

BZA 20-74 - Donald West requests
Exception to permit extraction of
fill dirt on east side of Socora
in an area north of Maple.

Revised
7-29-74

ACTION

DATE

8-27-74

BZA COMMITTEE

stricken from agenda

M.A.P.C.

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

*Case withdrawn and closed
per applicant's request.*

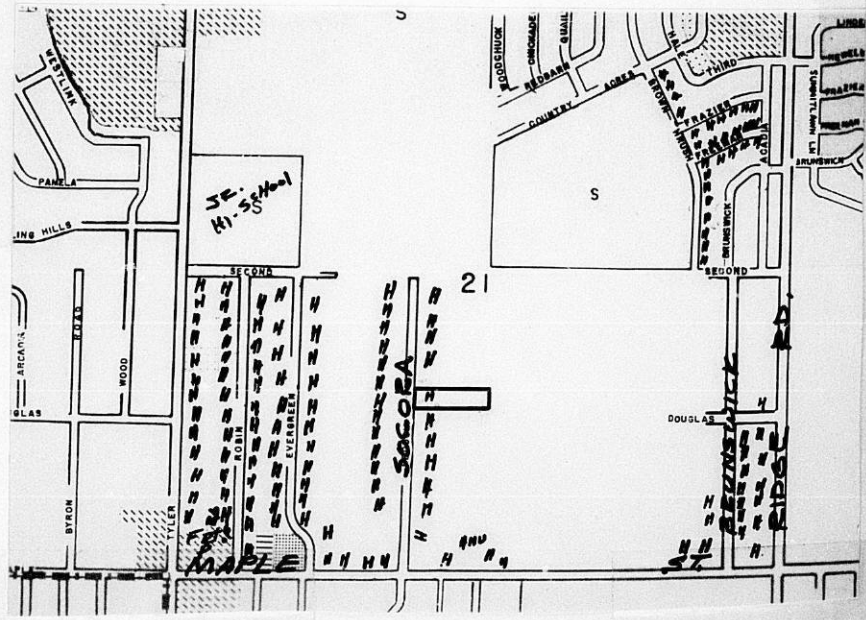
3/38

Map No. 4947
 Sec. 21
 Twp. 27
 Range 16W

BZA- 20-74
 SCZ- _____
 CU- _____
 Filed _____

- AREA DATA:
1. Acres: 2.42 (165 ft. by 640 ft.)
 2. Adjoining Zoning: E _____ S _____ W _____ N _____
 3. Land Use: East UNDEVELOPED South SINGLE FAM
 West SINGLE FAM North SINGLE FAM
 4. Sketch Plan Land Use is for: _____
 5. Present Land Use if for: SINGLE FAM
 6. Area (is) (is not) platted.

PHOTO DATA:
 Taken by _____ Date _____ Time _____





ON SAFETY
PHASE II

THE CITY OF WICHITA

OFFICE OF LAW DEPARTMENT

DATE September 13, 1974

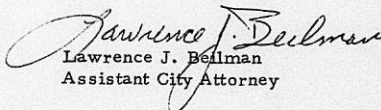
TO Joe Donnelly, Maintenance Inspection Supervisor, CID

FROM Lawrence J. Beilman, Assistant City Attorney

SUBJECT 120 Socoro Drive - Law Department
Memo of September 12, 1974
regarding same subject

This memo references our memo to you of September 12, 1972 containing the Law Department opinion regarding the excavation at 120 Socoro Drive.

The fourth paragraph on page three of that September 12, 1974 memo should be stricken and disregarded. John Dekker advises that paragraph is not correct in that once the legal officer for the city, or any of his delegated assistants in the Law Department are requested to give an opinion regarding a certain matter, that opinion does become binding. §28.04.181 B pertains to the superintendent's duties prior to his requesting an opinion from this department. But, once an opinion from the City Attorney is requested and given to the superintendent, or his department, §28.04.181 B does not apply as to interpretation of the ordinance(s).


Lawrence J. Beilman
Assistant City Attorney

LJB:kh

cc: John Dekker, Director of Law
Robert B. Feldner, Superintendent of CID
Robert A. Lakin, Director of Planning
Jack Galbraith, Principal Planner
Bill Loepp, Zoning Inspector



Jack



THE CITY OF WICHITA

OFFICE OF LAW DEPARTMENT

DATE September 12, 1974

ON SAFETY
PHASE II

TO Joe Donnelly, Maintenance Inspection Supervisor, CID
FROM Lawrence J. Beilman, Assistant City Attorney

SUBJECT Ordinance Numbers 5.34.020 and
28.04.181 - Excavation at 120
Socora Drive

This memo is in response to your memo to me of August 29, 1974 and Jack Galbraith's memo to John Dekker of August 30, 1974 regarding the same subject. I have reviewed this matter with John Dekker and both he and I have examined the following ordinances of the Code of the City of Wichita. The following is the opinion of this office regarding those ordinances as they apply to the facts existing at 120 Socora Drive:

1. Chapter 5.34 - FENCING BORROW PITS, SAND PITS AND GRAVEL PITS. It is the opinion of this office that the intent of this legislation in this chapter is to regulate those regularly commercial operations operating borrow pits, sand pits or gravel pits within the strict definition of those terms as used and defined within Chapter 5.34 and the constructively narrow application of the ordinance. It is also the opinion of this office, that under the facts known to us as they exist at 120 Socoro Drive, the Wests are not operating a borrow pit, sand pit or gravel pit within the applicative contemplation of Chapter 5.34.

Under §5.34.010 Definitions, subsection (4) it is stated, inter alia, "Owner" means any person, who, . . . [S]hall have record legal title to any premises presently or in the future being operated as a borrow pit, sand pit or gravel pit, . . . [Emphasis added] It is the opinion of the Law Department that the Wests are not "operating" a borrow pit, etc. as contemplated by Chapter 5.34, and therefore, Chapter 5.34 does not apply. We are of the opinion there must be more extrinsic and concrete evidence as to their operating a borrow pit than simply exchanging dirt for someone in turn digging them a hold in their back yard to use as a private swimming beach, fish pond, ice skating surface, etc. in order for this chapter to apply.



