

BZA 2-60 JESSE L. GRAHAM AND
RAYMOND J. ALLEN 1403 HARDING
CONDITIONAL Use (BORROW PIT)



The City of Wichita, Kansas

DEPARTMENT OF LAW

OFFICE OF CITY ATTORNEY

September 7, 1960

Mr. Kenneth P. Stewart
Boyer, Hendros & Donaldson
340 South Broadway
Wichita 2, Kansas



Re: Board of Zoning Appeals
BZA 2-60, BZA 5-60

Dear Mr. Stewart:

I have examined the proposed Covenants Running with the Land in the above matter as they relate to the Graham-Morris borrow pit operations.

The form and content appear to be in compliance with the Board of Zoning Appeals resolution as amended.

If you will kindly have executed and approved the original covenants as submitted in your letter of August 25, 1960, the building inspector will proceed with the issuance of the necessary permit conditioned upon the covenants and the Board's resolution of February 23, 1960.

Inasmuch as considerable time has elapsed since the hearing upon your clients' appeals to the Board of Zoning Appeals, I should like to recite my recollection of the conditions under which the permit is to be issued.

As the resolution and the covenant recites, the excavation and construction of loop levee shall be subject to approval of the Maintenance Division Department of Public Works, City of Wichita, Kansas, and the building inspector's permit will be issued subject to the conditions established by the Board of Zoning Appeals.

Mr. Kenneth P. Stewart
September 7, 1960
Page two

Following the recording of the Covenants Running with the Land, if you will kindly submit evidence of recording to Mr. Maple's office, I believe he will be in a position to issue the necessary permit.

I should also suggest that your clients check with Mr. Wilton of the Department of Public Works in order to obtain the details of construction and maintenance which have been engineered by Mr. Wilton's department.

If I can be of further assistance in this matter, kindly so advise me.

Very truly yours,

Eugene L. Pirtle

EUGENE L. PIRTLE
Assistant City Attorney

ELP/wcb

cc B. S. Maple, Bldg. Insp.
City Bldg. Annex

George Wilton
Maintenance Division
Department of Public Works

Leland Edmonds
Planning Department

Fred W. Aley
City Attorney

COVENANT RUNNING WITH THE LAND

WHEREAS, the undersigned as owner of the property hereinafter described has made application to the Board of Zoning Appeals of the City of Wichita, Kansas, for variance from the strict application of the enforcement provisions of the zoning ordinance to permit the operation and maintenance of a borrow pit on said property; and

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

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

NOW, THEREFORE, in consideration of the premises and approval of conditional use for operation of a borrow pit on his land hereinafter described so as to permit the use thereof for borrow pit operations, the undersigned hereby covenants to and with the City of Wichita, Kansas, on behalf of himself and his successors in title of said land, to construct or cause to be constructed and maintained without cost or expense to the City of Wichita, a loop levee on, around and enclosing any borrow pit located on the following described land, to-wit:

All that part of the Northeast Quarter of the Southeast Quarter (NE/4, SE/4) Section 15-278-1W, of the 6th P.M. lying East of the Big Ditch and West of the 81 By-Pass, Route Highway 235 described as follows to-wit:

Nine (9) acres off the North Side of the Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of Section 15-278-1W, of the 6th P.M., described as follows: Beginning at the Northeast Corner of the Southeast Quarter of said Section 15, thence West 80 Rods; thence South 297 Feet, thence East 80 Rods; thence North 297 Feet to the place of beginning; Except that portion thereof condemned for the Big Ditch and U. S Highway 81 By-Pass, Route Highway 235, being approximately 5.53 acres more or less,

all in accordance with Resolution No. BZA 5-60, duly adopted by the Board of Zoning Appeals, City of Wichita, Kansas, February 23, 1960, which is incorporated herein by reference.

The undersigned specifically covenants that the location of said loop levee shall be subject to the approval of the Maintenance Division, Department of Public Works, City of Wichita, Kansas.

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

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

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

Executed in triplicate this ____ day of _____, 1960.

W. L. Morris

STATE OF KANSAS)
) SS.
SEDGWICK COUNTY)

BE IT REMEMBERED, That on this ____ day of _____ 1960, before me, the undersigned, a notary public, in and for the County and State aforesaid, came W. L. Morris, who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

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

Notary Public

My Commission Expires: _____

Approved for the Board of Zoning Appeals, Wichita, Sedgwick County, Kansas.

Counsel

COVENANT RUNNING WITH THE LAND

WHEREAS, the undersigned as owners of the property hereinafter described have made application to the Board of Zoning Appeals of the City of Wichita, Kansas, for variance from the strict application of the enforcement provisions of the zoning ordinance to permit the operation and maintenance of a borrow pit on said property; and

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

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

NOW, THEREFORE, in consideration of the premises and approval of conditional use for operation of a borrow pit on their land hereinafter described so as to permit the use thereof for borrow pit operations, the undersigned hereby covenant to and with the City of Wichita, Kansas, on behalf of themselves and their successors in title of said land, to construct or cause to be constructed and maintained without cost or expense to the City of Wichita, a loop levee on, around and enclosing any borrow pit located on the following described land, to-wit:

All that part of the Northeast Quarter (NE/4) Section 15-27-1W, lying West of U. S. Highway 81 By-pass, Route Highway 235, and East of the Big Ditch in Sedgwick County, Kansas, being approximately 22.73 acres,

all in accordance with Resolution No. BZA 2-60 (amended), duly adopted by the Board of Zoning Appeals, City of Wichita, Kansas, February 23, 1960, which is incorporated herein by reference.

The undersigned specifically covenant that the location of said loop levee shall be subject to the approval of the Maintenance Division, Department of Public Works, City of Wichita, Kansas.

To secure and guarantee the above obligation, the undersigned hereby subject and encumber said property with the covenant and obligation to construct and maintain said loop levee as above described as a covenant running with and burdening the land and, in event of the failure by the undersigned or

any of their successors in title within sixty (60) days after receipt of written notice from the City to fulfill the obligation above set forth, then and in such event the Governing Body of the City of Wichita may order such work done and thereafter maintain and charge the entire cost of such construction and maintenance as a first lien against said land to be collected and foreclosed in the same manner as a mortgage is foreclosed.

The undersigned warrant that they are the owners of the fee title to said tract of land and that the obligation and covenant above set forth constitutes a first and prior lien against and encumbering said land.

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

Executed in triplicate this ____ day of _____, 1960.

Jesse L. Graham

Raymond J. Allen

Ina L. Graham, his wife

Neva M. Allen, his wife

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
SEDGWICK COUNTY)

BE IT REMEMBERED, That on this ____ day of _____ 1960, before me, the undersigned, a notary public, in and for the County and State aforesaid, came Raymond J. Allen and Neva M. Allen, his wife, and Jesse L. Graham and Ina L. Graham, his wife, who are personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

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

Notary Public

My Commission Expires:

Approved for the Board of Zoning Appeals, Wichita,
Sedgwick County, Kansas

Counsel

APRIL 11, 1960

MR. KENNETH P. STEWART, ATTORNEY
BOYER HONDROS AND DONALDSON
340 SOUTH BROADWAY
WICHITA, KANSAS

DEAR MR. STEWART:

SUBJECT: BZA 2-60 AND BZA 5-60

ATTACHED TO THIS LETTER ARE ONE COPY OF A MEMORANDUM FROM MR. G. H. WILTON, SUPERINTENDENT OF PUBLIC WORKS MAINTENANCE, AND ONE COPY EACH OF FOUR EXHIBITS, SHOWING THE FOUR DIFFERENT WAYS IN WHICH A LOOP LEVEE OR LOOP LEVEES COULD BE CONSTRUCTED TO PROTECT THE LOCATION APPROVED FOR BORROW PITS IN SUBJECT APPLICATIONS.

WE TRUST THAT THIS INFORMATION WILL BE SUFFICIENT FOR YOU IN YOUR ATTEMPTS TO PREPARE APPROPRIATE RESTRICTIVE COVENANTS AS REQUIRED BY THE BOARD OF ZONING APPEALS IN ITS APPROVAL OF THESE APPLICATIONS.

VERY TRULY YOURS,

LELAND R. EDMONDS
SECRETARY

LRE:BER

ENCLOSURES

THE CITY OF WICHITA

OFFICE OF Department of Public Works **DATE** April 5, 1960

TO Leland R. Edmonds, Secretary

FROM G. H. Wilton, Supt. of Public Works Maintenance

SUBJECT : BZA 2-60 and
BZA 5-60



Reference is made to your memorandum of March 11, 1960, requesting sketches of loop levee requirements for subject borrow pit locations.

Attached to this memorandum are two copies each of exhibits marked Case I, II, III, and IV. These exhibits show the four different ways in which a loop levee or loop levees could be constructed to protect subject locations.

Case I - Independent loop levees for each location constructed around the perimeter of each location. Case I would require the greatest length of levee and would result in loop levees constructed side by side with a narrow strip of "no man's land" between them.

Case II - Independent loop levees for the combined locations eliminating the levees or levee between the two sites. This arrangement would be superior to Case I.

Case III - An independent loop levee around BZA 5-60 with an integrated loop around three sides of BZA 2-60 tying into Levee 'D' of the Floodway System. This case assumes that BZA 2-60 and 5-60 cannot be made a combined operation and has the same objectionable feature as Case I as far as BZA 5-60 is concerned. Tying the loop levee into Levee 'D' will require suitable agreements with this office for the construction of access ramps over the ties where they cross Floodway right-of-way and will require the leaving of a 50 foot strip parallel and adjacent to the Floodway right-of-way line for support protection. This office would maintain the sections of the tie levees located on Floodway right-of-way provided they were constructed to design levee elevation with a 14 foot top width and minimum 3 : 1 side slopes.

Case IV - Integrated loop levees around the combined perimeter of the two sites tying into Levee 'D' with special requirements as in Case III.

If we can be of further service in this matter, please advise.

GHW:msm:fb
Encls.

cc: M. S. Mitchell

File: Sand Pit - Metro. Plan.

G. H. Wilton

G. H. Wilton
Supt. of Public Works Maintenance

BOARD OF ZONING APPEALS

MARCH 11, 1960

GEORGE WILTON, SUPERINTENDENT PUBLIC WORKS MAINTENANCE

LELAND R. EDMONDS, SECRETARY

BZA 2-60 AND 5-60

MR. KENNETH P. STEWART, ATTORNEY FOR THE APPLICANTS IN SUBJECT VARIANCE REQUESTS, HAS REQUESTED THAT A SKETCH BE PREPARED SHOWING THE LOCATION IN WHICH YOUR OFFICE WISHES THE REQUIRED LOOP LEVEES TO BE CONSTRUCTED. THIS INFORMATION IS DESIRED SO THAT IT MAY BE INCORPORATED INTO THE APPROPRIATE RESTRICTIVE COVENANTS REQUIRING THE CONSTRUCTION AND MAINTENANCE OF THE LOOP LEVEES.

