

ACTION

POSTED
10-29-83

DATE

COMMITTEE

M.A.P.C.

Agreed to 12-30-82

11-18-82

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

MAAC Meeting Cancelled

12-30-82

MAAC Agreed to 2-10-83

1-13-83

MAAC Agreed to 3-10-83

2-10-83

MAAC Agreed outside
of building

3-10-83

B Co. C. Paper 1 met

4-6-83

B Co. C. Agreed to
renewal

4-13-83

9.A.5a

Closed

CU-259 - Foundation, Inc. requests Conditional Use Permit to Establish a Sand & Gravel Extraction Operation on property zoned "E", Light Industrial. Generally located at the southwest corner of Bolin Drive and 21st Street.

Map No. 5143A&D
Sec. _____
Twp. _____
Range _____

DATA SHEET
~~XXXXXX~~ CONDITIONAL USE)

Z- _____
SCZ- _____
CU- 259
Filed 10-27-82

ASSOCIATED CASE: _____

- APPLICATION DATA: From _____ to _____
1. Applicant: Foundation, Inc. (Donald P. Cain, Sr. Pres.) et al
Address 8027 W. Kellogg, 67209 Phone 722-6071
 2. Agent: Everett C. Pettis, Suite 504 120 S. Market, 67202 267-7251
 - ENGR: ~~XXXXXX~~ P.E.C., P.A. (Gary Wiley) 1440 E. English (Phone 262-2691)
 3. General Location: Southwest corner of Bolin Drive and 31st St. South
 4. Proposed Use: Sand & Gravel Extraction Operation on property zoned "E"

- AREA DATA:
1. Acres: 120 + (120 ACRES) (2610 ft. by 2640 ft.)
 2. Adjoining Zoning: E "pp" S "pp" W "pp" N "pp"
 3. Land Use: East F-2.35 NO PARK South UNDEVELOPED
West FLOOD CONTROL DITCH North DRAINAGE DITCH
 4. Sketch Plan Land Use is for: _____
 5. Present Land Use is for: SAND PIT
 6. Area (is) (is not) platted.

PROCEDURE DATA:

1. Zoning Committee _____ by _____
2. MAPC Meeting:

Date	Action
<u>11-18-82</u>	<u>defer to 12-30-82</u>
<u>12-30-82</u>	<u>Meeting cancelled</u>
<u>1-13-83</u>	<u>deferred to 2-10-83</u>
<u>2-10-83</u>	<u>deferred to 3-10-83</u>
<u>3-10-83</u>	

3. Governing Body (Bd. City Commissioners - Bd. County Commissioners)

Date	Action	Resolution
<u>4-6-83</u>	<u>Deferred 1 week</u>	
<u>4-13-83</u>	<u>Approved as recommended</u>	

NOTES:

LOS ANGELES, CHICAGO, CULVER CITY,
MCKINNEY, FLORENCE GROVE, CA
SAN ANTONIO, TEXAS

Steward
No. 2153C

Map No. 5143A&D
Sec. _____
Twp. _____
Range _____

DATA SHEET
~~MINERAL~~ & CONDITIONAL USE)

Z- _____
SC- _____
CU- 259
Filed 10-27-82

ASSOCIATED CASE: _____

APPLICATION DATA: From _____ to _____

1. Applicant: Foundation, Inc. (Donald P. Cain, Sr. Pres.), et al
Address 8027 W. Kellogg, 67209 Phone 22-6071
2. Agent: Everett C. Ferris, Suite 504 120 S. Market, 67202 Phone 267-7251
ENGR: ~~XXXXXX~~ P.E.C. P.A. (Gary Wiley) 1440 E. English (11) Phone 62-2697
3. General Location: Southwest corner of Hollin Drive and 31st St. South

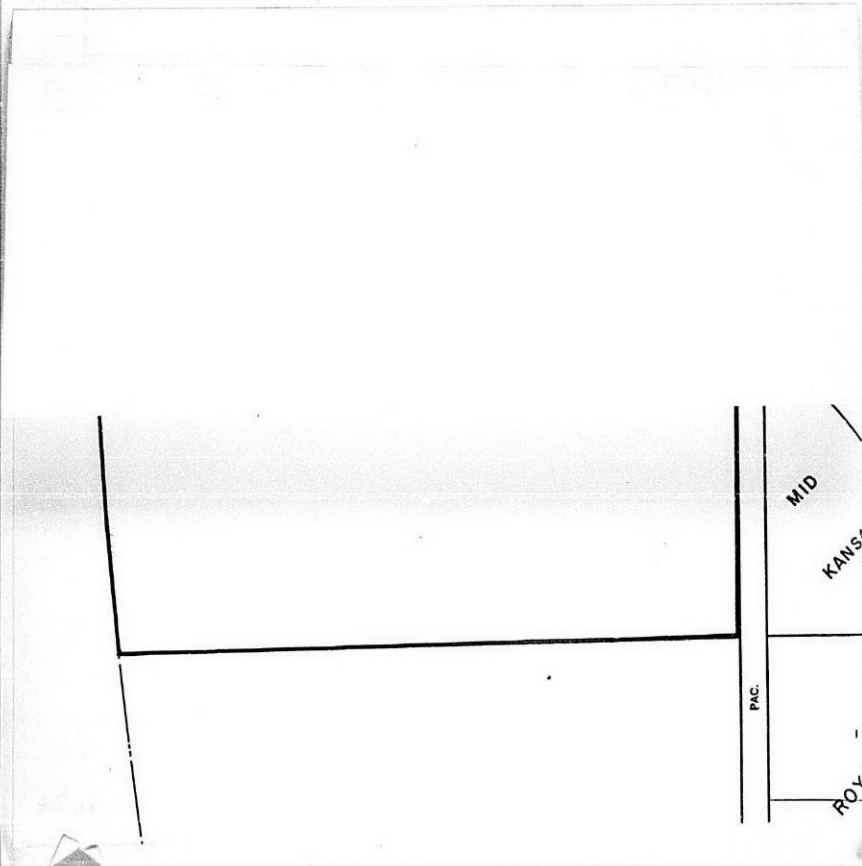
4. Proposed Use: Sand & Gravel Extraction Operation on property zoned "E"

AREA DATA:

1. Acres: 120 ± (IRREGULAR) 2610 ft. by 2640 ft.)
2. Adjoining Zoning: E "R" S "R" W "R" N "R"
3. Land Use: East F-275 & MO. PAV. R.E. South UNDEVELOPED
West FLOOD CONTROL DITCH North DRAINAGE DITCH
4. Sketch Plan Land Use is for: _____
5. Present Land Use is for: SAND PIT
6. Area (is) (is not) platted.

PHOTO DATA:

Taken by _____ Date _____ Time _____

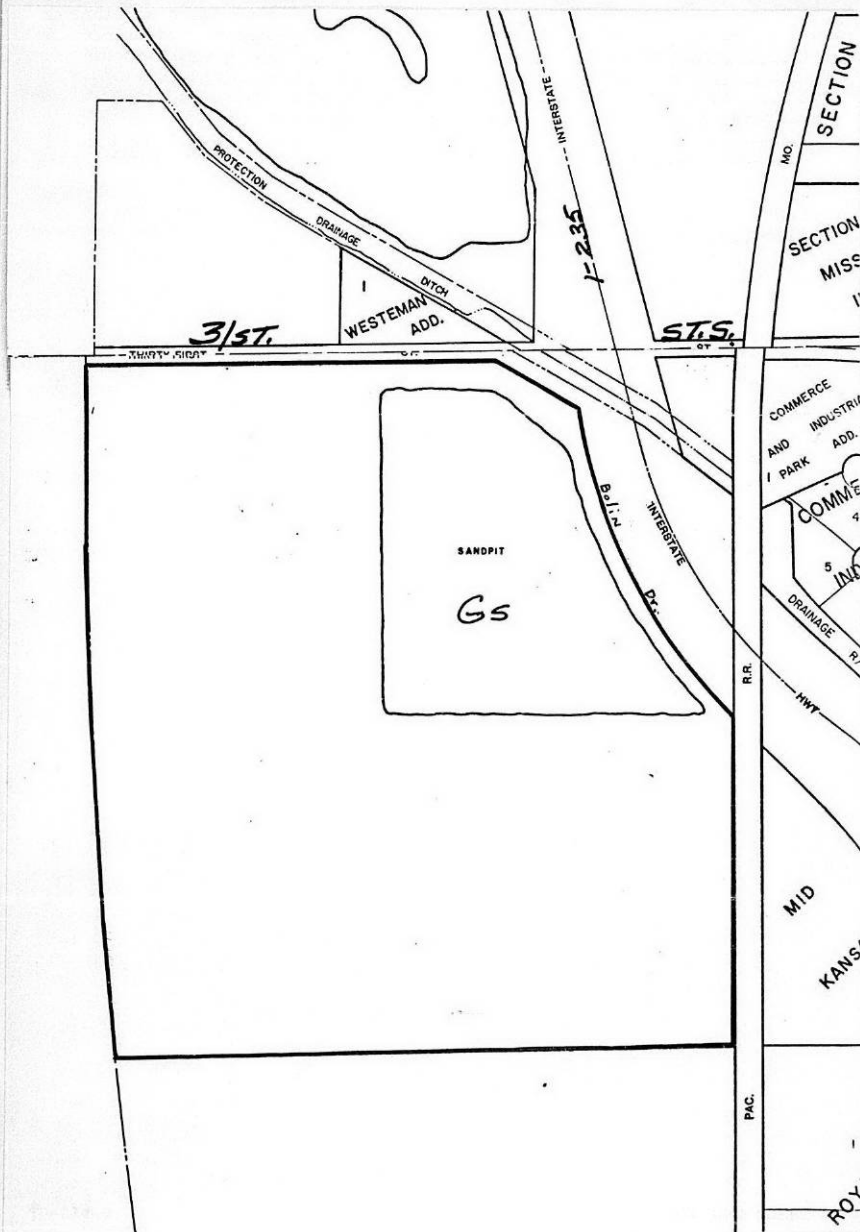


Map No. 5143A&D
Sec. _____
Twp. _____
Range _____

DATA SHEET
(~~PLANNING~~ & CONDITIONAL USE)

Z- _____
SCZ- _____
CU- 259
Filed 10-27-82

ASSOCIATED CASE: _____



April 22, 1983

Ron Worley, County Zoning Officer

Jack H. Galbraith, Chief Planner - Current Plans

CU-259 - Conditional Use Permit to allow expansion
of sand and gravel operation.

Attached is a copy of the Resolution of the above County case,
adopted by the Board of County Commissioners on April 13,
1983, which sets forth the conditions of approval. Please note
in particular, condition number 10 which sets a one-year time
limit to bring to compliance.

Also attached is a copy of the approved operational and re-
development plan for your files and information.

Jack H. Galbraith
Chief Planner

JHG:GLS:el

Attachments

() Published in The Daily Reporter on April 25, 1983

R#91-1983

RESOLUTION # 91-1983

CASE NO. CU-259

A RESOLUTION TO ALLOW EXPANSION OF SAND AND GRAVEL OPERATION IN THE "E" LIGHT INDUSTRIAL DISTRICT ON CERTAIN LANDS LOCATED WITHIN THE UNINCORPORATED TERRITORY LYING WITHIN THREE MILES OF EITHER THE CITY OF WICHITA, THE CITY OF HAYSVILLE, THE CITY OF DERBY, THE CITY OF MULVANE, THE CITY OF VALLEY CENTER, THE CITY OF GODDARD AND THAT PORTION OF THE AREA WITHIN THREE MILES OF THE CITY OF CHENEY AS ESTABLISHED BY THE BOARD OF COUNTY COMMISSIONERS ON OCTOBER 3, 1973, ALL IN SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY SECTION 9.A.5a AND SECTION 11.E OF THE ZONING RESOLUTION ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, ON MARCH 3, 1958, AND SUBSEQUENT AMENDMENTS THERETO.

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

SECTION I. That after receiving a recommendation from Wichita-Sedgwick County Metropolitan Area Planning Commission and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section 9.A.5a and Section 11.E of the Zoning Resolution, as amended, a Conditional Use Permit to allow expansion of sand and gravel operation in the "E" Light Industrial District is hereby approved on the lands legally described as follows:

The East Half of the Northwest Quarter of Section 11, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, lying East of the Wichita-Valley Center Floodway, AND

The Northeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, lying Southwest of Interstate 235 and West of the Missouri Pacific Railroad Right-of-Way. Generally located at the southwest corner of Bolin Drive and 31st Street South.

SUBJECT TO THE FOLLOWING:

1. No stockpiling of sand or storage of equipment shall occur within 50 feet of any property line or within 100 feet of any public right-of-way.
2. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the Flood Control Division and to form by County Counselor, providing for the construction and/or maintenance of a loop levee around the entire sandpit or portions thereof at such time as deemed necessary by the Flood Control office or their successors of office, and shall be constructed in accordance with construction specifications, Section 1 through 4

inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the Maintenance Division of the City of Wichita, Kansas; said covenant shall run with the land and be binding on all owners, successors and assigns.

3. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.
4. A minimum 58-inch high fence shall be constructed completely around the perimeter of the excavation area and plant operation area within one year of the date of approval by the Board of County Commissioners or the conditional use shall be null and void. The fence shall be constructed and maintained on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
 - a. A 42" or higher chainlink fence with three or more strands of barbed wire; or
 - b. A 42" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
 - c. A 42" or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.

5. The earth shall be extracted to a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
6. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
7. All of the application area outside of the sandpit lake shall be graded so as to drain into the lake.
8. The sand plant operator shall be responsible for:
 - a. Insuring that the loop levee elevation be maintained.
 - b. That the grading of the area around the perimeter of the sandpit lake be maintained so as to direct drainage toward the lake.
 - c. Construction of any structure such as culverts, ditches, ditch checks, riprap, etc., necessary to carry out this plan.

9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
10. The concrete and asphalt rubble piles shall be leveled, used for bank stabilization or removed from the site within one year of the date of approval by the Board of County Commissioners or the conditional use be declared null and void.
11. The natural drainage flow shall be protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Flood Control Office and the County Engineer and shall be according to the specifications and standards of these authorities.
12. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
13. All slopes shall have vegetative covering consisting of a perennial drouth resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
14. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation and a "stake" plant.
15. The applicant shall comply with Conditions 2 and 9 prior to the publication of the resolution establishing the conditional use.
16. Any violation of conditions attached shall declare the conditional use permit null and void.

SECTION II. That upon the taking effect of this Resolution, the notation of such Conditional Use approval shall be entered in the Official Zoning atlas on file in the Office of the County Zoning Administrator and in the Office of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION III. That this Resolution shall take effect and be in force from and after its adoption and publication in the Official County Paper.

PASSED AND ADOPTED by the Board of County Commissioners at Wichita, Kansas, this 13 day of April, 19 83.


_____, Chairman
Jack Spratt


_____, Commissioner
Tom Scott

Absent
_____, Commissioner
Donald E. Gragg

ATTEST:



Dorothy K. White
Dorothy K. White, County Clerk

Approved as to form by County Counselor

William D. Rustin
William D. Rustin, County Counselor

WICHITA-SEDGWICK COUNTY

G. Lynn Shirkey

DATE

April 13, 1983

METROPOLITAN AREA PLANNING DEPARTMENT

TO Donald C. Gisick, City Clerk

filed in D-1100-1

FROM G. Lynn Shirkey, Junior Planner

SUBJECT CU-259 - Sand and Gravel Extraction Operation.
Generally located at the southwest corner of
Bolin Drive and 31st Street South.

Attached are copies of two Covenants which were conditions of approval on the above captioned case, by the Board of County Commissioners at their meeting of April 13, 1983. These Covenants should be filed directly with the Register of Deeds, with the cost being billed to the Planning Department.

G. Lynn Shirkey

G. Lynn Shirkey
Junior Planner

GLS:el

Attachments



STATE OF KANSAS } 28
SEDGWICK COUNTY }
PUBLIC RECORD AT
8-000 M

APR 20 1983

NO. 6 26714

BETTE F. McCART
REGISTER OF DEEDS

COVENANT RUNNING WITH THE LAND

FOUNDATION, INC., owner of the following described
realty, to-wit:

*for Kettler
Deputy*
MICROFILMED
OF RECORD

The east half of the Northwest Quarter of Section 11, Township 28 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas, lying east of the Wichita-Valley Center Floodway, AND

The Northeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas, lying Southwest of Interstate 235 and West of the Missouri Pacific Railroad Right-of-Way.

does hereby make the following declaration of restrictions, limitations and use of said realty, and that said declaration shall constitute covenants running with the land and shall be binding upon all owners and their heirs, successors and assigns:

If the construction of a loop levee is deemed necessary by the County Department of Public Works, or its successors of office, in connection with conducting operations for the removal of sand and gravel from the premises, the fee owner agrees to construct and maintain a loop levee on the premises at such a location as the County Department of Public Works may direct, in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications, Sections 1 and 2 of Construction and Maintenance Specifications as prepared by the County Department of Public Works.