Joe Donnelly, Maintenance Inspection Supervisor, CID
Page 2
September 12, 1974

Also, under §5.34.010 Definitions, subsection (6) borrow pit is defined as "a pit or bank from which material is taken, or has been taken, for use in filling or embanking or other similar uses and in which water is ponded or trapped." It is both Mr. Dekker's (the author of this ordinance) and my opinion that that definition is to be narrowly interpreted with a narrow application and is not to be so broadly interpreted to include any and every hole dug in a back yard regardless of its intended use. It is our understanding the Wests are not conducting a regular commercial operation, but are building a private swimming pool or "hole" and a fishing pond. They do not have a borrow pit operation such as any number of the dirt, sand and gravel companies operating in the Wichita area. We do not believe Chapter 5.34 can be interpreted to require fencing any more than it applies to fencing a private swimming pool or swimming "hole". As you know, there is a request both to your office and this one to draft and propose ordinances requiring the fencing of private swimming pools which is affirmative indication that we do not at present require private pools to be fenced under Chapter 5.34. We do not pass on the wiseness or carelessness of the Wests not fencing this pond; that would be a matter for their own conscience and their insurer.

2. Chapter 28.04.181. SAME - OUTDOOR AMUSEMENT PARKS, SAND AND GRAVEL EXTRACTIONS, OIL WELLS, FALLOUT SHELTERS, RADIO AND TELEVISION TOWERS, CULTURAL GROUPS. It is the opinion of this office that this chapter must be interpreted in its entirety as a whole. It is our belief the primary impact of this chapter is aimed at and intended to be applied to commercial operations. The statutory construction of a reading of the main chapter title itself, is intended to apply to commercial and/or organizational profit or non-profit cultural groups.

Even though a quick reading of §28.04.181, sub. §2, extraction of raw materials, would lead one to assume it applies to any and all extractions, a closer examination belies that assumption. Subsection 2 does not allow any permanent construction of a hole, crater, or whatever in the ground. It allows for only temporary extractions. It uses the terms "temporary", "temporary use", throughout the chapter. The entire sub-section smacks of commercial operations, building operations and

Joe Donnelly, Maintenance Inspection Supervisor, CID
Page 3
September 12, 1974

commercial digging operations of whatever sort. For instance, §28.04.181, sub. §2.1 (c) requires a "time schedule for the temporary use and redevelopment of the property." §28.04.181, sub. §2.3 says the extraction "shall be considered as a temporary use of the land". It is our opinion that the West's excavation and planned use of this property is not contemplated by 28.04.181, sub. §2. If this 28.04.181, sub. §2 applies to any and all extractions regardless of the factual situation it is attempted to be applied to, then, in our opinion, things such as private swimming pools, swimming beaches, fish ponds, could not be dug, constructed, or allowed in the City of Wichita. The reason being the temporary use requirement of 28.04.181, sub. §2. It states specifically, "[T]he exception shall be granted only as a temporary use with a time limit being established for each exception. . . ." The obvious answer, in our opinion, is that §28.04.181, sub. §2 does not apply to private swimming pools, swimming beaches, fish ponds, etc., which is what we find the West's are constructing, nor do we know of any instances where CID has taken that position.

Therefore, our opinion is that Chapter 28.04.181, nor Chapter 5.34, contemplates the factual situation found at 120 Socora Drive.

At the same time, we are of the opinion the Wests indeed need a permit from CID to construct this private swimming beach, fish pond, or whatever, just as anyone putting a private swimming pool on their property needs a permit. They difinitely should seek and obtain such a permit.

Under §28.04.181 B, the building inspection superintendent is specifically charged by law with the responsibility of the administration, interpretation, and enforcement of the terms of Chapter 28.04; therefore, it would appear our opinion as to the interpretation of Chapter 28.04 may be ignored and is in no way binding upon him. He may give it whatever weight he wishes; it is simply our opinion, as lawyers for the City, of the interpretation and application of these ordinances to a specific factual situation.

We also note that there may indeed be a discrepancy in the city code

*See
memo
of
Sept. 13, 1974*

Joe Donnelly, Maintenance Inspection Supervisor, CID

Page 4

September 12, 1974

regarding the regulation of situations such as those at 120 Socoro Drive. The city may desire and need ordinances specifically covering these situations, such as the fencing of a private swimming pool ordinance now being worked on. But I suppose, ultimately, that is up to the governing body of the City of Wichita.

Regarding litigating this in a court of law, if it came to that, let it be said the feeling is, the court, upon close inspection of these ordinances applied to the factual situation at hand, would arrive at the same conclusion we have in attempting to interpret these ordinances. Therefore, whether it is advisable to take these people to court is speculative at the very least.

One other comment regarding Mr. Galbraith's point as to neighborhood concerning bringing this to the city's attention. It is commendable that the citizenry bring all such matters to the city's attention. I am sure if it were not for that notice type mechanism, there are many things we would be unaware of. At the same time, it must be understood that there are many situations that we are powerless to correct, remedy, or regulate because we lack the "tools", ordinances, regulations, etc. to indeed control some of these matters. In these type situations, at the very least, the citizens, i.e., neighbors to the activity, or any other interested affected persons, should be advised of their individual right to maintain any action provided at law or in equity. For instance, if the neighbors immediately adjacent to the Wests determine the Wests are creating a condition which may be dangerous to them, such as, say a nuisance to their immediate neighborhood, under §28.04.240, they are given a specific mandate by law. They are not limited to enforcing only city ordinances, but may bring an action on their own right, whereas, the city is limited by law to bringing actions under ordinances they determine have been violated. Ideally, it would be nice if the city could solve all problems that arise in the city such as in the Socora neighborhood, but in many instances, we cannot.

Mr. Dekker has advised, if anyone needs further explanation, we will meet with them concerning this matter.

