme  
Attachments

Robert A. Lakin, Director of Planning

cc: Henry H. Blase, Attorney, 2302 Hood, 67204  
John Dekker, Director of Law

LAW OFFICES OF  
**BLASE, BLASE & GRIFFITH**  
CHARTERED  
BRYNNWOOD PLACE - 2302 NORTH HOOD  
WICHITA, KANSAS 67204

ROBERT E. BLASE  
HENRY H. BLASE  
WILLIAM R. GRIFFITH

TELEPHONE  
(316) 838-7733

July 24, 1975

Mr. Jack H. Galbraith  
Senior Planner  
Metropolitan Area Planning Commission  
City Building Annex  
104 South Main Street  
Wichita, Kansas 67202

Re: S/D 75-11 Final Plat of  
WILDWOOD ADDITION

Dear Mr. Galbraith:

As per your request at todays planning commission meeting, the following two statutes are the ones relied upon in my presentation to the commission, to wit:

K. S. A. 82a - 307  
K. S. A. 12 - 635

You might note that the latter statute gives jurisdiction to the city to acquire land for flood control purposes within 10 miles outside the limits of that city. This might be construed as giving the city sole jurisdiction in this area.

If I may be of further assistance in this matter, please advise.

Very truly yours,



Henry H. Blase  
of Blase, Blase & Griffith

HHB:lj



July 24, 1975

Mr. Jack H. Galbraith  
Senior Planner  
Metropolitan Area Planning Commission  
City Building Annex  
104 South Main Street  
Wichita, Kansas 67202

Re: S/D 75-11 Final Plat of  
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Very truly yours,

Henry H. Blase  
of Blase, Blase & Griffith

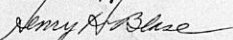
HHB:l j

July 26, 1975

Dear Mr. Galbraith:

In reply to your letter of July 25, 1975, I refer you to my letter of July 24th. If the County Counselor wishes to discuss this matter further with me, I will be glad to review the various legal and constitutional questions in issue in this matter. Please advise.

Sincerely,

  
Henry H. Blase  
of BLASE, BLASE & GRIFFITH



July 25, 1975

Mr. Henry Blase, Attorney  
2302 Hood  
Wichita, Kansas 67204

Re: S/D 75-11 - Final Plat of  
WILDWOOD ADDITION

Dear Mr. Blase:

At its regular meeting on July 24, 1975, the Metropolitan Area Planning Commission considered the above-captioned plat, and after considerable discussion concerning the legal issues you raised, it was the action of the Commission to defer this plat, and they requested an opinion from the Legal Departments. I am not sure we understood all the issues you were raising, however, I thought the main point was that the Planning Commission or governing bodies have no authority to require the dedication of floodways, drainageways, or riverbanks for the purpose of drainage, riverbank maintenance, flood control or river beautification.

Would you please provide, at your earliest convenience, points of contention so that they may be passed on to the Legal Departments for review?

If you have any questions, please call.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:ber

cc: Ray Woods, 4707 Sullivan Road 67204  
Verne Strong, 1315 Sullivan Circle 67204  
Kenneth O. Taylor, 1542 South St. Francis 67211  
Dean Sellers, Assistant City Engineer  
M. S. Mitchell, Flood Control Supervisor

July 24, 1975

John Dekker, City Attorney  
Curtis L. Newby, Junior Planner

S/D 75-11 - WILDWOOD ADDITION - generally  
located on the north side of 69th Street North  
in an area west of Meridian.

This memorandum is to request the attendance of Mr. Joe Bogle  
of your office at the Planning Commission hearing July 24, 1975,  
concerning the discussion of the above referred to plat. The  
plat is being discussed because of the request of a riverbank  
dedication which would involve approximately one-half of subject  
property.

It is my understanding that the attorney, Henry H. Blase, has  
been in contact with your office and discussed this matter with  
Mr. Bogle. I should point out that the property is located beyond  
the 3-mile ring of the City of Wichita and therefore the County  
Attorney's office should also be involved in this matter, however,  
since your office was approached concerning the dedication, we  
still feel that Mr. Bogle should be present at the meeting.