The above restrictions and agreements shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the County Department of Public Works, or its successors of office.

In the event of the failure by the undersigned or any successors of title to fulfill the obligation set forth above within sixty (60) days after receipt of written notice from the County Department of Public Works, or its successors of office, then the appropriate governing body may order such work done and maintained and charge the

RECEIVED
OFFICE OF CITY CLERK
APR 14 1983
 DC _____ DR _____
 Agenda _____ JE _____
 File _____

6.00

City Clerk

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

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

EXECUTED this 24th day of March, 1983.

FOUNDATION, INC.

By Wanda S. Cain
WANDA CAIN, Authorized Officer

ACKNOWLEDGMENT

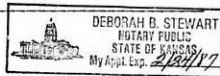
STATE OF KANSAS, SEDGWICK COUNTY, SS:

BE IT REMEMBERED, that on this 24th day of March, 1983, the undersigned, a notary public, in and for the County and State aforesaid, came WANDA CAIN, who is personally known to me to be the same person who executed the foregoing 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 official seal, the day and year last above written.

Deborah B. Stewart
Notary Public

My Appointment Expires:



RESTRICTIVE COVENANT

KNOW ALL MEN BY THESE PRESENTS: That

The undersigned, FOUNDATION, INC., does hereby impose upon the following described real property, to-wit:

The East Half of the Northwest Quarter of Section 11, Township 28 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas, lying East of the Wichita-Valley Center Floodway, AND

The Northeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas, lying Southwest of Interstate 235 and West of the Missouri Pacific Railroad Right-of-Way,

covenant to run with the land as follows:

1. No foreign matter, including but without limitation to, rubbish, trees, car bodies or other trash shall be deposited on the above described real property or within any sand pit excavated thereon.

The covenant herein contained shall be binding upon the undersigned, his successors in interest and assigns. The said covenant may be enforced in any appropriate action in any Court having jurisdiction thereof by the City of Wichita, the County of Sedgwick or any member of the public in whose favor and for whose benefit this covenant is made.

IN WITNESS WHEREOF, we have hereunto set our hands this 24th day of March, 1983.

FOUNDATION, INC.

By Wanda Cain
WANDA CAIN
Authorized Officer

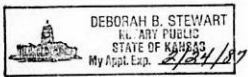
STATE OF KANSAS, SEDGWICK COUNTY, SS:

BE IT REMEMBERED, that on this 24th day of March, 1983, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came WANDA CAIN, personally known to me to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

Deborah B. Stewart
Notary Public

My Appointment Expires:



STATE OF KANSAS } SS
SEDGWICK COUNTY }
FILED FOR RECORD AT
8:00 A.M.

APR 20 1983
6 26737
NO. BETTE F. MCCART
REGISTER OF DEEDS

MICROFILMED
OF RECORD

Pat Kettler
Deputy

5.00

City Club

April 13, 1983

Donald C. Gisick, City Clerk
G. Lynn Shirkey, Junior Planner

CU-259 - Sand and Gravel Extraction Operation.
Generally located at the southwest corner of
Bolin Drive and 31st Street South.

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of approval on the above captioned case, by the Board of
County Commissioners at their meeting of April 13, 1983. These
Covenants should be filed directly with the Register of Deeds,
with the cost being billed to the Planning Department.

G. Lynn Shirkey
Junior Planner

GLS:el

Attachments

COVENANT RUNNING WITH THE LAND

FOUNDATION, INC., owner of the following described
realty, to-wit:

The east half of the Northwest Quarter of Section
11, Township 28 South, Range 1 West of the 6th
Principal Meridian, Sedgwick County, Kansas, lying
east of the Wichita-Valley Center Floodway, AND

The Northeast Quarter of Section 11, Township 28
South, Range 1 West of the 6th Principal Meridian,
Sedgwick County, Kansas, lying Southwest of Inter-
state 235 and West of the Missouri Pacific Railroad
Right-of-Way.

does hereby make the following declaration of restrictions,
limitations and use of said realty, and that said
declaration shall constitute covenants running with the land
and shall be binding upon all owners and their heirs,
successors and assigns:

If the construction of a loop levee is deemed
necessary by the County Department of Public
Works, or its successors of office, in con-
nection with conducting operations for the re-
moval of sand and gravel from the premises, the
fee owner agrees to construct and maintain a
loop levee on the premises at such a location
as the County Department of Public Works may
direct, in accordance with construction speci-
fications, Sections 1 through 4, inclusive, and
maintenance specifications, Sections 1 and 2 of
Construction and Maintenance Specifications as
prepared by the County Department of Public
Works.

The above restrictions and agreements shall be deemed
covenants running with the land and shall not be amended,
deleted or changed without written consent of the County
Department of Public Works, or its successors of office.

In the event of the failure by the undersigned or any
successors of title to fulfill the obligation set forth
above within sixty (60) days after receipt of written notice
from the County Department of Public Works, or its
successors of office, then the appropriate governing body
may order such work done and maintained and charge the

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

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

EXECUTED this 24th day of March, 1983.

FOUNDATION, INC.

By Wanda P. Cain
WANDA CAIN, Authorized Officer

ACKNOWLEDGMENT

STATE OF KANSAS, SEDGWICK COUNTY, SS:

BE IT REMEMBERED, that on this 24th day of March, 1983, the undersigned, a notary public, in and for the County and State aforesaid, came WANDA CAIN, who is personally known to me to be the same person who executed the foregoing 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 official seal, the day and year last above written.

Deborah B. Stewart
Notary Public

My Appointment Expires:



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The Northeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas, lying Southwest of Interstate 235 and West of the Missouri Pacific Railroad Right-of-Way,

covenant to run with the land as follows:

1. No foreign matter, including but without limitation to, rubbish, trees, car bodies or other trash shall be deposited on the above described real property or within any sand pit excavated thereon.

The covenant herein contained shall be binding upon the undersigned, his successors in interest and assigns. The said covenant may be enforced in any appropriate action in any Court having jurisdiction thereof by the City of Wichita, the County of Sedgwick or any member of the public in whose favor and for whose benefit this covenant is made.

IN WITNESS WHEREOF, we have hereunto set our hands this 24th day of March, 1983.

FOUNDATION, INC.

By Wanda Cain
WANDA CAIN
Authorized Officer

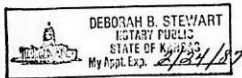
STATE OF KANSAS, SEDGWICK COUNTY, SS:

BE IT REMEMBERED, that on this 24th day of March, 1983, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came WANDA CAIN, personally known to me to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

Deborah B. Stewart
Notary Public

My Appointment Expires:



RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO
BOARD OF COUNTY COMMISSIONERS

120 A

REQUEST FOR CONIDTIONAL USE PERMIT

18
26

CASE NO. CG-259

CONSIDERED BY MAPC: 3-10-83

REQUEST FOR: Conditional Use Permit

REASON FOR REQUEST (AS PROVIDED BY APPLICANT):

"To amend CU-33 to include the extraction of sand and gravel in NW 1/4 of Section 11."

GENERAL LOCATION: Southwest corner of Bolin Drive and 31st Street South.

LEGAL DESCRIPTION:

(See excerpt from Planning Commission minutes of March 10, 1983)

APPLICANT: Foundation, Inc., et al, 8027 W. Kellogg.

AGENT FOR APPLICANT: Gary Wiley, Professional Engineering Consultants, 1440 E. English.

PROTESTORS (LIST AGENT) IF ANY: None.

SURROUNDING ZONING: North, "R-5" & "E"; East, South and West, "E".

LAND USE: Existing and South, Sandpit & Undeveloped; North, General business & undeveloped; East, I-235 Highway & Mo. Pac. Railroad; West, Big Ditch.

PLANNING COMMISSION RECOMMENDATION:

That this application be approved subject to the following conditions: (See excerpt from Planning Commission minutes of March 10, 1983). Garuner moved, Wilson seconded and it carried unanimously. One vacancy.

*Approved as recommended
2-0*

ACTION: 1. Concur with the findings of fact of the Metropolitan Area Planning Commission, approve the application subject to the recommended conditions and adopt a resolution establishing the conditional use; or
2. Take such action as the County Commission deems appropriate.