Lawrence J. Beilman
Assistant City Attorney

LJB:kh

cc: John Dekker, Director of Law
Robert B. Feldner, Superintendent of CID
Robert A. Lakin, Director of Planning
✓ Jack Galbraith, Principal Planner
Bill Loepp, Zoning Inspector

August 30, 1974

John Dekker, Director of Law

Jack H. Galbraith, Secretary of Board of Zoning Appeals

Excavation at 120 Socora Drive

After receiving Joe Donnelly's August 29, 1974 memo to Larry Bielman, with attached letter to Donnelly from attorney Ralph Baehr, I think it would be well to possibly set up a meeting and discuss the various limitations of the ordinances involved.

In reviewing Section 5.34 of the code, it appears to me that any area that is excavated that will allow water to be ponded or trapped is covered by the ordinance. There is an exception to this however, and that is when such excavation is located on a developed property and a plan has been submitted to the Planning Commission for approval (C.U.P. or plat) (5.34.070). I think it is reasonably clear that it must fall into a category as being required to be fenced, or it need not be, but first approved by the Planning Commission.

In the adoption of the above section of the City Code, the concern of the safety and welfare of the citizens of Wichita was the primary determination of the Board of City Commissioners when the regulations were adopted, due to the accidental drownings that had occurred. It was also the discussion at that time to exempt properties that are property developed from the full impact of the fencing requirements.

The Uniform Building Code, adopted by reference, includes a requirement for an excavation or grading permit for the express purpose to safeguard life, limb, property and the public welfare. It is my understanding that Central Inspection has not issued such a permit and has determined that one is necessary.

In light of the facts that Central Inspection has cited them for a violation that continues to exist, and the owner, through legal counsel filed an application for an exception (28.04.181.2) to permit the excavation and subsequently withdrew same, why

John Dekker, Director of Law
August 30, 1974
Page Two

would not an injunctive action through the district court be more appropriate than a citation through the Municipal Court. I would think, however, that prior to any action being taken in the courts, an Appeal of the Decision of the Central Inspection Division would have to first be considered by the Board of Zoning Appeals.

I might point out that neighborhood concern was the reason this was brought to the City's attention.

JHG:js

cc: Robert B. Feldner, Superintendent of Central Inspection
Joe Donnelly, Maintenance Inspection Supervisor, Central
Inspection
Larry Bielman, Legal Counsel to Board of Zoning Appeals
Robert A. Lakin, Director of Planning



THE CITY OF WICHITA

OFFICE OF CENTRAL INSPECTION DIVISION DATE August 29, 1974

TO Larry Bielman, Assistant City Attorney
FROM Joe Donn~~er~~, Maintenance Inspection Supervisor

SUBJECT Excavation at 120 Socora Drive

In view of the attached letter from Mr. West's counsel, it appears signing a complaint in Municipal Court is our only recourse.

Please review 28.04.181 - 2 and 5.34.020 and advise us how we should proceed.

If you feel we need further discussion regarding this matter, please advise.

JD:rs

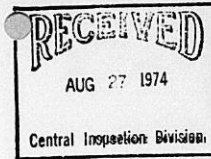
cc: Robert Feldner, Superintendent of Central Inspection
~~Jack Galbraith~~, Principal Planner
Bill Loepp, Zoning Inspector

LAW OFFICES OF
Mills and Baehr

920 CENTURY PLAZA BUILDING
DOUGLAS & MAIN
WICHITA, KANSAS 67202

August 26, 1974

Byron E. Mills
M. Ralph Baehr



Joseph R. Donnelly, Supervisor
Central Inspection Department
Department of Public Works
City Building Annex
104 South Main
Wichita, Kansas 67202

Re: Donald F. West
120 North Socora
Wichita, Kansas

Dear Mr. Donnelly:

This is to formally advise you that Mr. and Mrs. West do not intend to pursue an application for an exception to the zoning ordinances of the City of Wichita in order to construct a fishing pond on their premises located at 120 North Socora in Wichita, Sedgwick County, Kansas. The reason for this is that we feel that their proposed use of their property is not in violation of any of the ordinances of the City of Wichita.

We also feel that your department's interpretation of the applicable city ordinances and specifically the ones dealing with borrow pits do not apply to the West's intended use of their property. Therefore, Mr. and Mrs. West propose to continue with their construction of a fishing pond and will be doing additional excavation in the very near future.

If it is your feeling that these actions are in contravention of any of the ordinances of the City of Wichita, I would respectfully suggest that you pursue the matter through the City Attorney's office and file an appropriate complaint in the Municipal Court alleging a violation in order that we might

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finally adjudicate the matter in favor of either Mr. and Mrs. West or the City of Wichita.

Please do not interpret this letter as being either an ultimatum or an insolent demand upon your department, but rather an effort on behalf of Mr. and Mrs. West to have a very real question of statutory interpretation submitted to an appropriate court. Frankly, I am advising Mr. and Mrs. West to seek a court determination for their own protection and before they expend additional monies on the improvement of their property.

I have appreciated your cooperation in discussing this matter with me on an informal basis and would, of course, always welcome any further attempt on your part to resolve this matter in a consiliatory fashion.

Very truly yours,

A handwritten signature in black ink, appearing to read 'M. R. Baehr', with a long, sweeping flourish extending to the right.

M. Ralph Baehr

MRB/dz

August 7, 1974

Robert A. Lakin, Director of Planning

Larry Dobson, Junior Planner

BZA 20-74 - Application for Exception

Jack has asked me to bring you up-to-date on a recent BZA case, which will be heard at the Board's August 27, 1974 meeting.

The application is for a BZA exception to permit the extraction of fill dirt on property zoned the "AA" Single Family Dwelling District. Subject property is located at 120 North Socora, generally located north of Maple in an area between Ridge Road and Tyler Road. The property is a long rectangular shaped lot of 165 feet wide and 640 feet deep and is developed as a single-family residence, as are properties to the north, south and west. Property to the east is farm land.