If you have any questions concerning this matter, please call.

Curtis L. Newby, Junior Planner

CLN:rme

cc: Joe M. Bogle, Assistant City Attorney

July 24, 1975

Ray Bruggeman, Director of Public Works

Curtis L. Newby, Junior Planner

S/D 75-11 - WILDWOOD ADDITION - generally located on the north side of 69th Street North in an area west of Meridian.

This memorandum is to request that M. S. Mitchell of the Maintenance Department be present at the Planning Commission hearing of July 24, 1975 for discussion of the above referred to plat. The plat is being discussed because of Mr. Mitchell's request for about one-half of the subject property to be dedicated for riverbank and maintenance purposes. The applicant is protesting the outright dedication of the property and has offered in lieu of the dedication a riverbank easement. The subject property is located beyond the 3-mile ring of the City of Wichita and therefore Mr. Mitchell has been acting in his capacity as Director of Flood Control office.

If you have any questions concerning this matter, please call.

Curtis L. Newby, Junior Planner

CLN:rme

cc: M. S. Mitchell, Maintenance-Flood Control

July 18, 1975

Kenneth O. Taylor  
1542 South St. Francis  
Wichita, Kansas 67211

Re: S/D 75-11 - Final plat of  
WILDWOOD ADDITION.

Dear Mr. Taylor:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, July 17, 1975, the above captioned plat was considered. The action of the Committee was to recommend that this plat be forwarded to the M.A.P.C. for a determination on the requirement for flood-control right-of-way to be dedicated with this plat. Additional conditions of approval are:

- A. The deflection angles referred to in the legal description of the engineer's text shall be indicated on the face of the plat.
- B. A temporary cul-de-sac shall be granted by separate instrument at the north end of Edwards Avenue. A temporary 30-foot building setback from said cul-de-sac shall be included in said instrument. The properly executed instrument shall be submitted to the Planning Department for forwarding with the plat to the Board of County Commissioners.
- C. The applicant shall be advised that the existing mobile home indicated on the preliminary plat shall be removed from the street right-of-way prior to recording of the plat. A letter stating that this has been done shall be submitted to the Planning Department.
- D. The applicant shall contact Kansas Gas & Electric relative to making satisfactory arrangements for relocation or removal of the existing electric service line serving the existing mobile home on subject property. A letter obtained from said company stating that said arrangements have been made shall be submitted to the Planning Department.

July 18, 1975  
S/D 75-11  
Page 2

- E. The applicant shall guarantee the improvement of Edwards Avenue in accordance with suburban street standards since subject plat is a suburban subdivision. The County Engineer shall be contacted regarding this matter. In addition, appropriate road plans and profiles shall be submitted to the County Engineer for his approval. *dk*
- F. The applicant's engineer shall submit a site grading plan and closure data to Don Yelton of the Building, Planning and Inspection Office. A letter obtained from Mr. Yelton approving said plan shall be submitted to the Planning Department.
- G. Appropriate easements shall be indicated on the face of the plat for the Continental Pipeline Company's pipelines crossing subject property. A letter from the Continental Pipeline Company shall be submitted to the Planning Department setting forth that easement as shown on the final plat is acceptable.
- H. Any raising or lowering of the Continental Pipeline necessitated by the improvement of Edwards Avenue shall be at the sole expense of the applicant.
- I. Recording of the plat within 30 days after approval by the Board of City Commissioners.

Enclosed with the applicant's copy of this letter is a list of the five methods which have been adopted as being acceptable for guaranteeing improvements required in the approval of plats. Forms for the bond and irrevocable letter of credit are available from this office.

The enclosed "marked" copy of the final plat is for your information and files.

This matter will be forwarded to the Planning Commission for its consideration on Thursday, July 24, 1975, at 1:30 p.m. If you should have any questions concerning this matter, please call.

Sincerely,

Curtis L. Newby  
Junior Planner

CLN:rme  
Enclosure

cc: Ray Woods, 4707 Sullivan Road, 67204  
Verne Strong, 1315 Sullivan Circle, 67204  
Henry Blase, Attorney, 2302 Hood, 67204  
Dean Sellers, Assistant City Engineer

S/D NO. 75-11 Name WILDWOOD ADDITION  
Date Application Rec'd. 2-6-75 Preliminary Approval 6-5-75  
Scheduled S/D Meeting 7-17-75

DESCRIPTION

General Location North side of 69th Street North in an area west of Meridian.