EXCERPT FROM PLANNING COMMISSION MINUTES OF MARCH 10, 1983

6. Case No. CU-259 - Foundation, Inc., et al request Conditional Use Permit for the East Half of the North-west Quarter of Section 11, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, lying east of the Wichita-Valley Center Floodway, AND, the Northeast Quarter of Section 11, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, lying Southwest of Interstate 235 and West of the Missouri Pacific Railroad Right-of-Way. Generally located at the southwest corner of Bolin Drive and 31st Street South.

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

COMMENTS:

1. The following items should be considered by the Planning Commission in making findings of fact:

The applicant is requesting a Conditional Use Permit to permit the extraction of sand and gravel to include a larger area from that previously approved by the Board of County Commissioners on June 2, 1960, (CU-33). Subject property is zoned "E" Light Industrial and is located at the southwest corner of Bolin Drive and 31st Street South.

An Operational Plan and a "sketch" Redevelopment Plan has been submitted with the application. Although the Operational Plan appears to be acceptable, the proposed "sketch" is for residential redevelopment and will require a change of zoning prior to development inasmuch as 40,000 square feet is required per lot as zoned. It should be pointed out that the area in which subject property is located is not projected for urban development and therefore any determination of actual lot size and area would have to be reserved until such time in the future the actual redevelopment and platting of the property occurs.

The applicant should be prepared to clarify the apparent discrepancy in the indicated limit of excavation on the operation plan and the fingers proposed on the redevelopment plan.

2. A recommendation of approval by the Planning Commission should be subject to the following recommended conditions:

1. No stockpiling of sand or storage of equipment shall occur within 50 feet of any property line or within 100 feet of any public right-of-way.
2. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the Flood Control Division and to form by County Counselor, providing for the construction and/or maintenance of a loop levee around the entire sandpit or portions thereof at such time as deemed necessary by the Flood Control office or their successors of office, and shall be constructed in accordance with construction specifications, Section 1 through 4 inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the Maintenance Division of the City of Wichita, Kansas; said covenant shall run with the land and be binding on all owners, successors and assigns.

3. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.
4. A minimum 58-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
 - a. A 48" or higher chainlink fence with three or more strands of barbed wire; or
 - b. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
 - c. A 48" or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.

5. The earth shall be extracted to a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
6. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
7. All of the application area outside of the sandpit lake shall be graded so as to drain into the lake.
8. The sand plant operator shall be responsible for:
 - a. Insuring that the loop levee elevation be maintained.
 - b. That the grading of the area around the perimeter of the sandpit lake be maintained so as to direct drainage toward the lake.
 - c. Construction of any structure such as culverts, ditches, ditch checks, riprap, etc., necessary to carry out this plan.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.

10. The natural drainage flow shall be protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Flood Control Office and the County Engineer and shall be according to the specifications and standards of these authorities.
11. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
12. All slopes shall have vegetative covering consisting of a perennial drouth resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
13. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
14. The applicant shall comply with Conditions 2 and 9 prior to the publication of the resolution establishing the conditional use.
15. Any violation of conditions attached shall declare the conditional use permit null and void.

CALBRAITH stated that part of this property was included in a conditional use case considered in 1960. The new owner desires to expand his operation into a tract of land to the west that was not in the previous application. He pointed out the expansion of the lake to the west and the fingers going further west that might be developed with some residential lots at some point in time. They realize that platting and lot size have to be determined later. He said that Gary Wiley, agent for the applicant, had indicated that the limits of their excavation is where the good sand is, and that the smaller fingers would be to provide additional water area for some lots in the future.

CALBRAITH stated that he felt there needed to be some clarification on the map to permit this. He stated that this is an appropriate expansion of a former Conditional Use application, and would recommend approval subject to the conditions listed in the staff report. He added that fencing is also recommended.

GARY WILEY spoke in behalf of the applicant stating that there is a conditional use immediately to the south of the site that has been approved for the extraction of sand and gravel. He stated that he did not have a copy of the staff report but believed staff comments on this case to be the same as the previous case (CU-258) and felt that there will be no problem with compliance.

BAYOUTH asked about the broken concrete along the banks.

WILEY stated that it will be used for riprapping along the sides.

WALT KEELER, 2124 Garland, stated that he owns the property to the north, directly across the street from the application area. He stated for the record that he has no comments and does not want to be involved in the monetary situation that exists between Mr. Cain and Mr. Eisenring. He said he was not choosing sides. As for the fencing, KEELER said that if this request is granted additional fencing would be needed. Most

of the property along the north, east and south sides of that northeast quarter is already fenced, but the west side is not. If and when the request is granted, some provision should be made by the Commission for the extension of the fencing. He felt that the rubble should be cleaned up and it could be done in 60 days. Relative to Mr. Cain's desire to push his operation westward into the southwest quarter of Section 11, KEELER said he could support it if some conditions were added. He said that Mr. Cain should submit a zoning change request from "E" Light Industrial to "R-5" or "R-6" at this time. He felt that the present zoning would be detrimental to his and Mr. Kessler's land that is residentially zoned. He read a letter from Kessler Brothers Incorporated stating that they, by way of the letter, appointed Mr. Keeler as their agent to act in their behalf concerning the above case. KEELER read the letter and presented it to the Commission for filing.

KEELER stated that he wanted it to be known that they had no opposition to the expansion of the operation to the west. They wanted protection in the future and do not want "E" Light Industrial zoning to be used again in the area.

GARDNER stated that Mr. Keeler's request posed a problem regarding "spot" zoning. KEELER stated that he was only asking for a change of zoning in the area directly between the Big Ditch on the west, the railroad tracks on the east, the half-section line on the south, and 31st Street on the north.

BAYOUTH stated that he thought the applicant would have to "down zone" if he wants to develop residential uses.

GALBRAITH stated that only if the applicant built a mobile home park would he have to down zone. The site is in the County and residences are permitted in light industrial. Once it is annexed to the City that will change. GALBRAITH further stated that the surrounding area is zoned light industrial, and he felt that if anything was inappropriate it would be the residential use. He said that Mr. Keeler has come back in and down zoned his property to the north, with an intent to develop residences around the lake. He said that the problem could be solved if the applicant was agreeable to file a zoning change at this time, but he was not sure that the applicant wanted to down zone at this time.

KEELER stated that Mr. Kessler advised him that he has the same intention with his plot of land which is to the south.

GARDNER inquired about the length of time the conditional use would be in effect. GALBRAITH said it was unlimited.

LOFTON asked Mr. Cain for his comments concerning the remarks made by Mr. Keeler.

CAIN stated that if it was going to delay the conditional use permit he might go in later and do it, but he would like to go ahead and have his conditional use application approved.

BAYOUTH asked Galbraith for a clarification on what could be done about having Mr. Cain come back for a zone change.

GALBRAITH stated that the Commission could make such a requirement at this time. He said that although it is unusual, it can be done. He said that the Commission could require that Mr. Cain file a zoning application to change the zoning. That does not mean that this Commission or the County Commission will approve the request.

WILEY stated that sanitary sewer is available at this site and some day it is going to develop. The sewer is in 31st Street South and the area is servicable with sewer, water and other utilities. He said that the zone changes suggested by Mr. Keeler are not permitted in the County, and they would have to ask for annexation. If that happens, the conditional use is no longer valid and they would have to go the BZA. He said his clients, at this point in time, know it will be developed and probably with residential uses, but until such a time as they know what they want to do, they prefer not to file a charge and/or request annexation.

GALBRAITH said that prior to the meeting he was advised that concern was about noxious industrial uses that might occur on this property. He said it might not be unreasonable for the Commission to attach a condition that this property would not be used for any other use other than the excavation of sand until the property is platted. He suggested that Item 13 might cover this.

WILEY stated that, if in fact, the existing operation could remain, he would be agreeable to that condition. He also stated that a stake plant is to be moved to this site at Mr. Worley's suggestion. That building has not been built yet and a building will be built for the sand operation.

Some discussion ensued regarding building permits for the buildings.

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the mixed use character of the general area; the light industrial zoning on surrounding property; the sandpit to the west; the suitability of the subject site for sand excavation and the recommendation of approval by staff; I move that we recommend to the Board of County Commissioners that this application be approved subject to the following conditions:

1. No stockpiling of sand or storage of equipment shall occur within 50 feet of any property line or within 100 feet of any public right-of-way.
2. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the Flood Control Division and to form by County Counselor, providing for the construction and/or maintenance of a loop levee around the entire sandpit or portions thereof at such time as deemed necessary by the Flood Control office or their successors of office, and shall be constructed in accordance with construction specifications, Section 1 through 4 inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the Maintenance Division of the City of Wichita, Kansas; said covenant shall run with the land and be binding on all owners, successors and assigns.
3. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.