The situation, as we know it, began when an opportunity presented itself to the applicant to have a pond dug on the rear of his property in exchange for the excavated dirt, which was to be used as fill dirt at some construction project. The applicant told me that Joe's Sewer and Excavating Service was the outfit that made him this offer. The excavation was begun without a permit. Apparently at the complaint of someone in the neighborhood, a representative of the City's Central Inspection Office viewed the excavation and subsequently issued a cease and desist order to the applicant, with instructions to immediately fence the area or provide a watchman. The applicant was informed that he would need to obtain BZA approval to permit this use on his property. The applicant then contacted this office and obtained the necessary forms and information for filing an application for exception. His application was received in this office on July 22, 1974. In his statement of intent, the applicant states that the excavation area is to be developed as a family pond and used for fishing, swimming and skating for private use only.

Approval of such a request by the Board shall be subject to certain conditions and requirements, as detailed in Section 28.04.181 (2.1 through 2.10) of the City Code. Paragraph (2.7) of the previously mentioned Section states, in part, that "Excavation shall not be nearer than fifty feet to any property line, nor shall it be encouraged to be nearer than one hundred feet to the proposed right-of-way line of any public street." The excavation, as it now exists, lies within 20 feet of the north property line and 30 feet of the south property line. It is our opinion that the Board does not have the power to waive any of the conditions of approval and would therefore have no alternative but to deny the request.

Page 2 - Robert A. Lakin
August 7, 1974

Jack has talked to Jim Aiken about possible health hazards associated with such use. Mr. Aiken's feelings were that the best answer would be to fill it back in. He said that with no underground flow of water, such a pond would just become a stagnant pool of water and possible breeding place for mosquitos. If the pond is permitted to become a reality, he would recommend that the water be at an appropriate level to eliminate aquatic growth so as to discourage the breeding of mosquitos. It is also his recommendation that swimming be prohibited.

Attached is a copy of the applicant's plot plan which shows the size and location of the excavation. The applicant has recently stated that he would like to extend the eastern edge of the excavation to within 50 feet of his east property line.

In viewing the property, it was noted that the perimeter of the excavation is as originally shown on the plot plan and about 8 feet deep at its deepest point. So you can see that this project wasn't curtailed in an early stage.

If you have any thoughts, please advise.

LD:ber

Attachment

LAW OFFICES OF

Mills and Baehr

920 CENTURY PLAZA BUILDING
DOUGLAS & MAIN

WICHITA, KANSAS 67202

TELEPHONE 263-8251

APEA CODE 316

Bryson E. Mills

M. Ralph Baehr

August 27, 1974

Board of Zoning Appeals
City Building Annex
104 South Main
Wichita, Kansas 67202

Re: Case No. DZA 20-74

Attention: Mr. Jack H. Galbraith

Dear Mr. Galbraith:

This is to formally advise you that the above referenced application filed by Donald F. West requesting certain zoning exceptions has been withdrawn and that Mr. West does not intend to pursue the application through the Board of Zoning Appeals.

Thank you for your attention to this matter.

Very truly yours,



M. Ralph Baehr

MRB/dz



Mills and Baehr

920 CENTURY PLAZA BUILDING
DOUGLAS & MAIN
WICHITA, KANSAS 67202



Board of Zoning Appeals
City Building Annex
104 South Main
Wichita, Kansas 67202

Attention: Mr. Jack H. Galbraith

August 28, 1974

Mr. Ralph Baehr
Attorney at Law
Century Plaza Building
Wichita, Kansas 67202

Subject: Case No. EZA 20-74
Request for Exception

Dear Mr. Baehr:

On July 22, 1974, your client, Donald West, filed an application for the Board of Zoning Appeals to grant an exception to permit the extraction of raw materials (fill dirt) on property zoned the "AA" Single Family Dwelling District and generally located on the east side of Socora in an area north of Maple. This matter was scheduled for hearing by the Board of Zoning Appeals at their regular meeting of August 27, 1974.

On Monday, August 26, 1974 you verbally requested this case not be considered by the Board of Zoning Appeals and stated that your client wished to withdraw the case.

Based on your request it was the action of the Board to strike this matter from their agenda and Case No. EZA 20-74 is now considered to be withdrawn and closed.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

cc: Donald F. West, 120 N. Socora 67212
Andrew G. Bogner, 111 N. Socora 67212
Ralph E. Converse, 131 N. Socora 67212
Charles B. Rinehart, 148 N. Socora 67212

August 28, 1974

Robert B. Feldner, Supt. of Central Inspection

Jack H. Galbraith, Chief Planner

Case No. BEA 20-74, Request for Exception

The subject case is a request for exception, to permit the extraction of fill dirt, for the purpose of creating a family pond on property zoned the "AA" Single Family District. Donald West is the applicant and owner of subject property, which is located at 120 W. Socora. This case was scheduled to be heard before the Board of Zoning Appeals at its meeting of August 27, 1974. The applicant's attorney, Ralph Beehr, contacted this office on August 26, 1974 requesting that this case be withdrawn. This request was presented to the Board and it was their action to strike the case from the agenda. The case is now considered closed as far as the Board is concerned, but the violation for which the applicant was cited by your office still exists.

The attorney, Mr. Beehr, intimated that he did not feel his applicant's case fell into the same category as a commercial sand or borrow pit and therefore questioned the interpretation that would make him comply with the associated regulations. He did not seem interested in filing an Appeal From Order Or Decision of Superintendent Of Central Inspection with the Board, but suggested or hinted at the more direct approach of forcing the City to bring action against his client to bring his property into compliance with the zoning regulations. These comments are an interpretation of Mr. Beehr's conversation and may not be an accurate assessment of his intentions, but the fact remains that the property is in violation of the zoning ordinance, as determined by your office and the Board of Zoning Appeals case has been withdrawn.

We would appreciate your keeping this office advised on the disposition of this matter.