Owner Ray Woods  
Surveyor/Engineer Kenneth O. Taylor  
Address 1542 South St. Francis Phone 264-4072

- |                                |                                   |                                      |                        |
|--------------------------------|-----------------------------------|--------------------------------------|------------------------|
| 1. Gross Acreage of Plat       | <u>21.3</u>                       | 7. Lineal Feet of New Streets:       |                        |
| 2. Number of Lots:             |                                   | a. <u>50</u> R/W <u>400</u> ft.      |                        |
| Residential                    | <u>8</u>                          | b. <u>70</u> R/W <u>1295</u> ft.     |                        |
| Commercial                     |                                   | c. _____ R/W _____ ft.               |                        |
| Industrial                     |                                   | d. _____ R/W _____ ft.               |                        |
| Other                          |                                   | e. _____ R/W _____ ft.               |                        |
| Total Number of Lots           | <u>8</u>                          | TOTAL                                | <u>1695</u> ft.        |
| 3. Minimum Lot Frontage        | <u>200</u> ft.                    | 8. Sidewalk adjacent to all streets? | <u>yes</u> <u>X</u> no |
| 4. Minimum Lot Area            | <u>87,120</u> sq. ft.             |                                      |                        |
| 5. Existing Zoning             | <u>R</u>                          |                                      |                        |
| 6. Proposed Zoning             | <u>R</u>                          |                                      |                        |
| 9. Public Water Supply         | No (Yes-No), Name _____           |                                      |                        |
| 10. Public Sanitary Sewers     | No (Yes-No), Name _____           |                                      |                        |
| 11. Health Department Approval | (where applicable) _____ (Yes-No) |                                      |                        |
| 12. City of Wichita            | : Three-Mile Area <u>X</u>        |                                      |                        |

STAFF COMMENTS:

NOTE: It should be pointed out that subject property is zoned the "R" Rural Residential District which requires a minimum lot area of two acres. Subject plat proposes these lots to the center of the Little Arkansas River. It was expected that the river area would be an out-right dedication and lots increased to the two acre minimum size not extending into the river. The applicant's engineer should be prepared to discuss this matter.

- A. The deflection angles referred to in the legal description of the engineer's text shall be indicated on the face of the plat.
- B. A temporary cul-de-sac shall be granted by separate instrument at the north end of Edwards Avenue. A temporary 30 foot building setback from said cul-de-sac shall be included in said instrument. The properly executed instrument shall be submitted to the Planning Department for forwarding with the plat to be Board of County Commissioners.
- C. The applicant shall be advised that the existing mobile home indicated on the preliminary plat, shall be removed from the street right-of-way prior to recording of the plat. A letter stating that this has been done shall be submitted to the Planning Department.
- D. The applicant shall contact Kansas Gas & Electric relative to making satisfactory arrangements for relocation or removal of the existing electric service line serving the existing mobile home on subject property. A letter obtained from said company stating that said arrangements have been made shall be submitted to the Planning Department.
- E. The applicant shall guarantee the improvement of Edwards Avenue in accordance with suburban street standards since subject plat is a suburban subdivision. The County Engineer shall be contacted regarding this matter.

(OVER)

June 18, 1975

Dick Linn, City Engineer

Curtis L. Newby, Junior Planner

S/D 75-11 - Wildwood Addition. Generally located on the north side of 69th Street North in an area west of Meridian.

The above captioned plat was considered by the Subdivision Committee on June 5, 1975. At that meeting, Mr. Brewer of your office requested on behalf of the Department of Public Works, that the applicant guarantee the paving of Edwards Avenue to City of Wichita standards. Since that meeting, the applicant's engineer, K. O. Taylor, contacted our office to ask if subject plat was actually within the 3-mile area of Wichita. Our 3-mile ring maps were checked and subject plat is located outside the Wichita 3-mile ring and therefore outside the jurisdiction of the City Engineer. As stated in our original staff comments, this plat should be considered a suburban plat and the street improvements should be to suburban standards. It was an oversight on our part to have not pointed this out at the Subdivision Committee meeting and this is to advise you that when the final plat is considered by the Subdivision Committee, the paving of the street to city standards need no longer be a requirement of the plat approval.