4. A minimum 58-inch high fence shall be constructed completely around the perimeter of the excavation area and plant operation area within one year of the date of approval by the Board of County Commissioners or the conditional use shall be null and void. The fence shall be constructed and maintained on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
 - a. A 48" or higher chainlink fence with three or more strands of barbed wire; or
 - b. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
 - c. A 48" or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 140 degrees facing away from the excavation.

5. The earth shall be extracted to a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
6. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
7. All of the application area outside of the sandpit lake shall be graded so as to drain into the lake.
8. The sand plant operator shall be responsible for:
 - a. Insuring that the loop levee elevation be maintained.
 - b. That the grading of the area around the perimeter of the sandpit lake be maintained so as to direct drainage toward the lake.
 - c. Construction of any structure such as culverts, ditches, ditch checks, riprap, etc., necessary to carry out this plan.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
10. The concrete and asphalt rubble piles shall be leveled, used for bank stabilization or removed from the site within one year of the date of

approval by the Board of County Commissioners
or the conditional use be declared null and void.

11. The natural drainage flow shall be protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Flood Control Office and the County Engineer and shall be according to the specifications and standards of these authorities.
12. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
13. All slopes shall have vegetative covering consisting of a perennial drought resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
14. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation and a "stake" plant.
15. The applicant shall comply with Conditions 2 and 9 prior to the publication of the resolution establishing the conditional use.
16. Any violation of conditions attached shall declare the conditional use permit null and void.

Gardner moved, Wilson seconded and it
carried unanimously. One vacancy.

LAW OFFICES
FETTIS & McCLURE
120 SOUTH MARKET
SUITE 504
WICHITA, KANSAS 67202
316-267-7251

EVERETT C. FETTIS
DAVID R. McCLURE

KEITH M. CURFMAN
OF COUNSEL

April 4, 1983

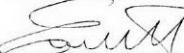
Jack H. Galbraith
Metropolitan Area Planning Department
455 North Main
Wichita, Kansas 67202

RE: Foundation, Inc.

Dear Jack:

We have redrawn the Restrictive Covenant and Covenant Running
with the Land and herewith enclose both documents.

Very truly yours,


EVERETT C. FETTIS

ECF/dbs
enc
cc: Thomas E. Brown

RECEIVED
APR 6 1983
METROPOLITAN PLANNING
ROUTE 2

COVENANT RUNNING WITH THE LAND

FOUNDATION, INC., owner of the following described realty, to-wit:

The east half of the Northwest Quarter of Section 11, Township 28 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas, lying east of the Wichita-Valley Center Floodway, AND

The Northeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas, lying Southwest of Interstate 235 and West of the Missouri Pacific Railroad Right-of-Way.

does hereby make the following declaration of restrictions, limitations and use of said realty, and that said declaration shall constitute covenants running with the land and shall be binding upon all owners and their heirs, successors and assigns:

If the construction of a loop levee is deemed necessary by the County Department of Public Works, or its successors of office, in connection with conducting operations for the removal of sand and gravel from the premises, the fee owner agrees to construct and maintain a loop levee on the premises at such a location as the County Department of Public Works may direct, in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications, Sections 1 and 2 of Construction and Maintenance Specifications as prepared by the County Department of Public Works.

The above restrictions and agreements shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the County Department of Public Works, or its successors of office.

In the event of the failure by the undersigned or any successors of title to fulfill the obligation set forth above within sixty (60) days after receipt of written notice from the County Department of Public Works, or its successors of office, then the appropriate governing body may order such work done and maintained and charge the

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

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

EXECUTED this 24th day of March, 1983.

FOUNDATION, INC.

By Wanda S. Cain
WANDA CAIN, Authorized Officer

ACKNOWLEDGMENT

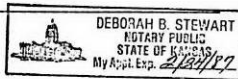
STATE OF KANSAS, SEDGWICK COUNTY, SS:

BE IT REMEMBERED, that on this 24th day of March, 1983, the undersigned, a notary public, in and for the County and State aforesaid, came WANDA CAIN, who is personally known to me to be the same person who executed the foregoing 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 official seal, the day and year last above wirtten.

Deborah B. Stewart
Notary Public

My Appointment Expires:



RESTRICTIVE COVENANT

KNOW ALL MEN BY THESE PRESENTS: That

The undersigned, FOUNDATION, INC., does hereby impose upon the following described real property, to-wit:

The East Half of the Northwest Quarter of Section 11, Township 28 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas, lying East of the Wichita-Valley Center Floodway, AND

The Northeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas, lying Southwest of Interstate 235 and West of the Missouri Pacific Railroad Right-of-Way,

covenant to run with the land as follows:

1. No foreign matter, including but without limitation to, rubbish, trees, car bodies or other trash shall be deposited on the above described real property or within any sand pit excavated thereon.

The covenant herein contained shall be binding upon the undersigned, his successors in interest and assigns. The said covenant may be enforced in any appropriate action in any Court having jurisdiction thereof by the City of Wichita, the County of Sedgwick or any member of the public in whose favor and for whose benefit this covenant is made.

IN WITNESS WHEREOF, we have hereunto set our hands this 24th day of March, 1983.

FOUNDATION, INC.

By Wanda Cain
WANDA CAIN
Authorized Officer

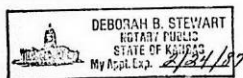
STATE OF KANSAS, SEDGWICK COUNTY, SS:

BE IT REMEMBERED, that on this 24th day of March, 1983, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came WANDA CAIN, personally known to me to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

Deborah B. Stewart
Notary Public

My Appointment Expires:



(_____) Published in The Daily Reporter on _____, 1983

R E S O L U T I O N

CASE NO. CU-259

A RESOLUTION TO ALLOW EXPANSION OF SAND AND GRAVEL OPERATION IN THE "E" LIGHT INDUSTRIAL DISTRICT ON CERTAIN LANDS LOCATED WITHIN THE UNINCORPORATED TERRITORY LYING WITHIN THREE MILES OF EITHER THE CITY OF WICHITA, THE CITY OF HAYSVILLE, THE CITY OF DERBY, THE CITY OF MULVANE, THE CITY OF VALLEY CENTER, THE CITY OF GODDARD AND THAT PORTION OF THE AREA WITHIN THREE MILES OF THE CITY OF CENEY AS ESTABLISHED BY THE BOARD OF COUNTY COMMISSIONERS ON OCTOBER 3, 1973, AND IN SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY SECTION 9.A.5a AND SECTION 11.E OF THE ZONING RESOLUTION ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, ON MARCH 3, 1958, AND SUBSEQUENT AMENDMENTS THERETO.

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

SECTION I. That after receiving a recommendation from Wichita-Sedgwick County Metropolitan Area Planning Commission and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section 9.A.5a and Section 11.E of the Zoning Resolution, as amended, a Conditional Use Permit to allow expansion of sand and gravel operation in the "E" Light Industrial District is hereby approved on the lands legally described as follows:

The East Half of the Northwest Quarter of Section 11, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, lying East of the Wichita-Valley Center Floodway, AND

The Northeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, lying Southwest of Interstate 235 and West of the Missouri Pacific Railroad Right-of-Way. Generally located at the southwest corner of Bolin Drive and 31st Street South.

SUBJECT TO THE FOLLOWING:

1. No stockpiling of sand or storage of equipment shall occur within 50 feet of any property line or within 100 feet of any public right-of-way.
2. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the Flood Control Division and to form by County Counselor, providing for the construction and/or maintenance of a loop levee around the entire sandpit or portions thereof at such time as deemed necessary by the Flood Control office or their successors of office, and shall be constructed in accordance with construction specifications, Section 1 through 4

inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the Maintenance Division of the City of Wichita, Kansas; said covenant shall run with the land and be binding on all owners, successors and assigns.

3. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.
4. A minimum 58-inch high fence shall be constructed completely around the perimeter of the excavation area and plant operation area within one year of the date of approval by the Board of County Commissioners or the conditional use shall be null and void. The fence shall be constructed and maintained on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
 - a. A 48" or higher chainlink fence with three or more strands of barbed wire; or
 - b. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
 - c. A 48" or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with bars spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.

5. The earth shall be extracted to a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
6. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
7. All of the application area outside of the sandpit lake shall be graded so as to drain into the lake.
8. The sand plant operator shall be responsible for:
 - a. Insuring that the loop levee elevation be maintained.
 - b. That the grading of the area around the perimeter of the sandpit lake be maintained so as to direct drainage toward the lake.
 - c. Construction of any structure such as culverts, ditches, ditch checks, riprap, etc., necessary to carry out this plan.