JHG:LD:df

cc: John Dekker, Director of Law
Larry Bielman, Legal Counsel
Joseph Donnelly, Central Inspection
Bill Leopp, Central Inspection

SECRETARY'S REPORT

CASE NO. BZA 20-74

APPLICANT: Donald F. West, 120 N. Socora, Wichita, Kansas.

AGENT: None

REQUEST: Exception pursuant to Section 2.12.590.C, Code of the City of Wichita to permit the extraction of raw materials (fill dirt).

GENERAL LOCATION: East side of Socora in an area north of Maple.

LAND USE: Subject property is developed as a single family residence, as are properties to the north, south and west. Property to the east is being utilized as farm land.

ZONING: Subject property is zoned the "AA" Single Family Dwelling District as are all surrounding properties.

JURISDICTION

The Board has jurisdiction to consider this request under the provisions outlined under 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.

COMMENTS BY THE SECRETARY

The zoning ordinance authorizes the Board of Zoning Appeals, by special permit, to grant exceptions and authorize the extraction of raw materials (fill dirt, soil, sand or gravel) as a temporary use in any zoning district where such use is not a permitted use, subject to certain conditions and requirements.

The applicant requests an exception to permit the extraction of fill dirt from his property for the purpose of creating a family pond, to be used for fishing, swimming and skating for private use only. Subject property is a long rectangular shaped lot of 165 ft. wide by 640 feet deep. This situation developed when an opportunity presented itself to the applicant to have a pond dug on the rear of his property in exchange for the excavated dirt, which was to be used as fill dirt at a construction site. The excavation was begun without a permit and proceeded until, in response to a citizen's complaint, a representative of the City's Central Inspection Office viewed the site and subsequently issued a cease and desist order to

Page Two
Secretary's Report
Case No. BZA 20-74

the applicant. The applicant was instructed to immediately fence the area or provide a watchman, as provided by Section 5.34 of the Code of the City of Wichita. He was also informed that he would need to obtain BZA approval to permit this use on his property. The applicant then contacted this office and later filed his application.

The applicant's plot plan shows that the edge of the excavation comes to within 20 feet of the north property line, 30 feet of the south property line, and 120 feet of the east property line. The applicant later indicated his desire to extend the east edge or bank to within 50 feet of the property line. He indicates bank slopes of 3:1 to an approximate depth of 12 feet. In viewing the property, it was noted that the perimeter of the excavation is as originally shown on the plot plan and about 8 feet deep at its deepest point. The applicant proposes to dig a water well near the excavation as a means of initially filling and then maintaining the water level in the pond.

As previously mentioned, approval of such a request by the Board shall be subject to certain conditions and requirements. These are detailed in Section 28.04.181 (2.1 through 2.10) of the Code of the City of Wichita. Paragraph (2.7) of that Section states, in part, that "Excavation shall not be nearer than fifty feet to any property line, nor shall it be encouraged to be nearer than one hundred feet to the proposed right-of-way line of any public street." The excavation site, as it now exists, violates this condition of approval. It is the opinion of the Secretary that the Board does not have the authority to waive any of the conditions of approval and therefore has no alternative but to deny the request.

The following comments are based on the assumption of the applicant being able to refill and contour a portion of the excavated area so as to be able to comply with the required conditions of approval mentioned above.

Comments have been solicited from the Health Department concerning possible health hazards associated with such a use. It was their opinion that with no underground flow of water, such a pond would become a stagnant pool of water, providing a possible breeding place for mosquitos. In the event the Board does approve this request it is the Health Department's recommendation that the water level be at an appropriate depth to eliminate aquatic growth so as to discourage the breeding of mosquitos and that swimming be prohibited for health safety reasons.

Secretary's Report
Case No. BZA 20-74
Page Three

Subject property is located in an area which is predominately unplatted and it is expected that with the extension of sewer laterals more intense residential development will occur. A process of that future development would first be the platting of the area. The Transportation Element of the Comprehensive Plan designates a future north-south collector street along the east property line of subject area which is the half-mile line. Also, it could even be expected that the properties along Socora may have a north-south street approximately through the center which would eventually provide for smaller residential lots. In this regard, the proposed pond could certainly interfere with future platting and development of the area and therefore, it is the opinion of the Secretary that such is not appropriate for the area.

RECOMMENDATION

Due to the reasons stated above it is the Secretary's opinion that this is not an appropriate use in this area and would not be in the best interest of the public and therefore recommends that the request be denied. However, should the Board determine that the use is appropriate, approval of the exception should be subject to the following conditions:

1. No commercial recreational activities, such as fishing, swimming, etc., shall be permitted.
2. The applicant shall obtain an excavation and grading permit from the Office of Central Inspection prior to any further excavation or grading.
3. Fencing shall be constructed in accordance with the requirements of Section 5.34 of the Code of the City of Wichita.
4. Excavation shall not be nearer than 50 feet to the north and south property lines, nor shall it be nearer than 100 feet of the east property line.
5. The applicant shall submit a restrictive covenant, in a form satisfactory to the Board's legal counsel to be recorded with the Register of Deeds and such covenant shall provide that no foreign matter, such as rubbish, car bodies, or other debris shall be deposited within the excavation.

Secretary's Report
Case No. BZA 20-74
Page Four

6. The side slope of the excavation shall not be steeper than three horizontal to one vertical.
7. Water shall be maintained at a depth of at least two feet so as to eliminate potential aquatic growth.
8. There shall be no swimming permitted in the impounded water.
9. Two copies of a revised plot plan shall be submitted to the Secretary of the Board showing the compliance with the above conditions.
10. The applicant shall comply with conditions 2, 3, 5 and 9 prior to the official resolution of approval being forwarded to the Superintendent of Central Inspection and within 60 days from the date of approval by the Board of Zoning Appeals or the resolution will be considered null and void.
11. Failure to comply with any of 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 public hearing.

August 14, 1974

Board of Zoning Appeals
Room 402 City Building Annex
104 South Main Street
Wichita, Kansas 67202

Attention: Mr. Jack H. Galbraith

Re: Case No. BZA 20-74

Dear Sir:

I, Mr. C. B. Rinehart, 148 North Socora, adjoining property owner to the North of Mr. Wests' present pond which commences approximately 15 feet from our property line and said pond is about six feet deep and 135 feet wide by 135 feet long.