LELAND R. EDMONDS
SECRETARY

LRE:BER

THE CITY OF WICHITA

OFFICE OF Board of Zoning Appeals DATE March 11, 1960

File

TO George Wilton, Superintendent of Public Works Maintenance
FROM Leland R. Edmonds, Secretary

SUBJECT BZA - 2-60 and BZA - 5-60

Attached is one thermofax copy of the resolution prepared for each of the above noted Board of Zoning Appeals actions. These are forwarded to you for your information and files because of your interest in the requirement for loop levees and restrictive covenants.

Leland R. Edmonds
Secretary

MARCH 7, 1960

MR. KENNETH P. STEWART
BOYER HONDROS & DONALDSON
340 SOUTH BROADWAY
WICHITA, KANSAS

DEAR MR. STEWART:

RE: BZA 2-60 AND BZA 5-60

NO APPEAL HAD BEEN TAKEN TO THE BOARD OF CITY COMMISSIONERS ON EITHER BZA 5-60 OR BZA 2-60, AS AMENDED. ACCORDINGLY, THE DECISION OF THE BOARD TO GRANT THE VARIANCE TO THE STRICT APPLICATION OF THE ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE TO ALLOW THE OPERATION AND MAINTENANCE OF A BORROW PIT ON BOTH OF THESE SITES, HAS BECOME FINAL. THE BUILDING INSPECTION SUPERINTENDENT HAS, THEREFORE, BE AUTHORIZED AND DIRECTED TO ISSUE A PERMIT FOR SUCH WORK ON THE DESCRIBED TRACTS OF LAND, SUBJECT TO THE NUMEROUS CONDITIONS ESTABLISHED BY THE RESOLUTION BZA-5-60 AND BZA 2-60 (AMENDED). RESOLUTION 2-60 AS ORIGINALLY ADOPTED WILL BECOME NULL AND VOID AS PROVIDED IN THE AMENDED RESOLUTION FOR THIS CASE.

IN BOTH OF THESE INSTANCES THE BORROW PIT SHOULD NOT BE ALLOWED TO BEGIN UNTIL THE APPROPRIATE RESTRICTIVE COVENANTS HAVE BEEN FILED OF RECORD. THESE SHOULD BE PREPARED IN ACCORDANCE WITH AND BEAR THE SIGNATURE OF APPROVAL OF MR. EUGENE PIRTLE, CITY COUNSEL FOR THE BOARD OF ZONING APPEALS.

ATTACHED ARE TWO COPIES OF BZA 2-60 (AMENDED) AND ONE COPY OF BZA 5-60.

VERY TRULY YOURS,

LELAND R. EDMONDS
SECRETARY

LRE:BER
ENCLOSURES

CC: S. B. MAPLE

FRED W. ALEY
City Attorney
THOMAS A. WOOD
Chief Assistant
LAWRENCE E. CURFMAN
DOUGLAS E. SHAY
PAUL J. DONALDSON
ROBERT C. HEISEL
EUGENE L. PIRTLE
ARTHUR G. JOHNSON
CHARLES A. SPARKS
Assistant City Attorneys



The City of Wichita, Kansas

DEPARTMENT OF LAW

OFFICE OF CITY ATTORNEY

March 1, 1960

Leland R. Edmonds
Department of Planning
City Annex
Wichita, Kansas

Re: Board of Zoning Appeals
BZA 2-60 and BZA 5-60

Dear Mr. Edmonds:

I have examined the enclosures contained in your letter of February 29, 1960, in the above matter. The proposed resolutions are approved as to form, and the content appears to coincide with the four principal conditions ordered by the Board of Zoning Appeals on February 23, 1960. The covenant running with the land submitted by Mr. Stewart in his letter of February 2, 1960, in behalf of the Graham's appears to be in order. A similar covenant should be furnished in behalf of W. L. Morris as regards BZA 5-60.

Very truly yours,

EUGENE L. PIRTLE
Assistant City Attorney

ELP/wcb

cc/ Kenneth Stewart



FEBRUARY 29, 1960

MR. KENNETH P. STEWART
ATTORNEY
BOYER HONDROS AND DONALDSON
340 SOUTH BROADWAY
WICHITA, KANSAS

DEAR MR. STEWART:

RE: BZA 2-60 AND BZA 5-60

AS YOU HAVE PREVIOUSLY BEEN INFORMALLY ADVISED, THE BOARD OF ZONING APPEALS TOOK ACTION ON FEBRUARY 23, 1960 TO APPROVE BZA 5-60, WHICH WAS A REQUEST FOR A VARIANCE TO OPERATE AND MAINTAIN A BORROW PIT ON PROPERTY IMMEDIATELY SOUTH OF THAT INCLUDED IN THE EARLIER APPLICATION, BZA 2-60. THE LATTER APPROVAL WAS SUBJECT TO CONDITIONS ESSENTIALLY THE SAME AS THOSE IMPOSED ON BZA 2-60. THE BOARD OF ZONING APPEALS ALSO AUTHORIZED THE AMENDMENT OF THE RESOLUTION FOR BZA 2-60 IN SUCH A WAY AS MIGHT BE NECESSARY TO PERMIT THE EFFICIENT OPERATION OF THE TWO TRACTS AS A SINGLE BORROW PIT.

ATTACHED IS ONE THERMOFAX COPY OF THE RESOLUTION WHICH HAS BEEN PREPARED FOR BZA 5-60 AND TWO THERMOFAX COPIES OF THE AMENDED RESOLUTION WHICH HAS BEEN PREPARED FOR BZA 2-60. THESE ARE IN ACCORDANCE WITH THE ROUGH DRAFTS WHICH WE EXAMINED TOGETHER ON FEBRUARY 26.

THE COPIES ARE SENT TO YOU AT THIS TIME SO THAT THEY MAY BE DISCUSSED WITH YOUR CLIENTS IF YOU FEEL THIS IS ADVISABLE. OFFICIAL COPIES WILL BE AVAILABLE AT THE EXPIRATION OF THE APPEAL PERIOD, OR IF BZA 5-60 SHOULD BE APPEALED, THEN AT SUCH TIME AS THE DECISION OF THE BOARD BECOMES FINAL.

WE WILL APPRECIATE YOUR EXAMINING THESE RESOLUTIONS AGAIN. IF YOU HAVE ANY COMMENTS CONCERNING THEM OR CHANGES WHICH YOU FEEL ARE ESSENTIAL, PLEASE ADVISE US PRIOR TO MARCH 4, 1960, WHICH DATE IS THE END OF THE APPEAL PERIOD FOR BZA 5-60.

VERY TRULY YOURS,

LELAND R. EDMONDS
SECRETARY

LRE:BER
ATTACHMENT

BOARD OF ZONING APPEALS

FEBRUARY 29, 1960

GENE PIRTLE, ASSISTANT CITY ATTORNEY
LELAND R. EDMONDS, SECRETARY, BOARD OF ZONING APPEALS
BZA 2-60 AND BZA 5-60

ATTACHED ARE RESOLUTIONS PREPARED FOR BZA 5-60
AND BZA 2-60 (AMENDED). I WORKED THESE OUT
WITH KEN STEWART AND HE IS HAPPY WITH THEM.
WILL YOU PLEASE LOOK THEM OVER IN THE NEXT DAY
OR TWO AND LET ME HAVE YOUR COMMENTS?

LELAND R. EDMONDS
SECRETARY

LRE:BER
ATTACHMENTS

BOARD OF ZONING APPEALS

FEBRUARY 29, 1960

File

C. H. FUNK, CITY CLERK

LELAND R. EDMONDS, SECRETARY, BOARD OF ZONING APPEALS

2-60

ATTACHED IS AN AMENDED COPY OF RESOLUTION 2-60
OF THE BOARD OF ZONING APPEALS OF THE CITY OF
WICHITA. THIS RESOLUTION WILL TAKE EFFECT WHEN
RESOLUTION 5-60 IS FINAL, AND AS SUCH THIS
RESOLUTION WILL THEN SUPERCEDE RESOLUTION 2-60
DATED JANUARY 29, 1960.

LELAND R. EDMONDS
SECRETARY
BOARD OF ZONING APPEALS

LRE:RAL:BER
ATTACHMENT

FEBRUARY 10, 1960

MR. KENNETH P. STEWART
BOYER, HONDROS & DONALDSON
340 SOUTH BROADWAY
WICHITA, KANSAS

RE: BZA 2-60 AND
BZA 5-60

DEAR MR. STEWART:

WE HAVE RECEIVED APPROPRIATE APPLICATIONS, FEES AND CERTIFICATES OF OWNERSHIP FOR A REQUEST FOR VARIANCE TO PERMIT A BORROW PIT THROUGH BOARD OF ZONING APPEALS ACTION ON PROPERTY IMMEDIATELY SOUTH OF THAT CONTAINED IN BZA 2-60. YOU HAVE SUBMITTED THIS ON BEHALF OF MR. MORRIS, THE OWNER.

YOU WILL RECALL OUR SEVERAL CONVERSATIONS PRIOR TO YOUR SUBMISSION OF THIS APPLICATION. YOU WILL ALSO RECALL THAT WE SUGGESTED THAT THE OWNERS OF THESE TWO TRACTS OF LAND SHOULD WORK TOGETHER TO AVOID UNNECESSARY DUPLICATION OF SUCH FEATURES AS LOOP LEVEES, SHELTER BELTS, FENCES, ETC.

THE APPEAL PERIOD FOR BZA 2-60 HAS ENDED WITHOUT ANY INDIVIDUAL OR AGENCY TAKING AN APPEAL TO THE BOARD OF CITY COMMISSIONERS. THUS, THE RULING OF THE BOARD OF ZONING APPEALS HAS BECOME FINAL AS WE INDICATED IN A LETTER DATED FEBRUARY 9, 1960. IT WOULD APPEAR THAT BZA 2-60 CAN BE NOW OPERATED AS A BORROW PIT AT SUCH TIME AS YOU WISH TO FILE THE APPROPRIATE RESTRICTIVE COVENANTS PROVIDING FOR THE CONSTRUCTION AND MAINTENANCE OF THE LOOP LEVEE. IF, HOWEVER, THE OWNERS OF THESE TWO TRACTS OF LAND CONTEMPLATE WORKING TOGETHER TO AVOID UNNECESSARY DUPLICATION OF THE LOOP LEVEE AND OTHER FEATURES, IT WOULD APPEAR IMPROPER FOR BZA 2-60 TO BE OPERATED UNTIL AFTER THE BOARD OF ZONING APPEALS HAS HAD AN OPPORTUNITY FORMALLY TO AMEND THE ESTABLISHED CONDITIONS AND TO ESTABLISH CONDITIONS FOR BZA 5-60, IF SUCH IS APPROVED.