If you have any questions concerning this matter, please call.

Curtis L. Newby, Junior Planner

CLN:rme

cc: Ray Bruggeman, Director of Public Works  
M. S. Mitchell, Maintenance-Flood Control  
Don Yelton, Assistant County Engineer, 1015 Stillwell, 67213  
K. O. Taylor, Engineer, 1542 South St. Francis, 67211

FINAL PLAT  
SUBDIVISION REPORT

SUBDIVISION COMMITTEE  
METROPOLITAN AREA  
PLANNING COMMISSION

S/D No. 75-11 Name WILDWOOD ADDITION  
Date Application Rec'd. 2-6-75 Preliminary Approval 6-5-75  
Scheduled S/D Meeting 7-17-75

DESCRIPTION

General Location North side of 69th Street North in an area west of Meridian.

Owner Ray Woods  
Surveyor/Engineer Kenneth O. Taylor  
Address 1542 South St. Francis Phone 264-4072

- |  |  |
|--|--|
| 1. Gross Acreage of Plat <u>21.3</u>                             | 7. Lineal Feet of New Streets:                                     |
| 2. Number of Lots:   | a. <u>50</u> R/W <u>400</u> ft.                                    |
| Residential <u>8</u>   | b. <u>70</u> R/W <u>1295</u> ft.                                   |
| Commercial _____   | c. _____ R/W _____ ft.   |
| Industrial _____   | d. _____ R/W _____ ft.   |
| Other _____  | e. _____ R/W _____ ft.   |
| Total Number of Lots <u>8</u>                                    | TOTAL <u>1695</u> ft.  |
| 3. Minimum Lot Frontage <u>200</u> ft.                           | 8. Sidewalk adjacent to all streets? <u>yes</u> <u>X</u> <u>no</u> |
| 4. Minimum Lot Area <u>87,120</u> sq. ft.                        |  |
| 5. Existing Zoning <u>R</u>                                      |  |
| 6. Proposed Zoning <u>R</u>                                      |  |
| 9. Public Water Supply <u>No</u> (Yes-No), Name _____            |  |
| 10. Public Sanitary Sewers <u>No</u> (Yes-No), Name _____        |  |
| 11. Health Department Approval (where applicable) _____ (Yes-No) |  |
| 12. City of Wichita _____: Three-Mile Area <u>X</u>              |  |

STAFF COMMENTS:

NOTE: It should be pointed out that subject property is zoned the "R" Rural Residential District which requires a minimum lot area of two acres. Subject plat proposes these lots to the center of the Little Arkansas River. It was expected that the river area would be an out-right dedication and lots increased to the two acre minimum size not extending into the river. The applicant's engineer should be prepared to discuss this matter.

- A. The deflection angles referred to in the legal description of the engineer's text shall be indicated on the face of the plat.
- B. A temporary cul-de-sac shall be granted by separate instrument at the north end of Edwards Avenue. A temporary 30 foot building setback from said cul-de-sac shall be included in said instrument. The properly executed instrument shall be submitted to the Planning Department for forwarding with the plat to be Board of County Commissioners.
- C. The applicant shall be advised that the existing mobile home indicated on the preliminary plat, shall be removed from the street right-of-way prior to recording of the plat. A letter stating that this has been done shall be submitted to the Planning Department.
- D. The applicant shall contact Kansas Gas & Electric relative to making satisfactory arrangements for relocation or removal of the existing electric service line serving the existing mobile home on subject property. A letter obtained from said company stating that said arrangements have been made shall be submitted to the Planning Department.
- E. The applicant shall guarantee the improvement of Edwards Avenue in accordance with suburban street standards since subject plat is a suburban subdivision. The County Engineer shall be contacted regarding this matter.