9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
10. The concrete and asphalt rubble piles shall be leveled, used for bank stabilization or removed from the site within one year of the date of approval by the Board of County Commissioners or the conditional use be declared null and void.
11. The natural drainage flow shall be protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Flood Control Office and the County Engineer and shall be according to the specifications and standards of these authorities.
12. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
13. All slopes shall have vegetative covering consisting of a perennial drought resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
14. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation and a "stake" plant.
15. The applicant shall comply with Conditions 2 and 9 prior to the publication of the resolution establishing the conditional use.
16. Any violation of conditions attached shall declare the conditional use permit null and void.

SECTION II. That upon the taking effect of this Resolution, the notation of such Conditional Use approval shall be entered in the Official Zoning atlas on file in the Office of the County Zoning Administrator and in the Office of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION III. That this Resolution shall take effect and be in force from and after its adoption and publication in the Official County Paper.

PASSED AND ADOPTED by the Board of County Commissioners at Wichita, Kansas, this ____ day of _____, 19____.

_____, Chairman
Jack Spratt

_____, Commissioner
Tom Scott

_____, Commissioner
Donald E. Gragg

ATTEST:

Dorothy K. White, County Clerk

(SEAL)

Approved as to form by County Counselor

William D. Rustin, County Counselor

March 17, 1983

Everett C. Fettis
120 South Market
Wichita, Ks. 67202

Re: CUP-259 Conditional Use
Permit to allow expansion
of sand & gravel operation

Dear Mr. Fettis:

It has come to our attention that condition #14, relating to the platting requirements for the above referenced case, in my letter of March 14, 1983 is incorrect. The MAPC recommended that a "stake" plant be allowed on the site without having to plat. That recommendation was inadvertently not included in my March 14, 1983 letter to you. The condition should have read:

14. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation or a "stake" plant.

The material that will be forwarded to the County Commission will include the revised condition. If you have any questions, please call.

Sincerely yours,

Jack H. Galbraith
Chief Planner

JHG:ADC:sad

cc: Donald P. Cain, Sr., President, Foundation, Inc., 8027 West Kellogg,
Wichita, Ks. 67209
Gary Wiley, Professional Engineering Consultants, P.A., 1440 East
English, Wichita, Ks. 67211
Thomas E. Brown, Attorney, Century Plaza Bldg., 111 West Douglas,
Wichita, Ks. 67202
Walt Keeler, 2124 Garland, Wichita, Ks. 67203
Karl Kessler, Vice President, Kessler Bros., Inc., 1905 Southwest
Boulevard, Wichita, Ks. 67213
Ron Worley, County Zoning Officer

WICHITA - SEDGWICK COUNTY



METROPOLITAN AREA PLANNING

COMMISSION

CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 258-4561

March 14, 1983

Everett C. Fettis
120 South Market
Wichita, Ks. 67202

Re: CU-259- Conditional Use Permit to
allow expansion of sand & gravel
operation

Dear Mr. Fettis:

At its regular meeting of March 10, 1983, the Metropolitan Area Planning Commission considered the above-captioned request for a Conditional Use Permit to allow expansion of a sand and gravel operation. The action of the Planning Commission was to recommend that this application be approved subject to the following conditions:

1. No stockpiling of sand or storage of equipment shall occur within 50 feet of any property line or within 100 feet of any public right-of-way.
2. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the Flood Control Division and to form by County Counselor, providing for the construction and/or maintenance of a loop levee around the entire sandpit or portions thereof at such time as deemed necessary by the Flood Control office or their successors of office, and shall be constructed in accordance with construction specifications, Section 1 through 4 inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the Maintenance Division of the City of Wichita, Kansas; said covenant shall run with the land and be binding on all owners, successors and assigns.

3. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.
4. A minimum 58-inch high fence shall be constructed completely around the perimeter of the excavation area and plant operation area within one year of the date of approval by the Board of County Commissioners or the conditional use shall be null and void. The fence shall be constructed and maintained on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
 - a. A 48" or higher chainlink fence with three or more strands of barbed wire; or
 - b. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
 - c. A 48" or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.

5. The earth shall be extracted to a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
6. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
7. All of the application area outside of the sandpit lake shall be graded so as to drain into the lake.
8. The sand plant operator shall be responsible for:
 - a. Insuring that the loop levee elevation be maintained.

- b. That the grading of the area around the perimeter of the sandpit lake be maintained so as to direct drainage toward the lake.
 - c. Construction of any structure such as culverts, ditches, ditch checks, riprap, etc., necessary to carry out this plan.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
 10. The concrete and asphalt rubble piles shall be leveled, used for bank stabilization or removed from the site within one year of the date of approval by the Board of County Commissioners or the conditional use be declared null and void.
 11. The natural drainage flow shall be protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Flood Control Office and the County Engineer and shall be according to the specifications and standards of these authorities.
 12. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
 13. All slopes shall have vegetative covering consisting of a perennial drouth resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
 14. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
 15. The applicant shall comply with Conditions 2 and 9 prior to the publication of the resolution establishing the conditional use.
 16. Any violation of conditions attached shall declare the conditional use permit null and void.

WICHITA - SEDGWICK COUNTY --4

Regarding conditions 2 and 9b, enclosed are sample covenants that need to be revised for your clients use and signatures. These covenants along with 7 copies of the proposed plans should be submitted to our office no later than March 25, 1983 so that subject case can be scheduled for consideration by the Board of County Commissioners at 9:00 a.m., on Wednesday, April 6, 1983, in Room 320, Sedgwick County Courthouse.

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

Sincerely yours,

Jack H. Galbraith
Chief Planner

JHG:sad

Encls.

cc: Donald P. Cain, Sr., President, Foundation, Inc., 8027 West
Kellogg, Wichita 67209
Gary Wiley, Professional Engineering Consultants, P.A., 1440
East English, Wichita 67211
Thomas E. Brown, Attorney, Century Plaza Bldg., 111 West Douglas,
Wichita 67202
Walt Keeler, 2124 Garland, Wichita 67203
Karl Kessler, Vice President, Kessler Bros., Inc., 1905 Southwest
Boulevard, Wichita 67213
Ron Worley, County Zoning Officer

KESSLER BROS., INC.

1905 SOUTHWEST BOULEVARD
WICHITA, KANSAS 67213
Telephone WH 3-4254

March 10, 1983

To Whom It May Concern:

Be it known that I do hereby appoint Walt Keeler as my agent concerning Case No. CU - 259 before the Wichita, Sedgwick County, Metropolitan Area Planning Commission, March 10, 1983. As our opinions coincide in the matter, Mr. Keeler will be expressing my thoughts, wishes, and concerns on the matter along with his own.

Sincerely,

Karl F. Kessler
Karl F. Kessler
Vice-President

*Presented by Mr.
Keeler on 3-10-83
JKH*

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

MAPC HEARING DATE: 3-10-83

Case No. CU-259 Request: Conditional Use Permit to
allow expansion of sand &
gravel operation

Location: Southwest corner of Bolin Drive & 31st Street South.

Reason: To amend CU-33 to include the extraction of sand and gravel
in NW $\frac{1}{4}$ of Section 11.

Acres: 120 Size: 1600' x 2640' (irregular)

	<u>Land Use</u>	<u>Zoning</u>	
Existing	Sand pit & undeveloped	"E"	"E"
North	General business & undeveloped	"R-5"	& "E"
East	I-235 Highway & Mo. Pac. Railroad	"E"	
South	Sand pit & undeveloped	"E"	
West	Big Ditch	"E"	

Street right-of-way is adequate. Platted: No

History:
CU-33 Sand & Gravel Extraction 5-26-60 MAPC Approve
6-02-60 BCoC Approve

COMMENTS:

1. The following items should be considered by the Planning Commission in making findings of fact:

The applicant is requesting a Conditional Use Permit to permit the extraction of sand and gravel to include a larger area from that previously approved by the Board of County Commissioners on June 2, 1960, (CU-33). Subject property is zoned "E" Light Industrial and is located at the southwest corner of Bolin Drive and 31st Street South.

An Operational Plan and a "sketch" Redevelopment Plan has been submitted with the application. Although the Operational Plan appears to be acceptable, the proposed "sketch" is for residential redevelopment and will require a change of zoning prior to development inasmuch as 40,000 square feet is required per lot as zoned. It should be pointed out that the area in which subject property is located is not projected for urban development and therefore any determination of actual lot size and area would have to be reserved until such time in the future the actual redevelopment and platting of the property occurs.