Mrs. Rinehart and I are very much interested that the above pond meets our City safety and health regulations as to fencing and water stagnation at present and in the future.

Yours very truly,

C. B. Rinehart
C. B. Rinehart



BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main Street
Wichita, Kansas 67202

August 7, 1974

CORRECTED NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 20-74

Our notice to you of August 6, 1974 advised you that an application had been filed by Donald F. West, requesting an exception to permit the extraction of raw materials (fill dirt) on property zoned the "AA" Single Family Dwelling District and legally described as follows:

Beginning 1485 feet north of the southeast corner of the SW $\frac{1}{4}$ of Sec. 21-27-1W, thence west 640 feet, thence north 165 feet, thence east 640 feet, thence south 165 feet to the point of beginning. Generally located on the east side of Socora in an area north of Maple.

The purpose of the extraction is to create a family pond to be used for fishing, swimming, and skating for private use only.

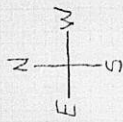
Our previous notice to you was in error in that it advised you the case would be heard by the Board of Zoning Appeals at their regular meeting of September 27, 1974. Therefore, this corrected notice is to advise you that this meeting will be held on Tuesday, August 27, 1974, at 1:30 p.m., in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas.

JACK H. GALBRAITH
Secretary

THIS NOTICE MAILED ON 8-8-74 TO LL ADJACENT PROPERTY OWNERS AND 10 MAPC MEMBERS.

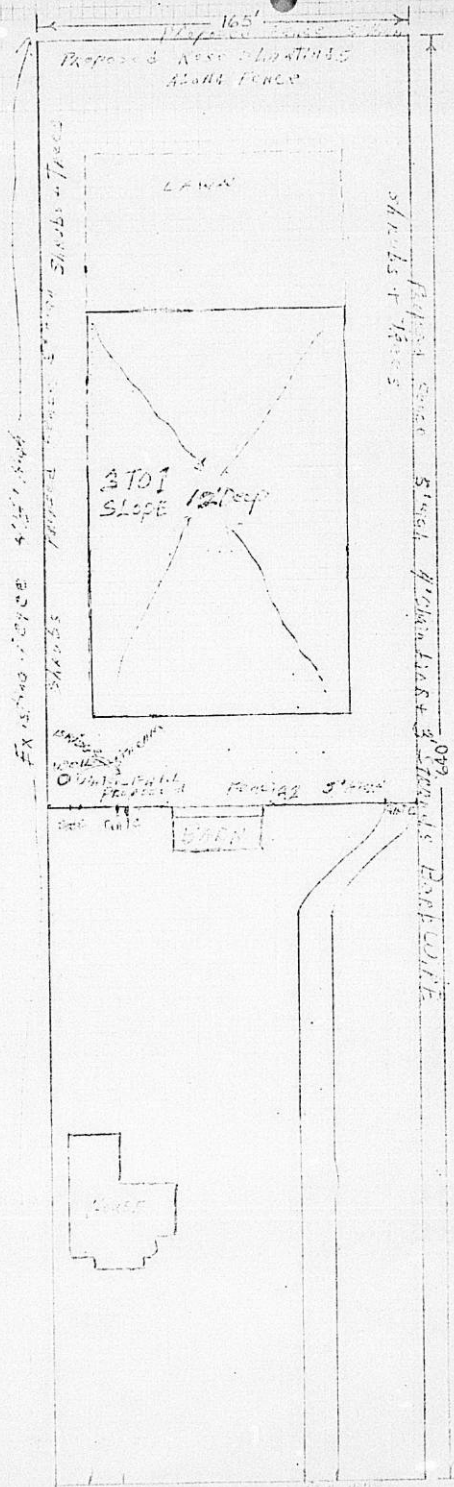
120 N. SOCORA

DONALD F. WEST



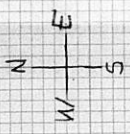
SCALE: 1" = 50'

GRID: 5'

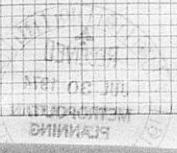
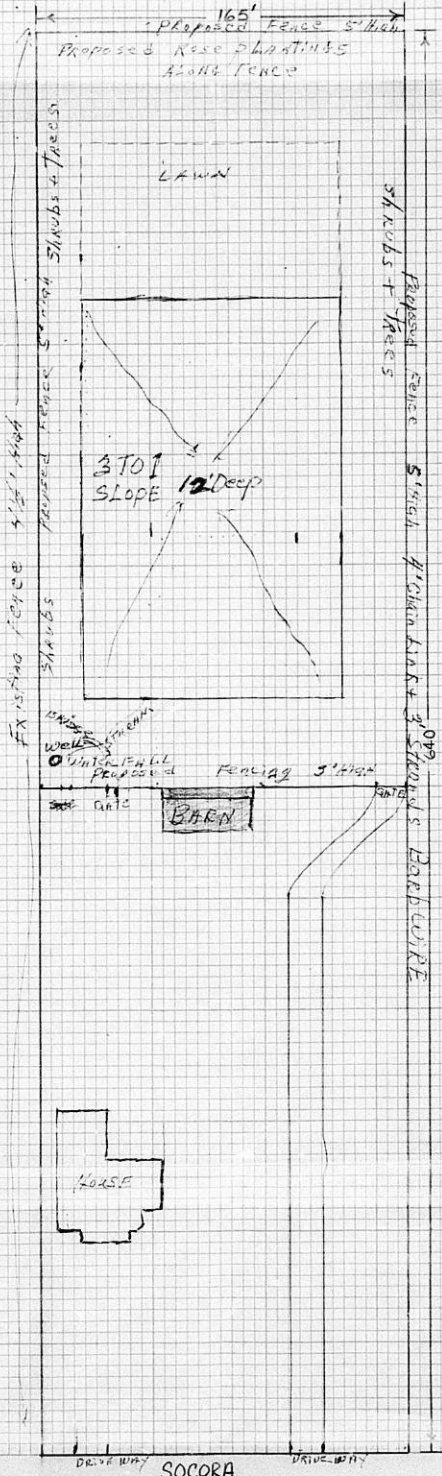