Mr. KENNETH P. STEWART

-2-

FEBRUARY 10, 1960

BZA 5-60 WILL BE CONSIDERED BY THE BOARD OF ZONING APPEALS ON FEBRUARY 23, 1960. WE PROPOSE TO PLACE BZA 2-60 ON THE SAME AGENDA FOR POSSIBLE AMENDMENT OF CONDITIONS, IF THE BOARD CONSIDERS THIS APPROPRIATE. PRIOR TO THAT TIME, WE WILL HAVE OBTAINED FROM THE MAINTENANCE DIVISION OF THE DEPARTMENT OF PUBLIC WORKS SUGGESTIONS FOR ELIMINATING THOSE FEATURES WHICH WOULD BE DUPLICATE FEATURES AND FOR RELOCATING THEM TO THE EXTREME SOUTHERN END OF THE COMBINED PROPERTY, IF THIS SHOULD BECOME DESIRABLE.

IF THE BOARD OF ZONING APPEALS APPROVES BZA 5-60 AT ITS MEETING ON FEBRUARY 23, THE TEN-DAY APPEAL PERIOD WILL END ON MARCH 4, AND THE BOARD OF ZONING APPEALS DECISION COULD BECOME FINAL ON THAT DATE. IF THE BOARD OF ZONING APPEALS APPROVES YOUR REQUEST ON FEBRUARY 23, THEN IT WOULD APPEAR PROPER TO FILE THE RESTRICTIVE COVENANTS FOR BZA 2-60 ONLY AT SUCH TIME AS THE DECISION ON BZA 5-60 BECOMES FINAL. THE APPROPRIATE RESTRICTIONS FOR BZA 5-60 SHOULD BE FILED AT THE SAME TIME.

IF THE BOARD OF ZONING APPEALS SHOULD DENY THE REQUEST FOR VARIANCE FOR BZA 5-60, THEN YOU WOULD HAVE THE OPTION OF APPEALING TO THE BOARD OF CITY COMMISSIONERS AND TO THE COURTS, IF NECESSARY, AND IF CONSIDERED APPROPRIATE. IT WOULD, OF COURSE, BE IMPOSSIBLE TO SUGGEST WHEN SUCH APPEALS MIGHT BE CONSIDERED IN THE EVENT THIS WERE TO OCCUR.

IN SUMMATION, THEN WE WOULD RECOMMEND THAT THE RESTRICTIONS FOR BZA 2-60 NOT BE FILED (AND THE LAND NOT BE USED FOR A BORROW PIT) UNTIL AFTER THE OUTCOME OF BZA 5-60 IS DETERMINED. IF THE TWO TRACTS OF LAND ARE BOTH APPROVED FOR A BORROW PIT AND ARE TO BE WORKED AS A SINGLE TRACT, THEN RESTRICTIVE COVENANTS AND OTHER CONDITIONS SHOULD BE SO DESIGNED AS TO PERMIT TREATMENT OF THE TWO TRACTS AS A SINGLE TRACT, INsofar AS POSSIBLE.

IF YOU HAVE ANY QUESTIONS CONCERNING THIS MATTER, OR ANY SUGGESTIONS FOR A DIFFERENT MANNER OF HANDLING THESE TWO CASES, PLEASE LET US HEAR FROM YOU.

VERY TRULY YOURS,


LELAND R. EDMONDS
SECRETARY

LRE:EB

BOARD OF ZONING APPEALS

FEBRUARY 9, 1960

MR. GEORGE WILTON, SUPERINTENDENT OF PUBLIC WORKS MAINTENANCE

MR. LELAND R. EDMONDS, SECRETARY

BZA 5-60 AND
BZA 2-60

THE BOARD OF ZONING APPEALS HAS RECEIVED AN APPLICATION FOR A VARIANCE TO PERMIT THE ESTABLISHMENT AND OPERATION OF A BORROW PIT ON A TRACT OF LAND LEGALLY DESCRIBED AS FOLLOWS:

ALL THAT PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE 6TH PRINCIPAL MERIDIAN, LYING EAST OF THE BIG DITCH AND WEST OF THE 81 BY-PASS ROUTE HIGHWAY 235, DESCRIBED AS FOLLOWS, TO-WIT:

NINE (9) ACRES OFF THE NORTH SIDE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWING: BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 15, THENCE WEST 80 RODS, THENCE SOUTH 297 FEET, THENCE EAST 80 RODS, THENCE NORTH 297 FEET TO THE POINT OF BEGINNING; EXCEPT THAT PORTION THEREOF CONDEMNED FOR THE BIG DITCH AND U. S. HIGHWAY 81 BY-PASS ROUTE HIGHWAY 235, BEING APPROXIMATELY 5.53 ACRES, MORE OR LESS.

YOU WILL RECOGNIZE THAT THIS LIES IMMEDIATELY SOUTH AND ADJACENT TO THE PROPERTY INCLUDED IN BZA 2-60 RECENTLY CONSIDERED FOR A SIMILAR USE BY THE BOARD OF ZONING APPEALS. YOU WILL ALSO RECALL THAT THE BOARD OF ZONING APPEALS GRANTED APPROVAL OF THE APPLICATION IN 2-60, SUBJECT TO NUMEROUS SPECIFIC CONDITIONS, AMONG WHICH WERE THE CONSTRUCTION AND MAINTENANCE OF A LOOP LEVY, AS REQUIRED BY YOUR OFFICE.

WE ARE ADVISED BY LEGAL COUNSEL FOR THE CURRENT APPLICANT, MR. KENNETH P. STEWART, THAT THE OWNERS OF THE TWO TRACTS WISH TO COOPERATE TO AVOID UNNECESSARY DUPLICATION IN LOOP LEVIES, FENCES, SHELTER BELTS, ETC. WE WOULD APPRECIATE YOUR COMMENTS WITH RESPECT TO THE DULY PROPOSED BORROW PIT, AND SPECIFICALLY WITH RESPECT TO THE POSSIBILITIES FOR THE COOPERATION OF THESE TWO OWNERS TO ELIMINATE THE NECESSITY OF DUPLICATE FACILITIES WHEREVER POSSIBLE.

THIS MATTER WILL BE CONSIDERED BY THE BOARD OF ZONING APPEALS AT ITS MEETING FEBRUARY 23, 1960. WE WOULD APPRECIATE YOUR COMMENTS PRIOR TO THAT TIME, SO THAT THEY MAY BE PASSED ON TO THE BOARD FOR ITS CONSIDERATION.


LELAND R. EDMONDS
SECRETARY

File

FEBRUARY 9, 1960

MR. KENNETH P. STEWART
BOYER, HONDROS AND DONALDSON
340 SOUTH BROADWAY
WICHITA, KANSAS

RE: BZA 2-60

DEAR MR. STEWART:

THIS IS TO ADVISE YOU THAT WE HAVE CONTACTED THE OFFICE OF THE CITY CLERK, AND HAVE DETERMINED THAT NO APPEAL HAS BEEN TAKEN IN THE DECISION RENDERED BY THE BOARD OF ZONING APPEALS RELATIVE TO SUBJECT CASE. ACCORDINGLY, THE DECISION RENDERED BY THE BOARD ON JANUARY 29, 1960, IS FINAL, AND YOU ARE ACCORDINGLY GRANTED PERMISSION BY THAT BOARD TO OPERATE AND MAINTAIN A BORROW PIT ON PROPERTY AS DESCRIBED IN SUBJECT APPLICATION, SUBJECT TO CONDITIONS SPECIFIED IN THE OFFICIAL RESOLUTION.

ATTACHED IS ONE COPY OF THE RESOLUTION ADOPTED BY THE BOARD OF ZONING APPEALS, SIGNED BY THE CHAIRMAN AND SECRETARY.

THIS RESOLUTION STATES THE CONDITIONS UNDER WHICH YOUR REQUEST WAS APPROVED BY THE BOARD.

IF YOU HAVE ANY QUESTIONS CONCERNING THIS MATTER, PLEASE DO NOT HESITATE TO CALL ON US.

VERY TRULY YOURS,

REL
LELAND R. EDMONDS
SECRETARY

cc: S. B. MAPLE, BUILDING
INSPECTION SUPERINTENDENT

JESSE L. GRAHAM AND
RAYMOND J. ALLEN
1403 HARDING
WICHITA, KANSAS

LAW OFFICES OF
BOYER, HONDROS & DONALDSON

WICHITA FEDERAL SAVINGS BUILDING

340 SOUTH BROADWAY

WICHITA 2, KANSAS

JOHN E. BOYER
GEORGE J. HONDROS
PAUL J. DONALDSON
HAROLD T. BECK
KENNETH P. STEWART
JAMES R. HANSON

February 8, 1960

File

Mr. Leland R. Edmonds
Metropolitan Area Planning Commission
City Building Annex
Wichita, Kansas

In re: B.Z.A. Resolution Number 2-60

Dear Mr. Edmonds:

This will acknowledge receipt of photo copy of the resolution which you have prepared for the Board of Zoning Appeals, representing the action taken by the Board with respect to borrow pit application of Jesse L. Graham held January 26, 1960 and January 29, 1960. The form of the resolution appears quite satisfactory to me.

It is my understanding that this resolution would be officially filed, representing the action of the B.Z.A., within three days of the date of consideration, and that either party must appeal within 10 days thereafter.

If you will advise us as to the time when the covenant and bond are required, then we shall be glad to furnish them. It is our understanding that this would be done at the time that work commenced on the borrow pit concurrently with the issuance of the permit by the Building Inspection Superintendent.

Very truly yours,

BOYER, HONDROS & DONALDSON

By *Kenneth P. Stewart*

KPS:mk
cc: Jesse L. Graham



324

LAW OFFICES OF
BOYER, HONDROS & DONALDSON
WICHITA FEDERAL SAVINGS BUILDING
340 SOUTH BROADWAY
WICHITA 2, KANSAS

JOHN L. BOYER
GEORGE J. HONDROS
PAUL J. DONALDSON
HAROLD T. BECK
KENNETH P. STEWART
JAMES R. HANSON

February 2, 1960

Mr. Eugene L. Pirtle, Attorney for
Board of Zoning Appeals, City of Wichita
Brown Building
Wichita, Kansas

✓ Mr. Leland R. Edmonds
Metropolitan Area Planning Commission
City Building Annex
Wichita, Kansas

Gentlemen:

Re: BZA 2-60 Graham Borrow Pit Permit

In compliance with the action taken by the Board of Zoning Appeals on Friday, January 29, 1960, I have prepared a draft of covenant running with the land to be executed by Messrs. Graham and Allen and their respective spouses with respect to the land owned by them subject of the above application for variance.

Copies of the draft are being forwarded to both Mr. Pirtle and Mr. Edmonds to be checked for form. Upon being advised, we shall have the original executed and delivered to the office of the Metropolitan Area Planning Commission.

Yours very truly,

BOYER, HONDROS & DONALDSON

KPS:rd
Encl.



