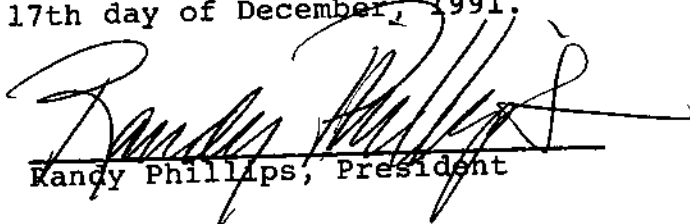


12. The applicant shall proceed in accordance with the operational plan and shall excavate the lake and form the banks as indicated on the approved plan.
13. Failure to comply with the requirements of approval by the Board of Zoning Appeals shall be sufficient cause for the Superintendent of Central Inspection to request the Board to revoke the special permit after a hearing.
14. A maximum of three temporary or mobile storage facilities may be placed in use at the applicant's discretion, but no closer than 50 feet to the Seneca Street right-of-way, so long as these storage facilities are used in a manner consistent with the sand and gravel yard. A revised site plan shall be submitted to the Secretary indicating the areas on which these storage facilities may be maintained.
15. Release of this resolution shall make null and void Resolution No. BZA 54-88.

ADOPTED AT WICHITA, KANSAS, this 17th day of December, 1991.


Randy Phillips, President

ATTEST:


Louise Olivarez, Secretary

BZA RESOLUTION NO. 35-91

WHEREAS, Edgar & Janice Dwire, pursuant to Section 2.12.590.C, Code of the City of Wichita, request an exception to permit a three-year extension of time for extraction of raw materials (sand) on property zoned the "AA" One-Family Dwelling District and legally described as follows:

The Southwest Quarter of the Northwest Quarter of Section 29, Township 26 South, Range 1 East of the 6th Principal Meridian, Sedgwick County, Kansas, lying west of the Wichita-Valley Center Flood Control right-of-way, except the north 1,000 feet thereof, and except the west 50 feet for street; AND

The Northwest Quarter of the Southwest Quarter of Section 29, Township 26 South, Range 1 East of the 6th Principal Meridian, Sedgwick County, Kansas, except highway right-of-way and except that part platted as Sherwood Village Addition; AND

The Northeast Quarter of the Southwest Quarter of Section 29, Township 26 South, Range 1 East of the 6th Principal Meridian, Sedgwick County, Kansas, lying west of the Wichita-Valley Center Flood Control right-of-way, except highway right-of-way. Generally located on the east side of Seneca, north of I-235.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of December 17, 1991, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for an exception under the provisions of Section 2.12.590.C, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has authority to permit extraction of raw materials (sand) on property zoned the "AA" One-Family Dwelling District, subject to the conditions outlined in Section 28.04.181.2, Code of the City of Wichita, and has authority to permit an extension of time for sand extraction on this particular site in accordance with condition #6 of BZA Resolution No. 54-88.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this application be approved to permit a three-year extension of time for extraction of raw materials (sand) on property zoned the "AA" One-Family Dwelling District and legally described as follows:

The Southwest Quarter of the Northwest Quarter of Section 29, Township 26 South, Range 1 East of the 6th Principal Meridian, Sedgwick County, Kansas, lying west of the Wichita-Valley Center Flood Control right-of-way, except the north 1,000 feet thereof, and except the west 50 feet for street; AND

The Northwest Quarter of the Southwest Quarter of Section 29, Township 26 South, Range 1 East of the 6th Principal Meridian, Sedgwick County, Kansas, except highway right-of-way and except that part platted as Sherwood Village Addition; AND

The Northeast Quarter of the Southwest Quarter of Section 29, Township 26 South, Range 1 East of the 6th Principal Meridian, Sedgwick County, Kansas, lying west of the Wichita-Valley Center Flood Control right-of-way, except highway right-of-way. Generally located on the east side of Seneca, north of I-235.

subject to the following conditions:

1. The applicant, sand extraction operator, and all persons depositing material in lakes on this property shall comply with requirements specified in a restrictive covenant filed on Film 1016 at Page 0513, which limits the materials that can be used as fill material in the lakes or which can be deposited on the land.
2. Fencing shall be provided in accordance with the requirements of Section 5.34 of the City Code.
3. The earth shall be extracted to at least a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
4. To provide for bank stabilization and safety of future uses, the side slopes of the excavation shall be no steeper than three horizontal to one vertical.
5. No sand extraction shall occur within 50 feet of the north and east property lines or within 100 feet of the south and west property lines. No stockpiling of sand or storage of equipment shall occur within 50 feet of the north, east and west property lines or within 100 feet of the south property line. Within 30 days following approval by the Board, all sand stockpiles and equipment storage which is closer to perimeter boundaries than specified above shall be removed. Also within 30 days, any equipment now stored on site which is not currently being utilized as part of the sand extraction operation shall be removed from the site or stored inside the equipment shed.
6. The sand extraction operation shall cease no later than December 31, 1994, unless the Board of Zoning Appeals grants an extension of time after proper notification and hearing.
7. Within 90 days following expiration of this use exception or cessation of the sand extraction operation, whichever occurs first, all equipment used in the operation, as well as all stockpiled material, shall be removed from the site and the site shall be final graded to prepare it for residential development. All slopes shall be planted or seeded with a perennial drought-resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
8. A watchman's mobile home residence may occupy the property at the location indicated on the plan for as long as this use exception is valid. The mobile home shall be tied down and skirted within 60 days, as required by Chapters 26.04 and 20.04 of the City Code. Within 30 days after final grading of this site, the mobile home shall be removed from the premises. If the mobile home now on the site is not to be utilized as a night watchman's residence, it shall be removed from the site within 30 days after approval by the Board of BZA 35-91.
9. The applicants shall be responsible for maintaining all operational roads on site with sand and/or gravel. In dry weather, the roads shall be treated with a dust suppressant in order to minimize blowing dust.
10. All the application area outside of the lake shall be graded so as to drain into the lake or as approved on the grading and drainage plan associated with the plat of Shark's Nest Addition.
11. No concrete or asphalt mixing plants or commercial recreational activities, such as boating, fishing, skiing, swimming, etc., shall be permitted in the area unless duly authorized under the provisions of the City Zoning Ordinance.

WICHITA — SEDGWICK COUNTY



METROPOLITAN AREA PLANNING
DEPARTMENT

CITY HALL — TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1608
(316) 268-4561

March 3, 1992

Edgar Dwire
2931 Benjamin
Wichita, KS 67204

Re: BZA 35-91 - Exception to permit a three-year extension of
time for sand extraction. East side of Seneca in an area
north of I-235.

Dear Mr. Dwire:

Enclosed is a signed copy of the above-referenced BZA resolution
adopted by the Board of Zoning Appeals on December 17, 1991.
This resolution reflects the official action of the Board to
grant your request and sets out the conditions of approval. It
is forwarded to you for your information and files now that con-
ditions 5, 8 and 14 have been completed. The land use inspector
will periodically check this sand extraction site to make sure it
maintains compliance with all site development requirements as
specified in the resolution.

If you have questions concerning this matter, please call our
office.

Sincerely,


Louise Olivarez, Secretary
Board of Zoning Appeals

LO:jcm
Enclosure

cc: Troy Fawcett, Quik Sand, 4130 N. Seneca
Paul Hays, OCI
J.R. Cox, OCI
Ray Sledge, OCI
Pat Burnett, Deputy City Clerk

9. The applicants shall be responsible for maintaining all operational roads on site with sand and/or gravel. In dry weather, the roads shall be treated with a dust suppressant in order to minimize blowing dust.
10. All the application area outside of the lake shall be graded so as to drain into the lake or as approved on the grading and drainage plan associated with the plat of Shark's Nest Addition.
11. No concrete or asphalt mixing plants or commercial recreational activities, such as boating, fishing, skiing, swimming, etc., shall be permitted in the area unless duly authorized under the provisions of the City Zoning Ordinance.
12. The applicant shall proceed in accordance with the operational plan and shall excavate the lake and form the banks as indicated on the approved plan.
13. Failure to comply with the requirements of approval by the Board of Zoning Appeals shall be sufficient cause for the Superintendent of Central Inspection to request the Board to revoke the special permit after a hearing.
14. Release of this resolution shall make null and void Resolution No. BZA 54-88.