(OVER)

- F. The applicant's engineer shall submit a site grading plan and closure data to Don Yelton of the Building, Planning and Inspection Office. A letter obtained from Mr. Yelton approving said plan shall be submitted to the Planning Department.
- G. Appropriate easements shall be indicated on the face of the plat for the Continental Pipeline Company's pipelines crossing subject property. A letter from the Continental Pipeline Company shall be submitted to the Planning Department setting forth that easement as shown on the final plat is acceptable.
- H. Any raising or lowering of the Continental Pipeline necessitated by the improvement of Edwards Avenue shall be at the sole expense of the applicant.
- I. Recording of the plat within 30 days after approval by the Board of City Commissioners.

June 18, 1975

Dick Linn, City Engineer

Curtis L. Newby, Junior Planner

S/D 75-11 - Wildwood Addition. Generally located on the north side of 69th Street North in an area west of Meridian.

The above captioned plat was considered by the Subdivision Committee on June 5, 1975. At that meeting, Mr. Brewer of your office requested on behalf of the Department of Public Works, that the applicant guarantee the paving of Edwards Avenue to City of Wichita standards. Since that meeting, the applicant's engineer, K. O. Taylor, contacted our office to ask if subject plat was actually within the 3-mile area of Wichita. Our 3-mile ring maps were checked and subject plat is located outside the Wichita 3-mile ring and therefore outside the jurisdiction of the City Engineer. As stated in our original staff comments, this plat should be considered a suburban plat and the street improvements should be to suburban standards. It was an oversight on our part to have not pointed this out at the Subdivision Committee meeting and this is to advise you that when the final plat is considered by the Subdivision Committee, the paving of the street to city standards need no longer be a requirement of the plat approval.

If you have any questions concerning this matter, please call.

Curtis L. Newby, Junior Planner

CLN:rme

cc: Ray Bruggeman, Director of Public Works  
M. S. Mitchell, Maintenance-Flood Control  
Don Yelton, Assistant County Engineer, 1015 Stillwell, 67213  
K. O. Taylor, Engineer, 1542 South St. Francis, 67211

THE WISCONSIN DEPARTMENT OF COMMUNITY HEALTH  
OFFICE OF ENVIRONMENTAL HEALTH

DATE June 18, 1968

TO: EUGENE HUNTER, District Planner  
FROM: JOHN F. SMITH, Environmental Health Engineer

SUBJECT: [Illegible]

[Illegible]

[Illegible]

[Illegible]

## INVENTORY & EVALUATION

\* { INDIVIDUAL  
GROUP  
UNIT OF GOVERNMENT

REQUESTED BY Wildwood Addition LOCATION 69th N. & Meridian

ASSISTED BY Larry L. Henry, District Conservationist DATE 6/5/75

~~SITUATION~~ Specific Problems: This area has a high wind erosion potential due to the soils on this area.

Solutions: 1. Disturb only the area needed for construction.

2. Remove only those trees, shrubs, and grasses that must be removed for construction; protect the rest to preserve their esthetic and erosion-control values.

3. Temporarily stabilize each segment of graded or otherwise disturbed land, including the sediment-control devices not otherwise stabilized, by seeding and mulching or by mulching alone. Permanently stabilize these areas as work on the land is completed. Both temporary and permanent stabilization

~~SUGGESTED SOLUTIONS~~ practices are to be installed according to Sedgwick County Conservation District Standards and specifications.

The following are adapted perennial grasses and should be seeded

at the following rates: Native bluestem mix, 2 pounds per 1,000 square feet, acre. Tall fescue, 2 pounds per 1,000 square feet, acre. Bromegrass, 2 pounds per 1,000 square feet, acre. Bluegrass, 2 pounds per 1,000 square feet, acre. Apply nitrogen fertilizer at the rates listed below or have the soil tested and fertilize accordingly. Tall fescue, 2 pounds per 1,000 square feet, acre.

\* Circle appropriate category.