The applicant should be prepared to clarify the apparent discrepancy in the indicated limit of excavation on the operation plan and the fingers proposed on the redevelopment plan.

2. A recommendation of approval by the Planning Commission should be subject to the following recommended conditions:
 1. No stockpiling of sand or storage of equipment shall occur within 50 feet of any property line or within 100 feet of any public right-of-way.

2. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the Flood Control Division and to form by County Counselor, providing for the construction and/or maintenance of a loop levee around the entire sandpit or portions thereof at such time as deemed necessary by the Flood Control office or their successors of office, and shall be constructed in accordance with construction specifications, Section 1 through 4 inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the Maintenance Division of the City of Wichita, Kansas; said covenant shall run with the land and be binding on all owners, successors and assigns.
3. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.
4. A minimum 58-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
 - a. A 48" or higher chainlink fence with three or more strands of barbed wire; or
 - b. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
 - c. A 48" or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.
5. The earth shall be extracted to a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
6. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
7. All of the application area outside of the sandpit lake shall be graded so as to drain into the lake.
8. The sand plant operator shall be responsible for:
 - a. Insuring that the loop levee elevation be maintained.
 - b. That the grading of the area around the perimeter of the sandpit lake be maintained so as to direct drainage toward the lake.
 - c. Construction of any structure such as culverts, ditches, ditch checks, riprap, etc., necessary to carry out this plan.

9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
10. The natural drainage flow shall be protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Flood Control Office and the County Engineer and shall be according to the specifications and standards of these authorities.
11. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
12. All slopes shall have vegetative covering consisting of a perennial drought resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
13. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
14. The applicant shall comply with Conditions 2 and 9 prior to the publication of the resolution establishing the conditional use.
15. Any violation of conditions attached shall declare the conditional use permit null and void.

LAW OFFICES
FETTIS & MCCLURE
120 SOUTH MARKET
SUITE 504
WICHITA, KANSAS 67202
316-267-7251

EVERETT C. FETTIS
DAVID R. MCCLURE

KEITH M. CURFMAN
OF COUNSEL

25 February 1983

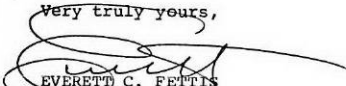
Jack H. Galbraith
Metropolitan Area Planning Department
City of Wichita
455 North Main
Wichita, Kansas 67203

RE: Foundation, Inc.
CU-258 & CU-259

Dear Jack:

We have settled a portion of the lawsuit with Mr. Eisenring and anticipate that he will withdraw any objections he has as to any proceeding we are involved in as to the conditional use permit. We, therefore, intend to proceed on March 10th as I told you.

Very truly yours,


EVERETT C. FETTIS

ECF/dbs

cc: Thomas E. Brown
Donald E. Lambdin

RECEIVED

MAR 1 1983

METROPOLITAN PLANNING

ROUTE

CU-259 - 16 "Notice to adjoining property owners" mailed 2-24-83 for
the MAPC meeting for 3-10-83.

1 to Ron Worley, County zoning officer

17 TOTAL

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

February 24, 1983

NOTICE TO ADJOINING PROPERTY OWNERS:

This is a notice of a request for a Conditional Use in your area. As an area property owner, you have the right to appear before the Metropolitan Area Planning Commission (MAPC) meeting in support or in opposition to this request. The MAPC will consider the following case in the City Commission Meeting Room, City Hall, First Floor, 455 North Main, Wichita, Kansas, at its meeting on March 10, 1983, which will commence at 1:30 p.m. You may appear either in person or by agent or attorney if you so desire.

CASE NO. CU-259

Conditional Use Permit to Establish a Sand and Gravel
Extraction Operation on Property zoned
"E" Light Industrial

The East Half of the Northwest Quarter of Section 11,
Township 28 South, Range 1 West of the 6th P.M.,
Sedgwick County, Kansas, lying East of the Wichita-Valley
Center Floodway, AND

The Northeast Quarter of Section 11, Township 28 South,
Range 1 West of the 6th P.M., Sedgwick County, Kansas,
lying Southwest of Interstate 235 and West of the
Missouri Pacific Railroad Right-of-Way. Generally
located at the southwest corner of Bolin Drive and 31st
Street South.

Additional information concerning this case and official protest pro-
cedures may be obtained from the Planning Department, 10th Floor,
City Hall, or by calling 268-4421.

Robert A. Lakin
Secretary

CU-259

Dave Johnson called Jack
this date and advised
case would not be considered
by the court until January 17, 1983

12/13/82 JJJ

December 8, 1982

Donald C. Cain, Sr., President
Foundation, Inc.
8027 West Kellogg
Wichita, Kansas 67209

Re: CU-258 and CU-259 - Requests
Conditional Use Permits to
Establish Land and Gravel
Extraction Operation.

Dear Mr. Cain:

This is to confirm my telephone conversation with George Lee of your firm on December 8, 1982 regarding the status of the above referenced conditional use applications. As I stated, our legal counsel has advised us that based upon the nature of the pending litigation between the "legal" and "equitable" owners of the two sandpits, no further action should be taken by the Metropolitan Area Planning Commission until the litigation has been completed. Therefore, unless the litigation is resolved by December 16, 1982, the cases will need to be deferred at the December 30, MAPC meeting. We need to know the status of the litigation by December 16 so we can properly notify all interested parties and nearby property owners.

If you have any questions regarding this matter, please call me or Jack Galbraith at 268-4421.

Sincerely,

ADC
Arthur D. Chambers, AICP
Senior Planner

ADC:el

cc: Everett Fettis, 120 S. Market, Wichita 67202
Professional Engineering Consultants, Gary Wiley,
1440 E. English, Wichita 67211
Victor B. Eisenring, 4620 W. 21st St. North, Wichita 67212
David N. Johnson, Attorney, 830 N. Main, Wichita 67203

THE CITY OF WICHITA
OFFICE OF Department of Law

DATE Dec. 1, 1982

RECEIVED

DEC 3 1982

METROPOLITAN PLANNING

ROUTE

TO Robert A. Lakin, Director of Planning

FROM H. R. Kuhn, Ass't City Attorney

SUBJECT Authorized Signatures on
Conditional Use Applications

This is in response to your memo of November 22, 1982 concerning certain conditional use applications signed by an "equitable" owner of the real property involved to which the "legal" owner has taken vigorous exception. Because of the unusual features of the case I felt it advisable to check out and review the two Sedgwick County District Court cases that are pending between the "owners" and which, to some extent, involve the authorized use of the property in question.

Absent a contractual dispute between an "equitable" and "legal" owner over the use of the subject property, the general and prevailing view would seem to confirm your understanding that the possessor of an equitable title should be treated as an "owner" of property under the planning and zoning statutes and regulations. This is assuming, of course, that a more definitive provision of "owner" is not set forth in the statutes or the regulations. Kansas and other courts have taken this position as to an "owner" in other types of statutes and I believe the courts would apply the same reasoning in zoning and planning matters if called upon. I have been unable to find any case law addressing the specific questions presented in the matter at hand.

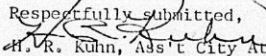
A review of the pending litigation between the "legal" and "equitable" owners of the subject property reveals that the owner of the fee title (legal) is seeking to foreclose and terminate the purchase agreement and, thus, eliminate any and all ownership claims of the present "equitable" owner. This being the case, it is my opinion that no further action should be taken by MAPC in connection with the conditional use applications until the ownership and/or permitted property uses have been judicially determined. These questions flow directly from the purchase agreement which is the subject matter of the litigation.

As to the two specific questions posed by you in your memo I would respond:

(a) Because of the direct challenge to the ownership of Foundation, Inc. and its use (depletion) of the property involved by the record title holder (legal owner) in the pending court proceedings, the applications for conditional use permits should be held in abeyance until the matter has been judicially resolved.

(b) It is my opinion that the Order of June 30, 1982 is sufficient to prohibit Foundation, Inc. from seeking a conditional use permit if the permit sought would permit excavating beyond the two hundred (200) feet area as defined in Permit No. Cu-133.

HRK/mb

Respectfully submitted,

H. R. Kuhn, Ass't City Attorney

November 22, 1982

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

Authorized signatures on CU-258 and CU-259.