SOCORA

DONALD F. WEST
120 N. SOCORA



SCALE: 1" = 50'
GRID: 5'



DRIVE WAY SOCORA DRIVE WAY
10 X 10 TO THE INCH

BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main Street
Wichita, Kansas 67202

August 6, 1974

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 20-74

An application has been filed by Donald F. West, 120 North Socora, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requesting an exception to permit the extraction of fill dirt on property zoned the "AA" Single Family Dwelling District and legally described as follows:

Beginning 1485 feet north of the southeast corner of the SW $\frac{1}{4}$ of Sec. 21-27-1W, thence west 640 feet, thence north 165 feet, thence east 640 feet, thence south 165 feet to the point of beginning. Generally located on the east side of Socora in an area north of Maple.

This application has been assigned Case No. BZA 20-74, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, September 27, 1974, at 1:30 p.m., in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

JACK H. GALBRAITH
Secretary

NOTICES MAILED ON THIS DATE TO 11 ADJACENT PROPERTY OWNERS AND
10 MAPC MEMBERS.

July 22, 1974

Mr. Donald F. West
120 North Socora
Wichita, Kansas 67209

Subject: Case No. BZA 20-74

Dear Mr. West:

As we discussed by telephone, I am enclosing some grid paper for your use in preparing a plot plan of your property. This plan should be drawn to scale and show the limits, depth and grade of your excavation and the location and size of all buildings. It might also be helpful if you would indicate the location, type, and height of all fencing, either existing or proposed.

Please include any other information which might be helpful to the Board of Zoning Appeals as they consider your case. Please complete and submit your plot plan as soon as possible. If you have any questions concerning this matter, contact our office.

Sincerely,

Larry Dobson
Assistant Secretary

LD:js
Encl.

MAP 4947

BOARD OF ZONING APPEALS

CASE NO. 20-74

CITY OF WICHITA, KANSAS

FILED July 22, 1974

APPLICATION FOR EXCEPTION

I. Name of Applicant Donald F. West

Mailing Address 120 N Socora Phone 722-4111

Name of Authorized Agent _____

Mailing Address _____ Phone _____

Relationship of applicant to property is that of Owner
(Owner, Tenant, Lessee, Other).

II. Application is made for an exception as provided in Section

2.12.590.C, Code of the City of Wichita, Kansas, to permit

the establishment of extraction of raw materials (fill dirt)

_____ on property zoned

AA, located at the on the east side of Socora

in an area north of Maple and legally described as: Block 1485 'N.

of the SE cor of the 9W 1/4, Sec 21-27-1W, thence W 640'

thence N 165', thence E 640', thence S 165' to Beg.

_____, in the City of Wichita.

III. The applicant herein, or his authorized agent, acknowledges:

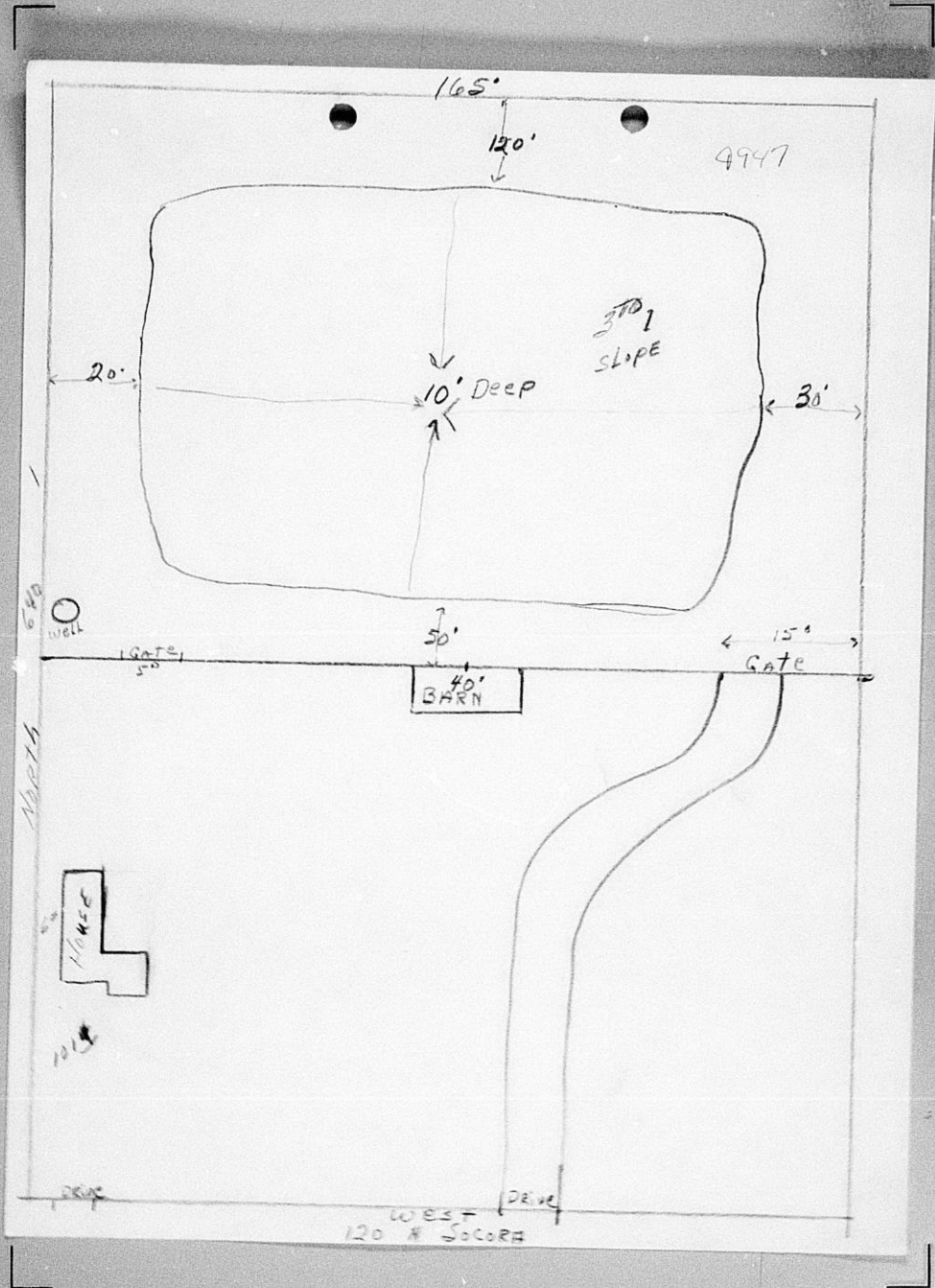
- a. That he has received an instruction sheet concerning the filing and hearing of this matter;
- b. That he has been advised of the fee requirements established by Section 2.12.580 of the Code of the City of Wichita (Ordinance No. 24-606); and that the appropriate fee is herewith tendered;
- c. That all documents are attached hereto as noted in paragraphs 2, 3, and 4 of the instructions.
- d. That he has been advised of his right to bring action in the District Court of Sedgwick County to appeal the decision of the Board.