# INVENTORY & EVALUATION

\* { INDIVIDUAL  
GROUP  
UNIT OF GOVERNMENT

REQUESTED BY \_\_\_\_\_ LOCATION \_\_\_\_\_

ASSISTED BY \_\_\_\_\_ DATE \_\_\_\_\_

**PROBLEM:** Bromegrass, 2 pounds per 1,000 square feet, acre.  
**SITUATION:** Bluegrass, 2 pounds per 1,000 square feet, acre. Adapted  
perennial grasses for sodding are Zoysia, Fescue, and Bluegrass.  
4. If additional information or on-site assistance is needed  
relative to soils, seeding procedures, structure design or  
related problems, call this number: 943-9471.

SUGGESTED SOLUTION(S): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* Circle appropriate category.

June 6, 1975

Mr. Kenneth O. Taylor  
1542 South St. Francis  
Wichita, Kansas 67211

Re: S/D 75-11 - Preliminary plat  
of WILDWOOD ADDITION.

Dear Mr. Taylor:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, June 5, 1975, the above captioned plat was considered. The action of the Committee was to approve the preliminary and authorize preparation of the final plat, subject to the following:

- A. A temporary cul-de-sac shall be granted by separate instrument at the north end of Edwards Avenue. A temporary 30 foot building setback from said cul-de-sac shall be included in said instrument.
- B. A 10 foot utility easement shall be indicated on the front of the lots on the east side of Edwards.
- ✓* *see memo dated 6-17-75*  
C. The applicant shall contact the Wichita-Sedgwick County Environmental Health Department relative to obtaining instructions for conducting percolation tests to determine whether the use of individual private water and septic tank systems can be permitted on subject property. A letter shall be submitted to the Planning Department.
- D. The applicant shall be advised that the existing mobile home indicated on the preliminary plat, shall be removed from the street right-of-way prior to recording of the plat.
- E. A lot grading plan and closure data for the final plat shall be submitted to the County Engineer.
- F. The applicant shall guarantee the improvement of Edwards Avenue in accordance with suburban street standards since subject plat is a suburban subdivision.

- G. Appropriate easements shall be indicated on the face of the plat for the Continental Pipeline Company's pipelines crossing subject property. A letter from the Continental Pipeline Company shall be submitted to the Planning Department setting forth that easement as shown on the final plat is acceptable.
- not needed see memo in file site is outside Wichita 3 mi area*
- H. Appropriate plans and profiles for the street improvements shall be submitted to both the City Engineer for the City of Wichita because the plat is within the 3-mile area of Wichita and the County Engineer who has maintenance responsibility for said street. A letter obtained approving said plans, shall be submitted to the Planning Department.
- I. The applicant's engineer shall submit a site grading plan to Don Yelton of the County Engineer's Office. A letter obtained from Mr. Yelton approving said plan shall be submitted to the Planning Department.
- J. The applicant shall contact Larry L. Henry of the Soil Conservation Service relative to taking proper precautions to prevent soil erosion from wind and water during the development of subject property.
- K. The applicant shall contact Kansas Gas & Electric relative to making satisfactory arrangements for relocation or removal of the existing electric service line serving the existing mobile home on subject property.
- L. Any raising or lowering of the Continental Pipeline necessitated by the improvement of Edwards Avenue shall be at the sole expense of the applicant.
- M. The applicant shall contact M. S. Mitchell of the Maintenance-Flood Control Office relative to the appropriate language used in reference to the "floodway" on subject property.
- N. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. The applicant should be prepared to discuss with the Subdivision Committee the manner in which it is proposed to provide for such utilities and facilities, e.g., petition, actual construction, monetary guarantee, etc.
- O. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

S/D 75-11  
June 6, 1975  
Page 3

In regards to condition "F" concerning the street improvement, the applicants engineer should contact the Planning Department to arrange a meeting with the Director of Public Works to discuss the street improvements to be required.

Enclosed herewith is the "marked" copy of the preliminary plat for your information and files.

If you should have any questions concerning this matter, please call.