By *Kenneth P. Stewart*

COVENANT RUNNING WITH THE LAND

WHEREAS, the undersigned as owners of the property hereinafter described have made application for variance to the Board of Zoning Appeals of the City of Wichita, Kansas, for a conditional use permit to operate a borrow pit on said property and to use said property for such other uses as may be necessary to carry on a borrow pit operation on said land; and

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

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

NOW, THEREFORE, in consideration of the premises and approval of conditional use for operation of a borrow pit on their land hereinafter described so as to permit the use thereof for borrow pit operations, the undersigned hereby covenant to and with the City of Wichita, Kansas, on behalf of themselves and their successors in title of said land, to construct or cause to be constructed and maintained without cost or expense to the City of Wichita, a loop levee on, around and enclosing any borrow pit located on the following described land, to-wit:

All that part of the Northeast Quarter (NE/4)
Section 15-27-1W, lying west of U. S. Highway
81 By-pass, Route Highway 235, and east of the
Big Ditch in Sedgwick County, Kansas, being
approximately 22.73 acres,

all in accordance with the plans and specifications prepared by the Maintenance Division, Department of Public Works, City of Wichita, Kansas, attached hereto marked Exhibit "A" and made a part hereof;

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

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

The undersigned warrant that they are the owners of the fee title to said tract of land and that the obligation and covenant above set forth constitutes a first and prior lien against and encumbering said land.

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

Executed in triplicate this _____ day of _____ 1960.

Raymond J. Allen

Neva M. Allen, his wife

Jesse L. Graham

Ina L. Graham, his wife

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

STATE OF KANSAS)
) SS:
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of _____ 1960, before me, the undersigned, a notary public, in and for the County and State aforesaid, came Raymond J. Allen and Neva M. Allen, his wife, and Jesse L. Graham and Ina L. Graham, his wife, who are personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

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

My Commission Expires: _____

Notary Public

FRED W. ALEY
City Attorney
THOMAS A. WOOD
Chief Assistant
LAWRENCE E. CURFMAN
DOUGLAS E. SHAY
PAUL J. DONALDSON
ROBERT C. HEISEL
EUGENE L. PIRTLE
ARTHUR G. JOHNSON
CHARLES A. SPARKS
Assistant City Attorneys



File

The City of Wichita, Kansas

DEPARTMENT OF LAW

OFFICE OF CITY ATTORNEY

February 5, 1960

Leland R. Edmonds
Department of Planning
City Annex
Wichita, Kansas

BZA

Re: Resolution 2-60
Jesse L. Graham, et al
Variance

Dear Mr. Edmonds:

This is to confirm my telephone conversation of February 3, 1960, approving as to form the suggested resolution prepared by you for approval by the Board of Zoning Appeals under No. 2-60.

I will work with Mr. Stewart in connection with the preparation of the covenant running with the land.

Very truly yours,

Eugene L. Pirtle

EUGENE L. PIRTLE
Assistant City Attorney

ELP/wcb



FRED W. ALLEY
City Attorney
THOMAS A. WOOD
City Auditor
LAWRENCE E. CURRYMAN
DOUGLAS E. SHAY
PAUL J. DONALDSON
ROBERT C. HEISLER
EUGENE L. PIRTLE
ARTHUR G. JOHNSON
CHARLES A. SPARKS
Assistant City Attorneys



The City of Wichita, Kansas

DEPARTMENT OF LAW

OFFICE OF CITY ATTORNEY

January 28, 1960

Mr. Leland R. Edmonds
Metropolitan Area Planning Commission
City Building Annex
Wichita, Kansas

Re: BZA 2-60 Graham Borrow Pit
permit

Dear Mr. Edmonds:

I have examined the suggested resolution submitted by the attorney for Mr. Graham in the above matter. The resolution appears to recite facts as they transpired at the meeting of the Board of Zoning Appeals on January 26, 1960. It is suggested that paragraph (d) of the Ordinance 21-27 under Variances be particularly prescribed by a waiver or statement from the Flood Control authorities that the use of these premises for the purposes described in the resolution will not impair the public safety as regards the flood control operation. It is also suggested that the party receiving the permit should acknowledge or consent to the conditions imposed by the Board of Zoning Appeals. This may be accomplished either by Mr. Graham's consent to the resolution or the Building Inspector could issue a permit with the conditions attached to the permit.

The suggested resolution omits reference to the direction of the Board of Zoning Appeals to review this permit annually. It is my recollection that that was the intent of the Board. This should be included in the resolution.

I shall be glad to prepare a similar resolution or review one containing these additional items.

Very truly yours,

ELP/wcb
cc/ S. B. Maple
Kenneth P. Stewart

EUGENE L. PIRTLE
Assistant City Attorney

LAW OFFICES OF
BOYER, HONDROS & DONALDSON
WICHITA FEDERAL SAVINGS BUILDING
340 SOUTH BROADWAY
WICHITA 2, KANSAS

JOHN E. BOYER
GEORGE J. HONDROS
PAUL J. DONALDSON
HAROLD T. BECK
KENNETH P. STEWART
JAMES R. HANSON

January 27, 1960

Mr. Eugene L. Pirtle, Attorney for
Board of Zoning Appeals, City of Wichita
Brown Building
Wichita, Kansas

✓ Mr. Leland R. Edmonds
Metropolitan Area Planning Commission
City Building Annex
Wichita, Kansas

Gentlemen:

Re: Resolution - Graham Conditional Use Permit

At the suggestion of Mr. Pirtle and Mr. Edmonds, I have endeavored to prepare a tentative draft for suggested resolution relating to the action taken by the Board of Zoning Appeals at its regular meeting Tuesday, January 26, 1960. This is a draft only and subject to the approval and suggestions of Mr. Pirtle and Mr. Edmonds.

I am forwarding a carbon copy to each of you for any changes which you might feel are necessary.

Yours very truly,

BOYER, HONDROS & DONALDSON

By *Kenneth P. Stewart*

KPS:rd
Encl.



R E S O L U T I O N

**BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS**

WHEREAS, on January 26, 1960, the Board of Zoning Appeals of the City of Wichita, Kansas, at a regular meeting duly called after notice of said hearing as required by law and the rules and regulations of the Board of Zoning Appeals, did hear the appeal of Jesse L. Graham and Raymond J. Allen, being BZA 2-60, from the decision and determination of S. B. Maple, Superintendent of Building Inspection, rendered December 24, 1959, to deny a conditional use permit for borrow pit and also heard the application of said Jesse L. Graham and Raymond J. Allen for a variance to allow a conditional use permit for operation of a borrow pit on the following described property, to-wit:

All that part of the Northeast Quarter (NE/4) Section 15-27-1W, lying west of U. S. Highway 81 By-pass, Route Highway 235, and east of the Big Ditch in Sedgwick County, Kansas, being approximately 22.73 acres, and;

WHEREAS, the Board of Zoning Appeals determined that it had jurisdiction under Section 21-27 of the Code of the City of Wichita, Kansas, as amended by Ordinance No. 24-606, to consider said appeal and application for variance and further determined that there were present all of the following conditions:

(Insert A, B, C, and D, Section I d.2) and,

WHEREAS, no one appeared to object to the granting of said application for variance; and

WHEREAS, the Board of Zoning Appeals being thus fully advised in the premises determined that said appeal and variance should be granted and the conditional use permit for operation of a borrow pit be approved subject to the following conditions:

(Here insert conditions which might be paraphrased as follows:)

1. Filing with the office of the City Clerk, City of Wichita, Kansas, of a performance bond in the amount of "blank" dollars to insure compliance with construction specifications and maintenance all satisfactory to the City of Wichita, Kansas, and
2. Performance of the construction specifications and maintenance as shown by the attached Schedule "A" specifically made a part hereof; and

WHEREAS, action upon said application for variance was thereupon deferred until January 29, 1960, at 1:30 P.M., and

WHEREAS, the Board of Zoning Appeals was regularly convened on said day and thereupon, being fully advised in the premises, it was moved, seconded and a concurring vote of the majority of all Board Members determined that said appeal and variance should be approved subject to compliance with construction specifications and maintenance and the filing of a performance bond as hereinabove stated.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, Kansas, that the appeal herein and the application for variance for a conditional use permit for the operation of a borrow pit on the above described property be approved subject to compliance with the above conditions.

ADOPTED this _____ day of January, 1960, by the Board of Zoning Appeals of the City of Wichita, Kansas, in regular session convened.

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

By _____
L. A. Casado, Chairman

By _____
H. D. Lester, Member

By _____
Bradford Hall, Member

By _____
F. Russell Jump, Member

By _____
Kenneth F. Beck, Member

SUGGESTED RESTRICTIONS APPLICABLE TO BZA 2-60

1. THE EARTH SHALL BE EXTRACTED TO A MINIMUM DEPTH OF TWO (2) FEET BELOW THE NORMAL WATER TABLE AS DETERMINED BY THE CITY-COUNTY HEALTH DEPARTMENT.
2. A FIFTY-EIGHT (58) INCH V-MESH FENCE ON NO LESS THAN SEVEN (7) FOOT STEEL POSTS WITH THE POSTS AT NO MORE THAN SIXTEEN (16) FOOT SPACING SHALL BE CONSTRUCTED ON THE PROPERTY LINE AND MAY PROVIDE FOR REASONABLE ACCESS GATES INSTALLED AT THE HEIGHT OF THE FENCE; WHICH GATES SHALL BE LOCKED EXCEPT WHEN IN USE; PROVIDED FURTHER THAT SUCH FENCE SHALL BE CONSTRUCTED OUTSIDE SUCH LOOP LEVEES AS MAY BE REQUESTED BY PARAGRAPH 6 OF THESE RESTRICTIONS. ~~AND THAT NO FENCE SHALL BE REQUIRED ALONG THE WEST PROPERTY LINE.~~
3. EXCAVATION SHALL NOT APPROACH NEARER THAN FIFTEEN (15) FEET TO THE PROPERTY LINE.
4. ALONG THE SOUTH BOUNDARY OF SAID PROPERTY THERE SHALL BE INSTALLED A SHELTER BELT CONSISTING OF TWO (2) ROWS OF PLANTING, THE INSTALLATION AND COMPOSITION OF WHICH SHELTER BELT SHALL BE IN ACCORDANCE WITH SPECIFICATIONS OF THE SOIL CONSERVATION SERVICE.
5. ALL FILL TAKEN FROM THE SUBJECT BORROW PIT SHALL BE USED EXCLUSIVELY FOR CONSTRUCTION OF INTERSTATE HIGHWAY 235.
6. A COVENANT RUNNING WITH THE LAND SHALL BE APPROPRIATELY EXECUTED AND RECORDED AND SHALL BE PREVIOUSLY APPROVED BY CITY COUNSEL. SAID RESTRICTIVE COVENANTS SHALL PROVIDE FOR THE CONSTRUCTION OF A LOOP LEVEE IN ACCORDANCE WITH CONSTRUCTION SPECIFICATIONS, SECTION 1 THROUGH 4 INCLUSIVE, AND MAINTENANCE SPECIFICATIONS, SECTION 1 AND 2, OF CONSTRUCTION AND MAINTENANCE SPECIFICATIONS AS PREPARED BY THE MAINTENANCE DIVISION OF THE DEPARTMENT OF PUBLIC WORKS; AND IN SUCH LOCATION AS THE SAID MAINTENANCE DIVISION OF THE DEPARTMENT OF PUBLIC WORKS MAY DIRECT.
7. THE SIDE SLOPE OF THE EXCAVATION SHALL BE NO MORE STEEP THAN THREE (3) HORIZONTAL TO ONE VERTICAL; AND IF THE LENGTH OF THE SLOPE IS GREATER THAN TEN FEET A SLOPE FOUR (4) HORIZONTAL TO ONE (1) VERTICAL SHALL BE REQUIRED.
8. VEGETATIVE COVER FOR SLOPES SHALL CONSIST OF A SHORT PERENNIAL DROUGHT RESISTANT GRASS OR COMBINATION OF GRASSES WHICH WILL PERMIT THE ESTABLISHMENT OF A GOOD SOG COVER; ~~INSTALLATION AND COMPOSITION OF SUCH SOG COVER TO BE IN ACCORDANCE WITH SPECIFICATIONS OF THE SOIL CONSERVATION SERVICE.~~
9. CONDITIONS 1 THROUGH 8 ABOVE SHALL BE MADE SUBJECT TO THE PERFORMANCE BOND PRESENTED BY THE CONTRACTOR TO THE STATE HIGHWAY COMMISSION AND A COPY OF SAID PERFORMANCE BOND SHALL BE FILED WITH THE OFFICE OF THE CITY CLERK, CITY OF WICHITA, TO INSURE PROPER CONFORMANCE TO THE CONDITIONS ESTABLISHED IN 1 THROUGH 8 ABOVE.
10. A FURTHER SEPARATE BOND SHALL BE PRESENTED TO COVER SEPARATELY AND APART THE MAINTENANCE OF THE SHELTER BELT FOR 3 YEARS AND IN THE AMOUNT OF 500 (TO BE DETERMINED BY THE BOARD OF ZONING APPEALS). SUCH BOND TO BE FILED IN THE OFFICE OF THE CITY CLERK AND TO RUN IN FAVOR OF THE CITY OF WICHITA.