**BOARD OF ZONING APPEALS
WICHITA, KANSAS**

AGENDA ITEM NO. 3

December 17, 1991

SECRETARY'S REPORT

CASE NUMBER: BZA 35-91

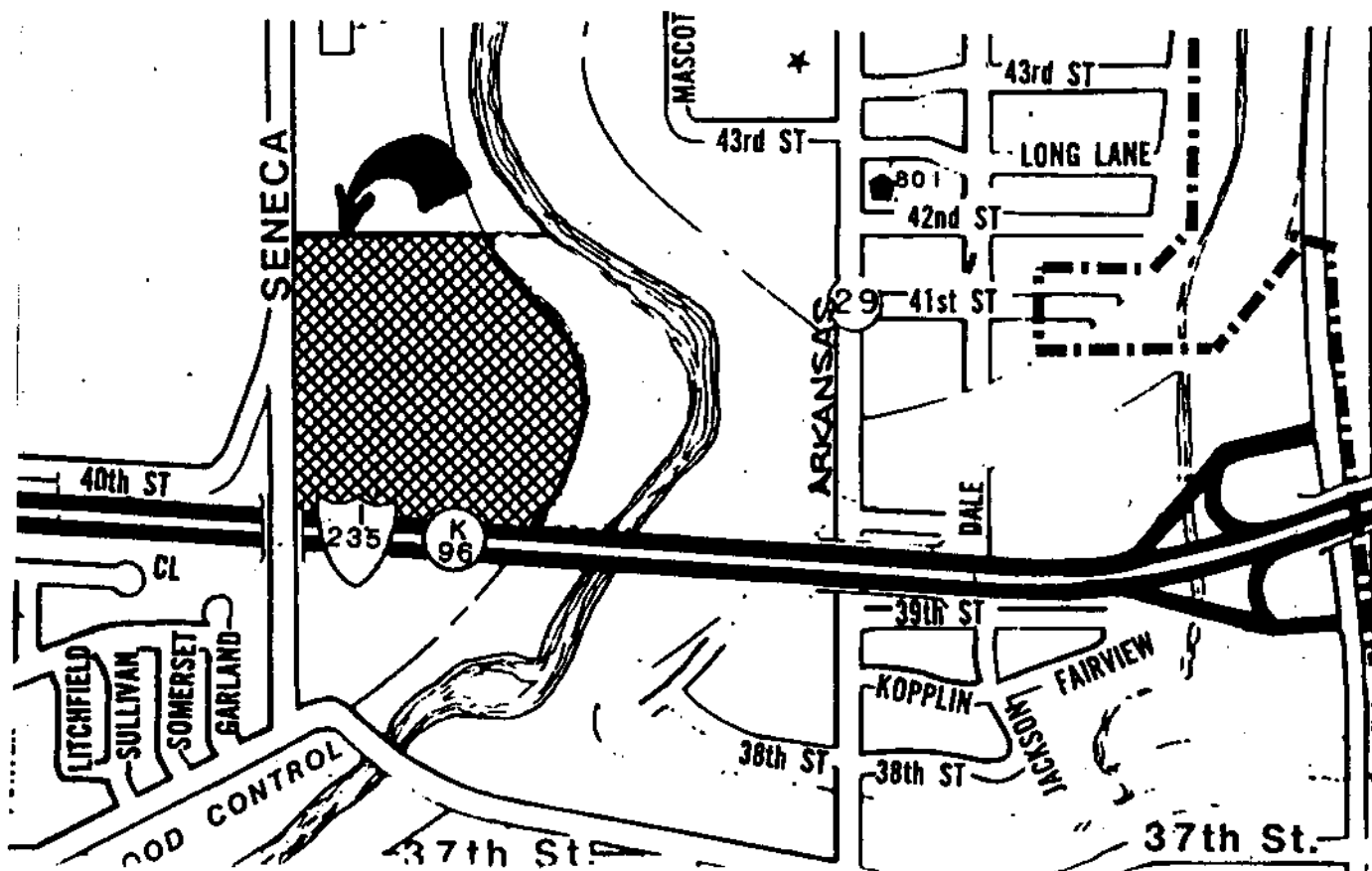
OWNERS/APPLICANTS: Edgar W. & Janice M. Dwire

REQUEST: Exception to permit a three-year extension of time for extraction of raw materials (sand).

CURRENT ZONING: "AA" One-Family Dwelling District

SITE SIZE: 34.9 acres

LOCATION: East side of Seneca in an area north of I-235



JURISDICTION: The Board has jurisdiction to consider this request under the provisions outlined in Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception, provided the conditions set out in Section 28.04.181.2 can be complied with.

BACKGROUND: Three years ago, the applicants obtained approval for temporary sand extraction from an existing lake located partly on the application area (BZA 54-88). The lake was shallow, creating problems with cattail growth and the attraction of large numbers of birds and muskrats. The applicants wanted to deepen the lake to approximately 20 feet, fill in a smaller lake in the southeast corner of the site, and eventually build their home on this property. They were in the process of platting a one-lot residential subdivision known as Shark's Nest Addition. Although that plat remains incomplete today, the sand extraction has been underway about six months. The extraction was to have been completed by the end of this year. The applicants stated it took much longer to get the sand extraction operation started than they had originally anticipated, due to the expense and customization of the equipment. A three-year time extension is now being requested.