Applicant Donald F. West

Authorized Agent _____

OFFICE USE ONLY: Received in the office of the Secretary, Board of Zoning Appeals, 8:20 AM (a.m. - p.m.), July 22, 19 74, together with appropriate fee of \$50.00

Signed Curtis L. Herby, Jr. planner



July 22, 1974

Statement of Intent

This is a family pond to be used for fishing, swimming and skating for OUR private use only.

The dirt is being used for fill on a apartment complex and is payment for digging pond.

thank you

Donald West

O W N E R S H I P L I S T

Tract	Property Owner
The West Half of the West Half of the Southeast Quarter of Section 21-27-1W	✓ H. H. Blair Atlanta, Kansas 67008
Beginning 1848 feet North of the Southwest corner of the East Half of the Southwest Quarter of Section 21-27-1W, thence East 640 feet, thence North 132 feet, thence West 640 feet, thence South 132 feet to beg.	✓ Fred H. Goeller and Ethel 151 N. Socora Drive 67212
A tract in the Southwest Quarter of Section 21-27-1W, Beginning 1320 feet North of the Southwest corner of the East Half of the Southwest Quarter, thence North 165 feet, thence East 640 feet, thence South 165 feet, thence West 640 feet to beginning	✓ Andrew G. Bogner and M. Mildred Bogner 111 N. Socora 67212
Beginning 1485 feet North of the Southeast corner of the Southwest Quarter, Section 21-27-1W, thence West 640 feet, thence North 165 feet, thence East 640 feet, thence South 165 feet to point of beginning	✓ Donald F. West and Crystal R. 120 North Socora 67212
The South 82.5 feet of: Beginning 1815 feet North of the Southeast corner of the East Half of the Southwest Quarter of Section 21-27-1W, thence West 640 feet, thence North 165 feet, thence East 640 feet, thence South 165 feet to beginning	✓ Hilary P. Gunzelman and Kathryn L. Gunzelman 158 N. Socora 67212
Beginning 1485 feet North of the Southwest corner of the East Half of the Southwest Quarter of Section 21-27-1W, thence East 640 feet, thence North 165 feet, thence West 640 feet, thence South 165 feet to beg.	✓ Ralph E. Converse & Margaret 131 N. Socora 67212
Beginning 1650 feet North of the Southeast corner of the Southwest Quarter of Section 21-27-1W, thence West 640 feet, thence North 165 feet, thence East 640 feet, thence South 165 feet to beginning	✓ Charles B. Rinehart and Barbara C. Rinehart 148 N. Socora 67212
Beginning 1155 feet North of the Southeast corner of the East Half of the Southwest Quarter of Section 21-27-1W, thence West 640 feet, thence North 165 feet, thence East 640 feet, thence South 165 feet to beginning	✓ Richard L. Schmidt and Elvina K. Schmidt 100 South Socora 67209
Beginning 1650 feet North of the Southwest corner of the East Half of the Southwest Quarter of Section 21, thence North 198 feet, East 640 feet, South 198 feet, West 640 feet to beginning	✓ C. M. Plumlee and Irene 145 N. Socora Drive 67212

Tract

Property Owner

Beginning 1155 feet North of the Southwest corner of the East Half of the Southwest Quarter of Section 21-27-1W, thence East 640 feet, North 165 feet, West 640 feet, thence South to beginning

✓ Basail L. Surtees ✓
103 South Socora 67209

Beginning 1320 feet North of the Southeast corner of the East Half of the Southwest Quarter of Section 21-27-1W, thence North 165 feet, West 640 feet, South 165 feet, East 640 feet to beginning

✓ H. B. Burns ✓
112 North Socora 67212

The Security Abstract and Title Company, Inc., hereby certifies the foregoing to be a true and correct list of property owners of:

A 200 foot radius of: Beginning 1485 feet North of the Southeast corner of the Southwest Quarter of Section 21-27-1W, thence West 640 feet, thence North 165 feet, thence East 640 feet, thence South 165 feet to the point of beginning

as shown by the records on file in the Office of the Register of Deeds of Sedgwick County, Kansas, on this 1st day of July, 1974 at 7:00 o'clock A.M.

THE SECURITY ABSTRACT AND TITLE COMPANY, INC.

By

John Byron
Asst. Vice President

Order No. 215139
wh

FORM 20 71

PAYMENT NOTICE

City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

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

150.00

DESCRIPTION	AMOUNT
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P.Z.A. Inspection for

excavation

Name

Address

Type

Due Date

Comments:

Date

By

7/20/74

Paul G. [Signature]