SUGGESTED RESTRICTIONS APPLICABLE TO BZA 2-60

1. THE EARTH SHALL BE EXTRACTED TO A MINIMUM DEPTH OF TWO (2) FEET BELOW THE NORMAL WATER TABLE AS DETERMINED BY THE CITY-COUNTY HEALTH DEPARTMENT.
2. A FIFTY-EIGHT (58) INCH V-MESH FENCE ON NO LESS THAN SEVEN (7) FOOT STEEL POSTS WITH THE POSTS AT NO MORE THAN SIXTEEN (16) FOOT SPACING SHALL BE CONSTRUCTED ON THE PROPERTY LINE AND MAY PROVIDE FOR REASONABLE ACCESS GATES INSTALLED AT THE HEIGHT OF THE FENCE; WHICH GATES SHALL BE LOCKED EXCEPT WHEN IN USE; PROVIDED FURTHER THAT SUCH FENCE SHALL BE CONSTRUCTED OUTSIDE SUCH LOOP LEVEES AS MAY BE REQUESTED BY PARAGRAPH 6 OF THESE RESTRICTIONS AND THAT NO FENCE SHALL BE REQUIRED ALONG THE WEST PROPERTY LINE.
3. EXCAVATION SHALL NOT APPROACH NEARER THAN FIFTEEN (15) FEET TO THE PROPERTY LINE.
4. ALONG THE SOUTH BOUNDARY OF SAID PROPERTY THERE SHALL BE INSTALLED A SHELTER BELT CONSISTING OF TWO (2) ROWS OF PLANTING, THE INSTALLATION AND COMPOSITION OF WHICH SHELTER BELT SHALL BE IN ACCORDANCE WITH SPECIFICATIONS OF THE SOIL CONSERVATION SERVICE.
5. ALL FILL TAKEN FROM THE SUBJECT BORROW PIT SHALL BE USED EXCLUSIVELY FOR CONSTRUCTION OF INTERSTATE HIGHWAY 235.
6. A COVENANT RUNNING WITH THE LAND SHALL BE APPROPRIATELY EXECUTED AND RECORDED AND SHALL BE PREVIOUSLY APPROVED BY CITY COUNSEL. SAID RESTRICTIVE COVENANTS SHALL PROVIDE FOR THE CONSTRUCTION OF A LOOP LEVEE IN ACCORDANCE WITH CONSTRUCTION SPECIFICATIONS, SECTION 1 THROUGH 4 INCLUSIVE, AND MAINTENANCE SPECIFICATIONS, SECTION 1 AND 2, OF CONSTRUCTION AND MAINTENANCE SPECIFICATIONS AS PREPARED BY THE MAINTENANCE DIVISION OF THE DEPARTMENT OF PUBLIC WORKS; AND IN SUCH LOCATION AS THE SAID MAINTENANCE DIVISION OF THE DEPARTMENT OF PUBLIC WORKS MAY DIRECT.
7. THE SIDE SLOPE OF THE EXCAVATION SHALL BE NO MORE STEEP THAN THREE (3) HORIZONTAL TO ONE VERTICAL; AND IF THE LENGTH OF THE SLOPE IS GREATER THAN TEN FEET A SLOPE FOUR (4) HORIZONTAL TO ONE (1) VERTICAL SHALL BE REQUIRED.
8. VEGETATIVE COVER FOR SLOPES SHALL CONSIST OF A SHORT PERENNIAL DROUGHT RESISTANT GRASS OR COMBINATION OF GRASSES WHICH WILL PERMIT THE ESTABLISHMENT OF A GOOD SOD COVER; INSTALLATION AND COMPOSITION OF SUCH SOD COVER TO BE IN ACCORDANCE WITH SPECIFICATIONS OF THE SOIL CONSERVATION SERVICE.
9. CONDITIONS 1 THROUGH 8 ABOVE SHALL BE MADE SUBJECT TO THE PERFORMANCE BOND PRESENTED BY THE CONTRACTOR TO THE STATE HIGHWAY COMMISSION AND A COPY OF SAID PERFORMANCE BOND SHALL BE FILED WITH THE OFFICE OF THE CITY CLERK, CITY OF WICHITA, TO INSURE PROPER CONFORMANCE TO THE CONDITIONS ESTABLISHED IN 1 THROUGH 8 ABOVE.
10. A FURTHER SEPARATE BOND SHALL BE PRESENTED TO COVER SEPARATELY AND APART THE MAINTENANCE OF THE SHELTER BELT FOR _____ YEARS AND IN THE AMOUNT OF _____ (TO BE DETERMINED BY THE BOARD OF ZONING APPEALS). SUCH BOND TO BE FILED IN THE OFFICE OF THE CITY CLERK AND TO RUN IN FAVOR OF THE CITY OF WICHITA.

JANUARY 27, 1960

MR. KENNETH P. STEWART
BOYER, HONDROS & DONALDSON
340 SOUTH BROADWAY
WICHITA, KANSAS

RE: BZA 2-60

DEAR MR. STEWART:

THIS IS TO ADVISE YOU THAT THE BOARD OF ZONING APPEALS CONSIDERED SUBJECT APPEAL AND VARIANCE AT ITS MEETING OF JANUARY 26, 1960. THE BOARD OF ZONING APPEALS HAS VOTED TO TAKE JURISDICTION OF THIS MATTER AS A "VARIANCE FROM THE STRICT APPLICATION OF THE ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE."

IN A SECOND ACTION THE BOARD OF ZONING APPEALS MOVED TO DEFER ACTION ON THE REQUEST FOR A VARIANCE TO THE ADJOURNED MEETING TO RECONVENE AT 1:30 P.M. FRIDAY, JANUARY 29, 1960.

YOURS VERY TRULY,

LELAND R. EDMONDS,
SECRETARY

LRE:SDH

Attachment 3

STATEMENT

CAPTIONED PROPERTY IS LOCATED GENERALLY AT 9TH STREET AND SOUTH OF 13TH STREET JUST EAST OF THE BIG DITCH AND WEST OF HIGHWAY 81 BY-PASS AND IS DESCRIBED AS FOLLOWS:

ALL THAT PART OF THE NORTHEAST QUARTER (NE/4) SECTION 15-27-1W, LYING WEST OF U. S. HIGHWAY 81 BY-PASS, ROUTE HIGHWAY 235, AND EAST OF THE BIG DITCH IN SEDGWICK COUNTY, KANSAS, BEING APPROXIMATELY 22.73 ACRES.

APPEAL HAS BEEN MADE TO THE BOARD OF ZONING APPEALS, CITY OF WICHITA, KANSAS, IN ACCORDANCE WITH SECTION 21-27, D-1, AS AMENDED AND IS BASED UPON THE FOLLOWING:

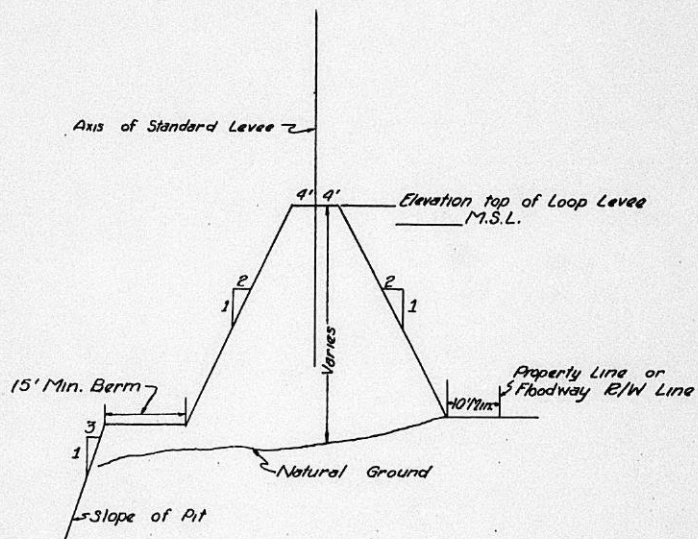
1. NO PROCEDURE IS SET UP FOR A CONDITIONAL USE PERMIT FOR BORROW PIT WITHIN THE CITY LIMITS.

2. EXISTING ZONING CLASSIFICATIONS DO NOT CLEARLY INDICATE THAT BORROW PIT USE COULD BE PERMITTED IN ANY ZONING CLASSIFICATION.

(A.) THE "F" HEAVY INDUSTRIAL CLASSIFICATION, AS A MATTER OF FACT, PERMITS USE "FOR ANY LAWFUL PURPOSE" AND "FOR ANY PURPOSE NOT IN CONFLICT WITH ANY ORDINANCE OF THE CITY REGULATING NUISANCES OR SPECIAL FIRE HAZARDS;....."