Sincerely,

Curtis L. Newby  
Junior Planner

CLN:rme  
Enclosure

cc: Mr. Ray Woods  
4707 Sullivan Road, 67204

Mr. Verne Strong  
1315 Sullivan Circle, 67204

Dean Sellers, Assistant City Engineer

PRELIMINARY PLAT  
DIVISION REPORT

SUBDIVISION COMMITTEE  
METROPOLITAN AREA  
PLANNING COMMISSION

NO. 75-11 Name WILDWOOD ADDITION  
Application Rec'd. 26-75 Preliminary Approval \_\_\_\_\_  
Scheduled S/D Meeting 6-5-75

DESCRIPTION

General Location North side of 69th Street North in an area west  
of Meridian.  
Owner Ray Woods  
Surveyor/Engineer Kenneth O. Taylor  
Address 1542 South St. Francis Phone 264-4072

1. Gross Acreage of Plat 21.3
2. Number of Lots:
  - Residential 8
  - Commercial \_\_\_\_\_
  - Industrial \_\_\_\_\_
  - Other \_\_\_\_\_
3. Minimum Lot Frontage 200 ft.
4. Minimum Lot Area 87,120 sq. ft.
5. Existing Zoning R
6. Proposed Zoning R
7. Lineal Feet of New Streets:
  - a. 50 R/W 400 ft.
  - b. 70 R/W 1295 ft.
  - c. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
  - d. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
  - e. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
  - TOTAL 1695 ft.
8. Sidewalk adjacent to all streets? yes  no
9. Public Water Supply No \_\_\_\_\_ (Yes-No), Name \_\_\_\_\_
10. Public Sanitary Sewers No (Yes-No), Name \_\_\_\_\_
11. Health Department Approval (where applicable) \_\_\_\_\_ (Yes-No)
12. City of Wichita \_\_\_\_\_ : Three-Mile Area X

STAFF COMMENTS:

- A. The applicant shall contact the Wichita-Sedgwick County Environmental Health Department relative to obtaining instructions for conducting percolation tests to determine whether the use of individual private water and septic tank systems can be permitted on subject property. A letter shall be obtained from said Department setting forth approval of such systems which shall be submitted to the Planning Department.
- B. The applicant shall be advised that the existing mobile home indicated on the preliminary plat, shall be removed from the street right-of-way prior to recording of the plat.
- C. A lot grading plan and closure data for the final plat shall be submitted to the County Engineer.
- D. The applicant shall guarantee the improvement of Edwards Avenue in accordance with suburban street standards since subject plat is a suburban subdivision.
- F. Appropriate easements shall be indicated on the face of the plat for the Continental Pipeline Company's pipelines crossing subject property. A letter from the Continental Pipeline Company shall be submitted to the Planning Department setting forth that easement as shown on the final plat is acceptable.
- F. Appropriate plans and profiles for the street improvements shall be submitted to both the City Engineer for the City of Wichita because the plat is within the 3-mile area of Wichita and the County Engineer who has maintenance responsibility for said street. A letter obtained approving said plans, shall be submitted to the Planning Department.
- G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. The applicant should be prepared to discuss with the Subdivision Committee the manner in which it is proposed to provide

(OVER)

for such utilities and facilities, e.g., petition, actual construction, monetary guarantee, etc.

- H. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

April 23, 1975

Kenneth O. Taylor  
1542 South St. Francis  
Wichita, Kansas 67211

Re: S/D 75-11 - sketch plat of  
Wildwood Addition.

Dear Mr. Taylor:

We have completed our review of the above captioned sketch plat and find that it may be approved subject to the following conditions:

- (A) The applicant shall contact the Wichita-Sedgwick County Environmental Health Department relative to obtaining instructions for conducting percolation tests to determine whether the use of individual private water and septic tank systems can be permitted on subject property. A letter shall be obtained from said Department setting forth approval of such systems which shall be submitted to the Planning Department.
- (B) "Complete access control" shall be labeled adjacent to Lot 6, Block 2 on 69th Street North.
- (C) The applicant shall be advised that the mobile home shall be removed from the street right-of-way prior to recording of the plat.
- (D) 25 foot triangular drainage easements shall be indicated on all street intersections.
- (E) A lot grading plan and closure data for the final plat shall be submitted to the County Engineer.
- (F) The applicant shall guarantee the improvement of the north-south street.
- (G) The western boundary or riverbank line for the Little Arkansas River shall be adjusted as shown on the engineer's copy of the plat.