The land is leased to Troy Fawcett, owner of Quik Sand, who operates the sand extraction business. A field check of the site, plus discussions with Central Inspection, Health, and Street Maintenance revealed the following:

1. There have been very few complaints from neighbors about this operation;
2. The materials used to fill the small pond have been acceptable to the Health Department, are in accordance with the restrictive covenant submitted as a condition of BZA 54-88, and pose no environmental hazard;
3. Mr. Fawcett has assisted the City in maintaining Seneca, which is unpaved down to 37th Street;
4. A few violations of the conditions of BZA 54-88 exist at this time:
 - a. The stockpiling of sand (and perhaps the storage of some unused equipment) is occurring within 100 feet of Seneca (condition #5);
 - b. The mobile home which was to be used as a night watchman's residence is not tied down, skirted, or used for a residence (condition #8);
 - c. The operational roads are not graveled (condition #9).

Section 28.04.181(2) refers to excavation being no closer than 100 feet to public streets, but local policy has also required that stockpiling of sand and storage of equipment be kept at least 100 feet back from streets. Mr. Fawcett has stated that K.G. & E. does not allow sand to be stockpiled in its 50-foot-wide easement, which crosses this site just west of the lake. If required to maintain a 100-foot setback from the 50-foot Seneca right-of-way, the area for stockpiling

would be very limited. Considering the nature of other uses in this immediate vicinity, a reduced setback of 50 feet from existing Seneca right-of-way may be acceptable for stockpiling of sand and storage of equipment only. The sand excavation setback should remain at 100 feet. There appear to be numerous pieces of equipment lying around on the property in a disorderly fashion. The applicant or sand extraction operator should be prepared to tell the Board what this equipment is to be used for and why it cannot be stored in a more sightly manner.

If the mobile home is not to be used for a night watchman's residence, it should be removed from the site. If it is to be used for a night watchman's residence, it should be tied down and skirted.

For recent sand extraction cases, the operational roads have been required to "be maintained with sand and/or gravel in order to minimize blowing dust." Considering that Seneca, the access road to and from the site, is a sand road which is used by several high-traffic-generating uses, it seems appropriate to allow the internal roads to also be sand. In dry weather, sand roads need to be treated with dust suppressants to reduce blowing dust.

As the original intent of this use exception was to create one residential building site with a 20-foot-deep lake and with the sale of extracted sand being an incidental and temporary use, an extension of time of less than three years to complete the extraction seems appropriate. The Secretary recommends that compliance with setbacks, internal road conditions and on-site mobile home requirements be attained within 60 days and that the time for completing the sand extraction be extended two years to December 31, 1993. The Secretary also recommends that the plat of Shark's Nest Addition be required to be completed by December 31, 1993, so that the site can be redeveloped for a single-family residence once the sand extraction operation has ceased. Except where modified, all conditions of BZA 54-88 should still apply and are included in the following recommended conditions of approval.

ADJACENT ZONING AND LAND USE:

NORTH	"AA"	One-family dwelling
SOUTH	"R-5"	Highway and undeveloped
EAST	"AA"	Little Arkansas River & flood control levee
WEST	"C"	Softball diamonds & truck driving training grounds

RECOMMENDATION: Should the Board determine that an extension of time to permit extraction of sand is appropriate at this location, it is recommended that the exception be approved, subject to the following conditions:

1. The applicant, sand extraction operator, and all persons depositing material in lakes on this property shall comply with requirements specified in a restrictive covenant filed on Film 1016 at Page 0513, which limits the materials that can be used as fill material in the lakes or which can be deposited on the land.
2. Fencing shall be provided in accordance with the requirements of Section 5.34 of the City Code.
3. The earth shall be extracted to at least a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
4. To provide for bank stabilization and safety of future uses, the side slopes of the excavation shall be no steeper than three horizontal to one vertical.
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6. The sand extraction operation shall cease no later than December 31, 1993, unless the Board of Zoning Appeals grants an extension of time after proper notification and hearing.
7. Within 90 days following expiration of this use exception or cessation of the sand extraction operation, whichever occurs first, all equipment used in the operation, as well as all stockpiled material, shall be removed from the site and the site shall be final graded to prepare it for residential development. All slopes shall be planted or seeded with a perennial drought-resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
8. A watchman's mobile home residence may occupy the property at the location indicated on the plan for as long as this use exception is valid. The mobile home shall be tied down and skirted within 60 days, as required by Chapters 26.04 and 20.04 of the City Code. Within 30 days after final grading of this site, the mobile home shall be removed from the premises. If the mobile home now on the site is not to be utilized as a night watchman's residence, it shall be removed from the site within 30 days after approval by the Board of BZA 35-91.