(B.) SEC. 21-131 INTERPRETED BROADLY WOULD APPEAR TO MAKE THE OPERATION OF A BORROW PIT A NUISANCE AND, CONSEQUENTLY, A BORROW PIT WOULD BE IN CONFLICT WITH THE ORDINANCE AND PROHIBITED.

3. BY VIRTUE OF PAST ACTION OF THE METROPOLITAN AREA PLANNING COMMISSION, THE BOARD OF CITY COMMISSIONERS AND THE BOARD OF COUNTY COMMISSIONERS, A POLICY HAS BEEN ADOPTED WHEREBY BORROW PIT USES WILL NO LONGER BE PERMITTED WITHOUT THE IMPOSITION OF CERTAIN CONDITIONS AND LIMITATIONS TO OPERATION AND USE. CONSEQUENTLY, EVEN IF HEAVY INDUSTRIAL CLASSIFICATION WOULD ACCOMMODATE A BORROW PIT, THE METROPOLITAN AREA PLANNING COMMISSION WOULD NOT PERMIT AN "F" ZONING SINCE THEY CANNOT CONDITION A HEAVY INDUSTRIAL USE EXCEPT THOSE MENTIONED SPECIFICALLY IN SECTION 21-18, A. THIS AUTHORITY LIES ONLY WITH THE BOARD OF ZONING APPEALS UNDER PRESENT PLANNING PROCEDURES.



No Scale

TYPICAL SECTION OF STANDARD
LEVEE

CONSTRUCTION SPECIFICATIONS

SECTION I - CLEARING AND GRUBBING

1-01. ORDER OF WORK:

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

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

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

SECTION II - EXCAVATION

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

SECTION III - EMBANKMENT

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

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

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

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

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

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

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

c. Compaction Equipment -

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

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

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

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

SECTION IV - TURFING

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

4-02. MULCHING:

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

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

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

4-03. FERTILIZING AND SEEDING:

a. Materials -

1. Fertilizer shall be dry, free-flowing materials which can be distributed uniformly, and shall be commercial grade 10-10-0 or the equivalent.

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

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

MAINTENANCE SPECIFICATIONS

SECTION I - GENERAL

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

SECTION II - INSPECTION

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

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

CONDITIONS FOR SAND PITS

1. THE APPROPRIATE EXECUTION AND RECORDING OF A COVENANT RUNNING WITH THE LAND AS PREPARED AND AGREED TO BY CITY AND COUNTY COUNSEL DATED SEPTEMBER 28, 1959. (ENCLOSURE 1).
2. CONSTRUCTION SPECIFICATIONS FOR A LOOP LEVEE, SECTION 1 THROUGH 4 INCLUSIVE AND MAINTENANCE SPECIFICATIONS FOR THE LOOP LEVEE, SECTIONS 1 AND 2, OF CONSTRUCTION SPECIFICATIONS AS PREPARED BY THE MAINTENANCE DIVISION OF THE DEPARTMENT OF PUBLIC WORKS. (ENCLOSURE 2.) (APPLICABLE ONLY WHEN LOCATED ADJACENT TO OR NEAR BIG DITCH)
3. THE CONSTRUCTION OF A 58 INCH V-MESH WIRE FENCE ON 7 FOOT STEEL POSTS SPACED 16 FEET APART. SAID FENCE TO BE LOCATED OUTSIDE THE LOOP LEVEE REFERRED TO ABOVE.
4. THE SIDE SLOPE OF THE EXCAVATION SHALL BE NO MORE STEEP THAN 3 HORIZONTAL TO 1 VERTICAL AND IF THE LENGTH OF THE SLOPE IS GREATER THAN 10 FEET, A SLOPE 4 HORIZONTAL TO 1 VERTICAL SHALL BE REQUIRED.
5. VEGETATIVE COVER FOR SLOPES SHOULD CONSIST OF A SHORT, PERENNIAL, DROUTH-RESISTANT GRASS OR COMBINATION OF GRASSES WHICH WILL PERMIT THE ESTABLISHMENT OF A GOOD SOD COVER; INSTALLATION AND COMPOSITION OF WHICH SHALL BE IN ACCORDANCE WITH SPECIFICATIONS OF THE SOIL CONSERVATION SERVICE.
6. EXCAVATION SHALL NOT APPROACH NEARER THAN 15 FEET TO THE PROPERTY LINE.

TYPICAL CONDITIONS FOR BORROW PITS

1. THE EARTH SHALL BE EXTRACTED TO A MINIMUM DEPTH OF TWO (2) FEET BELOW THE NORMAL WATER TABLE AS DETERMINED BY THE CITY-COUNTY HEALTH DEPARTMENT.
2. A FIFTY-EIGHT (58) INCH V-MESH FENCE ON NO LESS THAN SEVEN (7) FOOT STEEL POSTS WITH THE POSTS AT NO MORE THAN SIXTEEN (16) FOOT SPACING SHALL BE CONSTRUCTED ON THE PROPERTY LINE AND MAY PROVIDE FOR REASONABLE ACCESS GATES INSTALLED AT THE HEIGHT OF THE FENCE WHICH GATES SHALL BE KEPT LOCKED EXCEPT WHEN IN USE.
3. EXCAVATION SHALL NOT APPROACH NEARER THAN 15 FEET TO THE PROPERTY LINE.
4. ALONG THE BOUNDARIES FACING RESIDENTIAL AREAS THERE SHALL BE INSTALLED A SHELTER BELT CONSISTING OF TWO (2) ROWS OF PLANTINGS AND THE INSTALLATION AND COMPOSITION OF SAID SHELTER BELT SHALL BE IN ACCORDANCE WITH SPECIFICATIONS OF THE SOIL CONSERVATION SERVICE.
5. THAT ALL FILL TAKEN FROM THE SUBJECT BORROW PIT SHALL BE USED EXCLUSIVELY FOR THE CONSTRUCTION OF INTERSTATE HIGHWAY 235.
6. CONSTRUCTION SPECIFICATIONS FOR A LOOP LEVEE, SECTION 1 THROUGH 4 INCLUSIVE AND MAINTENANCE SPECIFICATIONS FOR THE LOOP LEVEE, SECTIONS 1 AND 2, OF CONSTRUCTION SPECIFICATIONS AS PREPARED BY THE MAINTENANCE DIVISION OF THE DEPARTMENT OF PUBLIC WORKS. (ENCLOSURE 2) (APPLICABLE ONLY WHEN LOCATED ADJACENT TO OR NEAR BIG DITCH)
7. THE SIDE SLOPE OF THE EXCAVATION SHALL BE NO MORE STEEP THAN 3 HORIZONTAL TO 1 VERTICAL AND IF THE LENGTH OF THE SLOPE IS GREATER THAN 10 FEET, A SLOPE 4 HORIZONTAL TO 1 VERTICAL SHALL BE REQUIRED.
8. VEGETATIVE COVER FOR SLOPES SHOULD CONSIST OF A SHORT, PERENNIAL, DROUGHT-RESISTANT GRASS OR COMBINATION OF GRASSES WHICH WILL PERMIT THE ESTABLISHMENT OF A GOOD SOD COVER. ~~INSTALLATION AND COMPOSITION OF WHICH SHALL BE IN ACCORDANCE WITH SPECIFICATIONS OF THE SOIL CONSERVATION SERVICE.~~
9. THE APPROPRIATE EXECUTION AND RECORDING OF A COVENANT RUNNING WITH THE LAND AS PREPARED AND AGREED TO BY CITY AND COUNTY COUNSEL DATED SEPTEMBER 28, 1959. (ENCLOSURE 1).
10. CONDITIONS ONE THROUGH NINE ABOVE SHALL BE MADE SUBJECT OF THE PERFORMANCE BOND PRESENTED BY THE CONTRACTOR TO THE STATE HIGHWAY COMMISSION, AND A COPY OF SAID PERFORMANCE BOND SHALL BE FILED WITH THE CITY CLERK'S OFFICE TO ENSURE PROPER CONFORMANCE TO THE CONDITIONS ESTABLISHED IN ONE THROUGH NINE ABOVE.
11. A FURTHER SEPARATE BOND SHALL BE PRESENTED TO COVER SEPARATELY AND APART THE MAINTENANCE OF THE SHELTER BELT FOR SUCH PERIOD OF TIME AND AMOUNT TO BE DETERMINED BY THE BOARD OF ZONING APPEALS. SUCH BOND TO BE FILED IN THE OFFICE OF THE CITY CLERK AND TO RUN IN FAVOR OF THE CITY.

SEPTEMBER 28, 1959

COVENANT RUNNING WITH THE LAND

WHEREAS, THE UNDERSIGNED AS OWNER OF THE PROPERTY HEREINAFTER DESCRIBED HAS MADE APPLICATION TO THE METROPOLITAN PLANNING COMMISSION OF THE CITY OF WICHITA AND COUNTY OF SEDGWICK FOR PERMISSION TO USE SAID PROPERTY AS A BORROW OR SAND PIT TOGETHER WITH SUCH OTHER USES AS MAY BE NECESSARY TO CARRY ON A BORROW OR SAND PIT OPERATION ON SAID LAND; AND

WHEREAS, THE LANDS ADJACENT TO THE ABOVE DESCRIBED TRACT ARE AND WILL BE DEVELOPED FOR URBAN PURPOSES AND THE OPERATION OF A BORROW OR A SAND PIT AT SUCH LOCATION WILL ENDANGER THE HEALTH, WELFARE AND PROPERTY OF RESIDENTS WHO MAY LIVE IN SUCH AREAS UNLESS CERTAIN PROTECTIVE MEASURES ARE TAKEN; AND

WHEREAS, THE UNDERSIGNED DESIRES TO OBLIGATE HIMSELF AND HIS SUCCESSORS IN TITLE TO PROTECT THE PUBLIC WELFARE BY CONSTRUCTING AND MAINTAINING A LOOP LEVEE UPON SAID PROPERTY AND TO SUBJECT AND BURDEN THE FEE TITLE THERETO SO THAT SUCH OBLIGATION IS A COVENANT RUNNING WITH THE LAND;

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE ZONING BY THE METROPOLITAN PLANNING COMMISSION OF MY LAND HEREINAFTER DESCRIBED SO AS TO PERMIT THE USE THEREOF FOR BORROW AND/OR SAND PIT OPERATIONS, THE UNDERSIGNED HEREBY COVENANTS TO AND WITH THE METROPOLITAN PLANNING COMMISSION, THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY AND CITY OF WICHITA, KANSAS, ON BEHALF OF HIMSELF AND HIS SUCCESSORS IN TITLE OF SAID LAND, TO CONSTRUCT OR CAUSE TO BE CONSTRUCTED AND MAINTAINED WITHOUT COST OR EXPENSE TO THE COUNTY OF SEDGWICK OR THE CITY OF WICHITA, A LOOP LEVEE ON, AROUND AND ENCLOSING ANY BORROW OR SAND PIT LOCATED ON THE FOLLOWING DESCRIBED LAND, TO-WIT:

(DESCRIPTION)

ALL IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS PREPARED BY THE CITY AND COUNTY ENGINEERS ATTACHED HERETO MARKED EXHIBIT "A" AND MADE A PART HEREOF:

TO SECURE AND GUARANTEE THE ABOVE OBLIGATION, THE UNDERSIGNED HEREBY SUBJECTS AND ENCOMBERS SAID PROPERTY WITH THE COVENANT AND OBLIGATION TO CONSTRUCT AND MAINTAIN SAID

LOOP LEVEE AS ABOVE DESCRIBED AS A COVENANT RUNNING WITH AND BURDENING THE LAND AND, IN EVENT OF THE FAILURE BY THE UNDERSIGNED OR ANY OF HIS SUCCESSORS IN TITLE WITHIN SIXTY (60) DAYS AFTER RECEIPT OF WRITTEN NOTICE FROM THE COUNTY OR CITY TO FULFILL THE OBLIGATION ABOVE SET FORTH, THEN AND IN SUCH EVENT THE BOARD OF COMMISSIONERS OF SEDGWICK COUNTY OR THE GOVERNING BODY OF THE CITY OF WICHITA MAY ORDER SUCH WORK DONE AND THEREAFTER MAINTAIN AND CHARGE THE ENTIRE COST OF SUCH CONSTRUCTION AND MAINTENANCE AS A FIRST LIEN AGAINST SAID LAND TO BE COLLECTED AND FORECLOSED IN THE SAME MANNER AS A MORTGAGE IS FORECLOSED.