Kenneth O. Taylor  
April 23, 1975  
Page 2

- (H) The applicant's engineer shall contact the County Zoning Office relative to indicating an appropriate street name for the north-south street.
- I. The applicant shall contact M. S. Mitchell of the Maintenance-Flood Control Office relative to the drainage of subject property.
- J. Requirements for a preliminary plat (see Article 5, Part 3 of the M.A.P.C. Subdivision Regulations).

If you have questions concerning this plat, please call.

Respectfully,

John Richter  
Planning Analyst

JR:zme

cc: Ray Woods, 4707 Sullivan Street, 67204  
Verne Strong, 1315 Sullivan Circle, 67204

February 13, 1975

M. S. Mitchell, Maintenance-Flood Control

John Richter, Planning Analyst

S/D 75-11 - sketch plat of Wildwood Addition.

Please find attached a sketch plat of Wildwood Addition. Subject property is zoned "R" Rural Residential requiring 200 feet of frontage and a minimum lot size of 2 acres. I would appreciate your review of this sketch with any comments you may have returned to me no later than Thursday, February 20.

John Richter, Planning Analyst

JR:rme  
Attachment

Memo also sent to Nancy Graham, County Engineering

Map No.: W-2-B  
Section No.: 1  
Twp. No.: 26S  
Range: 1W

S/D No. 75-11

APPLICATION FOR SUBDIVISION APPROVAL

Name of Subdivision: Wildwood Addition

General Location: NW Cor. Meridian + 69th St. North  
lying west of Little Arkansas River

Name of Property Owner: Ray Woods - 4707 Sullivan Road  
Address: Verne Strong-1315 Phone: 265-1601 Woods

Name of Subdivider: Sullivan Circle  
Address: \_\_\_\_\_ Phone: 838-6489 Strong

Name of Agent/Surveyor: K. O. Taylor  
Address: 1542 S. St. Francis Phone: 264-4072

Date of Application: Feb. 5, 1975

SUBDIVISION INFORMATION:

1. Gross Acreage of Plat 21.3
2. Number of Lots:
  - Residential 8
  - Commercial \_\_\_\_\_
  - Industrial \_\_\_\_\_
  - Other \_\_\_\_\_
3. Minimum Lot Frontage 200 ft.
4. Minimum Lot Area ~~200~~ 87120 ft.
5. Existing Zoning R
6. Proposed Zoning R
7. Lineal Feet of New Streets:
  - a. 50 R/W 400 ft.
  - b. 70 R/W 1295 ft.
  - c. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
  - d. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
  - e. \_\_\_\_\_ R/W \_\_\_\_\_ ft.
8. Sidewalk adjacent to all streets? yes  no
9. Public Water Supply No (Yes-No), Name \_\_\_\_\_
10. Public Sanitary Sewers No (Yes-No), Name \_\_\_\_\_
11. Health Department Approval (where applicable) Yes (Yes-No)
12. City of Wichita Three-Mile Area

The owner herein agrees to comply with the Subdivision Regulations for the Wichita-Sedgwick County Metropolitan Area, as approved, and all other pertinent ordinances of the City of Wichita and/or Resolutions of Sedgwick County, Kansas, and Statutes of the State of Kansas. He further agrees that he waives the 60-day statutory period in which the Planning Commission or governing body must act. In addition, it is agreed that all costs of recording the plat and supplemental documents thereto with the Register of Deeds, as well as all costs of publication of initiating resolutions approving any petition for improvements, such as streets, sewer, sidewalks, etc. shall be assumed and paid by the owner when billed. The undersigned further states that he is the owner of the property proposed for platting.

Owner's Signature: [Signature]

Wichita-Sedgwick County Metropolitan Area  
Planning Commission, Room 402, City Building  
Annex, 104 South Main Street, Wichita, Kansas

Received by [Signature]  
Date 2-6-75  
Fee Submitted none

71.00  
5-23.75

Form 23-021

**PAYMENT NOTICE**

City of Wichita

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

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

DESCRIPTION	AMOUNT
<i>Suburban High St</i>	

Name *Wichita*

Address *1234*

Type *...* Due Date *...*

Comments:

Date *1/2/75* By *...*