THE UNDERSIGNED WARRANTS THAT HE IS THE OWNER OF THE FEE TITLE TO SAID TRACT OF LAND AND THAT THE OBLIGATION AND COVENANT ABOVE SET FORTH CONSTITUTES A FIRST AND PRIOR LIEN AGAINST AND ENCUMBERING SAID LAND.

THIS INSTRUMENT SHALL BE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS, SEDGWICK COUNTY, KANSAS, SO AS TO APPEAR IN THE CHAIN OF TITLE OF SAID LAND.

EXECUTED IN TRIPLICATE THIS _____ DAY OF _____
19__.

(OWNER)

(OWNER'S WIFE)

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

STATE OF KANSAS)
) SS:
SEDGWICK COUNTY)

BE IT REMEMBERED, THAT ON THIS _____ DAY OF _____
19__, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC, IN AND FOR
THE COUNTY AND STATE AFORESAID, CAME _____

WHO ARE PERSONALLY KNOWN TO ME TO BE THE SAME PERSONS WHO EXECUTED
THE WITHIN INSTRUMENT OF WRITING, AND SUCH PERSONS DULY ACKNOWLEDGED
THE EXECUTION OF THE SAME.

- 3 -

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND
AND AFFIRMED MY NOTARIAL SEAL, THE DAY AND YEAR LAST ABOVE
WRITTEN.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

PAYMENT NOTICE

City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

Bld'g & Elev. _____ Elec. _____ Elev. Insp. _____
Exam Fees _____ Hse. Mvr. _____ Hse. Moving _____
Lisc. _____ Mech. _____ Oil Well _____ Pav. Cuts _____
Plan. Pib'g. _____ Pib'g Cert. _____
Sanitation _____ Sewer _____ Signs _____ Sidewalk _____
Street _____ Trailers _____

| DESCRIPTION | AMOUNT |
|-------------------------|--------------|
| <i>Copy Application</i> | <i>20.00</i> |

Name *Kenn Stewart*
Address *3410 S Broadway*
Type _____ Due Date _____
Comments: _____

Date *1-4-60* By *[Signature]*

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

APPEAL FROM ORDER OF THE BUILDING INSPECTION SUPERINTENDENT

I. Name of Appellant Jesse L. Graham and Raymond J. Allen
Mailing Address 1403 Harding Phone MU 2-8561
Name of Agent Kenneth P. Stewart
Mailing Address 340 South Broadway Phone HO 4-7321
Relationship of Appellant to property is that of Owner
(Owner, tenant, lessee, other).

II. The appellant herein appeals from a decision, determination, or an order of the Building Inspection Superintendent, as follows: _____
Application for conditional use (borrow pit) denied for property zoned "AA" residential because ordinance makes no provision for any kind of special use. Decision was rendered on December 24, 1959.

_____The decision was rendered on Dec. 24, 1959 (date) and refers to Section None of the Code of the City of Wichita (Zoning Ordinance).

III. The appellant hereby declares that he believes the order, decision or determination of the Building Inspection Superintendent in enforcing Section None of the Code of the City of Wichita (Zoning Ordinance) is incorrect for the following reasons:

SEE STATEMENT ATTACHED

IV. The appellant herein, or his authorized agent, hereby acknowledges:
a. That he has received an instruction sheet pertaining to the filing of this appeal.
b. That he has been advised of his rights of appeal of the decision of the Board of Zoning Appeals to the Board of City Commissioners within ten (10) days of the date of that decision.

Jesse L. Graham
Raymond J. Allen
Applicant
Kenneth P. Stewart
Authorized Agent
By: Kenneth P. Stewart of
BOYER, HONDROS & DONALDSON

OFFICE USE ONLY

This appeal was received in the office of the Secretary, Board of Zoning Appeals, at 11:30 (a.m., p.m.) 1-4-60 (date).

BZA - 4A

Blaker (checked)
Signed by [initials]

S T A T E M E N T

(Under III)

Captioned property is located generally at 9th Street and south of 13th Street just east of the Big Ditch and west of Highway 81 By-pass and is described as follows:

All that part of the Northeast Quarter (NE/4) Section 15-27-1W, lying west of U. S. Highway 81 By-pass, Route Highway 235, and east of the Big Ditch in Sedgwick County, Kansas, being approximately 22.73 acres.

Appeal has been made to the Board of Zoning Appeals, City of Wichita, Kansas, in accordance with Section 21-27, D-1, as amended and is based upon the following:

1. No procedure is set up for a conditional use permit for borrow pit within the city limits.

2. Existing zoning classifications do not clearly indicate that borrow pit use could be permitted in any zoning classification.

(a.) The "F" heavy industrial classification, as a matter of fact, permits use "for any lawful purpose" and "for any purpose not in conflict with any ordinance of the city regulating nuisances or special fire hazards;....."

(b.) Sec. 21-131 interpreted broadly would appear to make the operation of a borrow pit a nuisance and, consequently, a borrow pit would be in conflict with the ordinance and prohibited.

3. By virtue of past action of the Metropolitan Area Planning Commission, the Board of City Commissioners and the Board of County Commissioners, a policy has been adopted whereby borrow pit uses will no longer be permitted without the imposition of certain conditions and limitations to operation and use. Consequently, even if heavy industrial classification would accommodate a borrow pit, the Metropolitan Area Planning Commission would not permit an "F" zoning since they cannot condition a heavy industrial use except those mentioned specifically in Section 21-18, A. This authority lies only with the Board of Zoning Appeals under present planning procedures.

CITY BUILDING ANNEX • 104 S. MAIN STREET

WICHITA 2, KANSAS

DEPARTMENT OF PUBLIC WORKS
BUILDING INSPECTION

December 24, 1959

Re: Borrow Pit - All that part of the Northeast quarter of Sec.
15-17-1s, lying west of U.S. Highway 81 Bypass, Route
Highway 235, and east of the Big Ditch, in Sedgwick Co., Kans.

Mr. Kenneth F. Stewart
Attorney at Law
240 South Broadway
Wichita, Kansas

Dear Mr. Stewart:

I have your letter of December 23 relative to the placing of a
borrow pit on the subject property.

This office will not be in a position to approve this use of the
property, since it lies in the "RA" residential district as defined
by the zoning Ordinance of the City of Wichita.

After searching through the ordinance I can find nothing therein
where it makes provision for any kind of special use which could be
granted by either this office, the Planning Commission or the
Governing Body of the City.

I find it necessary, therefore, that your request be denied.

Yours very truly,

S. H. Esple
Superintendent of Building Inspection

SEM:ND

Cc Planning Commission

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

Case No. BZA 2-60
Filed Jan. 26, 1960

APPLICATION FOR VARIANCE

- I. Name of Applicant Jesse L. Graham and Raymond J. Allen
Mailing Address 1403 Harding Phone MU 2-8561
Name of Authorized Agent Kenneth P. Stewart
Mailing Address 340 South Broadway Phone BO 4-7321
Relationship of Applicant to Property is that of Owner
(Owner, tenant, lessee, other.)
- II. The variance requested is conditional use for borrow pit
City ordinance 24-606 Sec. 1. D. r.
generally at 9th Street and south of 13th Street
for property located at just east of the Big Ditch and west of Highway
81 By-pass
and legally described as Lot(s) _____ Block(s) _____
Addition to the City of Wichita; and which is
presently zoned _____.
(Give metes and bounds description below if appropriate):
All that part of the Northeast Quarter (NE/4) Section
15-27-1W, lying west of U. S. Highway 81-By-pass, Route
Highway 235, and east of the Big Ditch in Sedgwick County,
Kansas, being approximately 22.73 acres.
- III. The applicant herein, or his authorized agent, hereby acknowledges:
- That he has received an instruction sheet concerning the filing and hearing of this matter;
 - That he has been advised of the fee requirements established by Section 21-27 of the Code of the City of Wichita (Ordinance 24-606); and that the appropriate fee is herewith tendered;
 - That he has been advised of his right of appeal of the decision of the Board of City Commissioners within ten (10) days of that decision;
 - That a statement is attached hereto justifying this request as noted in paragraph 2.C of the instructions and in Section 21-27-D.2 of the Code of the City of Wichita.

Jesse L. Graham
Raymond J. Allen
Applicant
Kenneth P. Stewart
Authorized Agent
By: Kenneth P. Stewart of
BOYER, HONDROS & DONALDSON

OFFICE USE ONLY

Received in office of Secretary, Board of Zoning Appeals, _____
(a.m., p.m.) _____, 19____, together with appropriate fee
of \$30.00.

Signed

S T A T E M E N T

(Under III d.)

It is represented by the applicant:

- A) That the variance desired arises from such condition which is unique and which is not ordinarily found in the same zoning district;
- B) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- C) That the strict application of the enforcement provisions of the zoning ordinance will constitute unnecessary hardship upon the property owner represented in the appeal;
- D) That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

The statement under this application for variance supplements statement previously filed under Paragraph III of appeal from order of the Building Inspection superintendent duly filed on or about January 5, 1960.

JANUARY 5, 1960

MR. KENNETH P. STEWART
ATTORNEY
340 SOUTH BROADWAY
WICHITA, KANSAS

DEAR MR. STEWART:

SUBJECT: BZA 2-60

THIS WILL ACKNOWLEDGE RECEIPT OF THE APPLICATION APPEAL FROM THE ORDER OF THE BUILDING INSPECTION SUPERINTENDENT FILED BY YOU ON BEHALF OF JESSIE L. GRAHAM AND RAYMOND J. ALLEN ON JANUARY 4, 1960. THIS APPEAL WILL BE PRESENTED TO THE BOARD OF ZONING APPEALS FOR ITS CONSIDERATION ON JANUARY 26, 1960. THE MEETING OF THE BOARD WILL BE HELD ON THAT DATE BEGINNING AT 1:30 P.M. IN ROOM 401 CITY BUILDING ANNEX, 104 SOUTH MAIN, WICHITA, KANSAS.

VERY TRULY YOURS,

LELAND R. EDMONDS
SECRETARY

LRE:BER

B-2 W 2-60

December 24, 1959

Re: Borrow Pit - All that part of the Northeast Quarter of Sec. 15-27-1W, lying west of U. S. Highway 81 By-pass, Route Highway 235, and east of the Big Ditch, in Sedgwick Co., Kans.

Mr. Kenneth P. Stewart
Attorney at Law
340 South Broadway
Wichita, Kansas

Dear Mr. Stewart:

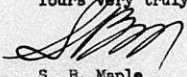
I have your letter of December 22 relative to the placing of a borrow pit on the subject property.

This office will not be in a position to approve this use of the property, since it lies in the "AA" residential district as defined by the Zoning Ordinance of the City of Wichita.

After searching through the ordinance I can find nothing therein where it makes provision for any kind of special use which could be granted by either this office, the Planning Commission or the Governing Body of the City.

I find it necessary, therefore, that your request be denied.

Yours very truly,



S. B. Maple
Superintendent of Building Inspection

SEM MG

Cc Planning Commission



CITY OF WICHITA
BOARD OF ZONING APPEALS
ROOM 402, CITY BUILDING ANNEX
104 SOUTH MAIN
WICHITA, KANSAS

NOTICE TO ADJOINING PROPERTY OWNERS

AN APPEAL FROM AN ORDER OF THE BUILDING INSPECTION SUPERINTENDENT HAS BEEN FILED BY JERRE L. GRAHAM AND RAYMOND J. ALLEN OF 1403 HARDING AS PROVIDED BY SECTION 21-27 OF THE CODE OF THE CITY OF WICHITA. THE APPELLANT DESIRES TO OPERATE A BORROW PIT ON PROPERTY LOCATED SOUTH OF 13TH STREET, EAST OF THE BIG DITCH, AND WEST OF INTERSTATE 235 (S1 WEST BY PASS), WICHITA, KANSAS AND LEGALLY DESCRIBED AS: ALL THAT PART OF THE NORTHEAST QUARTER (NE/4) SECTION 15-27-1W, LYING WEST OF U. S. HIGHWAY 81 BY-PASS, ROUTE HIGHWAY 235, AND EAST OF THE BIG DITCH IN SEDGWICK COUNTY, KANSAS, BEING APPROXIMATELY 22.73 ACRES, AND WHICH IS LOCATED IN AN "AA" ZONING DISTRICT.

THIS APPEAL HAS BEEN ASSIGNED CASE No. BZA 2-60. A HEARING WILL BE HELD BY THE BOARD OF ZONING APPEALS ON TUESDAY, JANUARY 26, 1960, AT 1:30 P.M., IN ROOM 401, CITY BUILDING ANNEX, 104 SOUTH MAIN, WICHITA, KANSAS, AT WHICH TIME YOU MAY APPEAR, IF YOU SO DESIRE, EITHER IN PERSON OR BY AGENT OR ATTORNEY.

LELAND R. EDMONDS, SECRETARY
BOARD OF ZONING APPEALS

MAILED TO

MORRIS BLDG. Co., INC.
208 N. BROADWAY

ELOISE MORRIS MCMURTRY
208 N. BROADWAY

TWENTY FIRST STREET BUILDING Co., INC.
208 N. BROADWAY

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

NOTICE OF HEARING OF APPEAL

JANUARY 6, 1960

DEAR MR. GRAHAM :

YOUR APPLICATION FOR A (AN) APPEAL (APPEAL, VARIANCE,
EXCEPTION) UNDER PROVISIONS OF PARAGRAPH _____, SECTION 21-27, CODE OF
THE CITY OF WICHITA, AND RELATING TO PREMISES LOCATED AT: _____

SOUTH OF 13TH STREET, EAST OF THE BIG DITCH AND WEST OF INTERSTATE 235
(81 WEST BY PASS)

HAS BEEN GIVEN BOARD OF ZONING APPEALS CASE No. 2-60.

ALL INQUIRIES AND REFERENCES SHOULD ALWAYS BE MADE TO THAT CASE NUMBER
WHEN YOU SEEK INFORMATION FROM THE SECRETARY.

FURTHER, YOU ARE NOTIFIED THAT YOU MAY APPEAR BEFORE THE BOARD OF
ZONING APPEALS EITHER IN PERSON, OR BY AGENT OR ATTORNEY, FOR A HEARING
OF YOUR CASE ON JANUARY 26, 1960, AT 1:30 P.M. IN ROOM 401,
CITY BUILDING ANNEX, 104 SOUTH MAIN, WICHITA, KANSAS.

RESPECTFULLY,

SECRETARY, BOARD OF ZONING APPEALS

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

NOTICE OF HEARING OF APPEAL

JANUARY 6, 1960

DEAR MR. ALLEN :

YOUR APPLICATION FOR A (AN) APPEAL (APPEAL, VARIANCE,
EXCEPTION) UNDER PROVISIONS OF PARAGRAPH _____, SECTION 21-27, CODE OF
THE CITY OF WICHITA, AND RELATING TO PREMISES LOCATED AT: _____

SOUTH OF 13TH STREET, EAST OF THE BIG DITCH AND WEST OF INTERSTATE 235
(81 WEST BY PASS)

HAS BEEN GIVEN BOARD OF ZONING APPEALS CASE No. 2-60.

ALL INQUIRIES AND REFERENCES SHOULD ALWAYS BE MADE TO THAT CASE NUMBER
WHEN YOU SEEK INFORMATION FROM THE SECRETARY.

FURTHER, YOU ARE NOTIFIED THAT YOU MAY APPEAR BEFORE THE BOARD OF
ZONING APPEALS EITHER IN PERSON, OR BY AGENT OR ATTORNEY, FOR A HEARING
OF YOUR CASE ON JANUARY 26, 1960, AT 1:30 P.M. IN ROOM 401,
CITY BUILDING ANNEX, 104 SOUTH MAIN, WICHITA, KANSAS.

RESPECTFULLY,

SECRETARY, BOARD OF ZONING APPEALS

1849884
N° 12

RECEIPT FOR CERTIFIED MAIL—15

| | |
|---|---|
| SENT TO <i>Jesse Graham</i> | POSTMARK OR DATE |
| STREET AND NO. <i>1403 Harding</i> | |
| CITY AND STATE <i>Michite Kansas</i> | |
| <input type="checkbox"/> If you want a return receipt, check which: <input type="checkbox"/> It shows to whom and when delivered | <input type="checkbox"/> If you want restricted delivery, check here <input type="checkbox"/> 20c fee |

PD Form 3800 July 1955 Replaces previous editions of this form which MAY be used.

1 - INSTRUCTIONS TO DELIVERING EMPLOYEE

- Deliver ONLY to addressee Show address where delivered
(Additional charges required for these services)

RETURN RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Jesse S. Graham

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Jessie S. Graham

DATE DELIVERED

1-9-60

ADDRESS WHERE DELIVERED (only if requested in item #1)

CS-16-71 470

No 386381

RECEIPT FOR CERTIFIED MAIL-15

| | |
|---|------------------|
| SENT TO <i>Jesse Graham</i> | POSTMARK OR DATE |
| STREET AND NO. <i>1403 Harding</i> | |
| CITY AND STATE <i>Wichita, Kansas</i> | |
| <input type="checkbox"/> If you want a return receipt/check which 7c shows to whom and when delivered <input type="checkbox"/> If you want restricted delivery, check here 20c fee | |

POD Form 3800 July 1955 Replaces previous editions of this form which MAY be used.

POST OFFICE DEPARTMENT
BUSINESS

JAN 12 1960

METROPOLITAN PLANNING

CHITZ
JAN 9
WED

POST OFFICE
WICHITA, KANSAS

PENALTY FOR NON-POSTAGE TO AVOID
FIRST CLASS

INSTRUCTIONS: Fill in items below and complete #11 on other side, when applicable. Moisten gummed ends and attach to back of article. Print on front of article RETURN RECEIPT REQUESTED.

| | |
|---------------------------------|--|
| REGISTERED NO. | NAME OF SENDER <i>City of Wichita</i> |
| CERTIFIED NO. <i>6386381</i> | STREET AND NO. OR P.O. NO. <i>Board of Zoning Appeals</i> |
| INSURED NO. | CITY, ZONE AND STATE <i>104 S. Main Wichita, Kansas</i> |

RETURN TO

CBS-15-11662-4

OWNERSHIP LIST

LEGAL

OWNERSHIP

S½ of NE¼ of NE¼ exc N½ of SE¼ Sec 15-27-1W
& exc 11.02 Acres Floodway A-31849 & exc
Case A-77196 for 81 Bypass

Ina Graham
1403 Harding

SE¼ of NE¼ of Sec 15-27-1W exc South 10
Acres & exc 6.49 Acres for Floodway
A-31849 & exc Case A-77196 for 81 Bypass

Jesse Graham
1403 Harding

South 10 Acres of SE¼ of NE¼ Sec 15-27-1W
exc Case A-77196 for 81 Bypass

Raymond J. Allen
Neva M. Allen
1013 N. Hoover

North 9 Acres off the North side of NE¼ of
SE¼ Sec 15-27-1W, Beg NE corner of SE¼ Sec
15, thence West 80 rods, South 297 feet,
East 80 rods, North 297 feet to beg. exc
that part condemned in Case A-77197 for
81 Bypass

Morris Bldg Co. Inc.
208 N. Broadway

Tract- All that part of W½ of SE¼ Sec 15-
27-1W, lying East of Wichita Valley Center
Flood Control r/w & West of West Central
Gardens Third Addition

Eloise Morris McMurtry
208 N. Broadway

| LOT | BLOCK | ADDITION | OWNER |
|-----|-------|-------------------------------|---|
| 25 | A | West Central Gardens Third | Twenty First Street Building Co. Inc. 208 N. Broadway |
| 26 | " | " | " |

We hereby certify the foregoing to be a true and
correct List of Property Owners within a 200 foot
radius of : All that part of the NE¼ Sec 15-27-1W,
lying West of U.S. Highway 81 By-Pass, Route High-
way 235, and East of the Big Ditch in Sedgwick
County, Kansas, being Approximately 22.73 Acres,
as shown by the records in the office of the
Register of Deeds of Sedgwick County, Kansas, on this
the 30 day of December A. D. 1959 at 7:00 A. M.

THE SECURITY ABSTRACT AND TITLE CO INC
By *[Signature]*

Vice President