On November 4, 1982, the MAPC considered a conditional use application (CU-258) that would, if approved, amend an existing conditional use. During the discussion, a question was raised of whether or not the application was properly signed because the fee title owner did not sign the application. The MAPC requested that we seek an opinion from our legal counsel about this question. The question would also relate to a second conditional use application (CU-259) that has been filed. The second application, scheduled for the November 18 MAPC meeting will be deferred until December 30, 1982, at which time it will be considered along with CU-258.

The fee title owner of the property in the two conditional uses, Victor Eisenring, sold the two sandpits to Foundation, Inc. on December 7, 1978. Under the purchase agreement (copy attached) the titles for the properties would be transferred to Foundation, Inc., the day that the last payment was made in 1988. Total purchase price of the two sandpits was \$545,000. Foundation, Inc. made a \$150,000 down payment, leaving a \$395,000 balance that would be reduced by quarterly payments of \$19,000. The quarterly payments were to be made to an escrow agent, whose records (attached) show that on May 5, 1982, there was a \$207,378 unpaid balance. In October 1982, Foundation, Inc. submitted a payment to the District Court. Thus, Foundation, Inc. has paid 62% of the purchase price which would seem to make them an equitable owner having a substantial interest in the properties.

It has been our understanding from discussions with City and County legal staff that an equitable owner has the right, to sign applications as an owner, for zone changes and conditional uses. However, we do not have any written opinions to that effect. Thus, when the application was submitted with a letter from their agent stating that Foundation Inc. was purchasing the property from Eisenring, had made several payments and was not delinquent, we felt that the application was valid and in turn accepted it and have processed it to the point of a public hearing.

Page Two
H. R. Kuhn
November 22, 1982

The State statutes that we are operating under (K.S.A. 19-2927, et. seq.) do not specifically state who may request a change of zoning. Section 11-B-3 Conditional Uses, of the County Zoning Resolution, states that applications for conditional uses shall be on forms approved by the Commission. Years ago the MAPC did approve the form. Section 14-C, application for a change in zoning does require that an "owner of the property must sign the application".

It would seem that once a purchase contract has been entered into and is held by an escrow agent, that the buyer (Foundation, Inc.) depending on the amounts involved, acquires an interest and ownership in the property. Assuming that the terms of the contract were being met, it would seem that the ownership of the property would be held by both parties and either could sign an application for a zone change or a conditional use. If one party did not want the proposed change or conditional use approved they would have two options. The first would be to file sufficient protest petitions provided for in the County Zoning Resolution for Conditional Use cases and for zoning under KSA 19-2932 and the County Zoning Resolution, that would require a unanimous vote of the County Commission. Secondly, they could file an action in district court against the other party.

Another issue that was brought out at our hearing is that Foundation, Inc. and Victor Eisenring are currently in litigation over the validity of the purchase contract. On June 30, 1982, a journal entry (copy attached) was made that temporarily restrained Foundation, Inc. from violating the term of the existing conditional use (CU-133). In addition Foundation, Inc. was to fill the area that had been excavated in violation of CU-133 and required to remove some debris. Eisenring was required to remove all paint barrels. CU-133 established a line beyond which excavation was prohibited, however, some excavation was done beyond that line. The new conditional use, if approved, would move the excavation limit line and make the existing excavation legal. The attorney for Eisenring (who contends the application is improperly brought) argues that the court order prohibits the filing of the case.

Based upon the above, it seems that there are two questions relating to the ability of Foundation, Inc. to sign an application for a conditional use. First, is Foundation, Inc. considered an owner of the property under the State statutes and the County Zoning Resolution? Secondly, does the June 30,

Page Three
H. R. Kuhn
November 22, 1982

journal entry prohibit Foundation, Inc. from seeking approval
of a new conditional use?

Please furnish me an opinion so we can advise the MAPC. If
you have any questions, need additional information, or wish
to discuss this matter, please call.

Robert A. Lakin
Director of Planning

RAL:ADC:el

Attachments

cc: John Dekker, Director, Law Department
William D. Rustin, County Counselor

CU-259 - 17 ¹⁷ "Notice to Adjoining Property Owners" mailed 11-4-82 for
the MAPC meeting for 11-18-82.

1 to Ron Worley, Director of County Department of Building,
Planning and Codes.

—
18 TOTAL

* 1 to Jack for Bob Finch

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

November 4, 1982

NOTICE TO ADJOINING PROPERTY OWNERS:

This is a notice of a request for a Conditional Use in your area. As an area property owner, you have the right to appear before the Metropolitan Area Planning Commission (MAPC) meeting in support or in opposition to this request. The MAPC will consider the following case in the City Commission Meeting Room, City Hall, First Floor, 455 North Main, Wichita, Kansas, at its meeting on November 18, 1982, which will commence at 1:30 p.m. You may appear either in person or by agent or attorney if you so desire.

CASE NO. CU-259

Conditional Use Permit to Establish a Sand and Gravel
Extraction Operation on Property zoned
"E" Light Industrial

The East Half of the Northwest Quarter of Section 11,
Township 28 South, Range 1 West of the 6th P.M.,
Sedgwick County, Kansas, lying East of the Wichita-Valley
Center Floodway, AND

The Northeast Quarter of Section 11, Township 28 South,
Range 1 West of the 6th P.M., Sedgwick County, Kansas,
lying Southwest of Interstate 235 and West of the
Missouri Pacific Railroad Right-of-Way. Generally
located at the southwest corner of Bolin Drive and 31st
Street South.

Additional information concerning this case and official protest procedures may be obtained from the Planning Department, 10th Floor, City Hall, or by calling 268-4421.

Robert A. Lakin
Secretary

CU-259

APPLICATION FOR APPROVAL OF CONDITIONAL USE PERMIT
FOR PROPERTY LOCATED WITHIN THE JURISDICTION
OF THE BOARD OF COUNTY COMMISSIONERS OF
SEDGWICK COUNTY, KANSAS

Map
5143AD

This is an application for a Conditional Use Permit. The form must be completed and filed at the Planning Department, Tenth Floor, City Hall, 455 North Main Street, Wichita, Kansas, in accordance with directions on the accompanying instruction sheet. AN INCOMPLETE APPLICATION CANNOT BE ACCEPTED.

1. Name of applicant or applicants and/or their agent or agents. All owners of all property requested to be considered in this application must be listed in this item.

A. APPLICANT Big River Sand Company, Inc. (Donald P. Cain, Sr. Pres.)

ADDRESS 8027 W. Kellogg 67209 PHONE 722-6071

AGENT Everett C. Fettis

ADDRESS Suite 504 120 S. Market 67202 PHONE 267-7351

B. APPLICANT Foundation, Inc. (Donald P. Cain, Sr. Pres.) Equitable Owner

ADDRESS 8027 W. Kellogg 67209 PHONE 722-6071

AGENT Everett C. Fettis

ADDRESS Suite 504 120 S. Market 67202 PHONE 267-7251

C. APPLICANT Victor B. Eisenring

ADDRESS 4700 W. 21st St. No. 67202 PHONE 943-4372

AGENT _____

ADDRESS _____ PHONE _____

Copies to (Use separate sheet if necessary for names of additional applicants).
2. a. Engineer - Professional Engineering Consultants, P.A. (Gary Wiley) 1440 E. English
The applicant proposes to establish a 67211 262-2691

Sand Extraction Operation (C.U. 33 Amended) (use)

on property legally described as Lot(s) _____

_____, Block(s) _____

of the _____ Addition.

(If appropriate, metes and bounds description may be provided in the space below or on an attached sheet).

N
R
S
E
E
W
E

- 1) Big River Sand
The NE 1/4 of Sec. 11, T28S, R1W lying southwest of Interstate No. 235 and west of the Missouri Pacific Railroad Right-of-Way.
- 2) Victor B. Eisenring (Foundation, inc. Equitable Owner)
The E 1/2 of the NW 1/4 of Sec. 11, T28S, R1W lying east of the Wichita-Valley Center Flood Control (Condemnation Case No. A-30410)

see legal from ownership list

2. b. There are 120 ± acres (round to nearest tenth) in the above described property.

3. THIS PROPERTY IS LOCATED AT (ADDRESS) 4100 W. 31st Street South
 THE GENERAL LOCATION IS (USE APPROPRIATE SECTION)
 A. AT THE Southwest CORNER OF Bolin Drive AND
31st St. South, OR
 B. ON THE _____ SIDE OF _____ (AVE.) STREET BETWEEN
 _____ (AVE.) STREET AND _____ (AVE.) STREET.
4. THE PROPERTY INCLUDED IN THIS APPLICATION IS ZONED "E"
 (ZONING DISTRICT CLASSIFICATION).
5. I REQUEST THIS CONDITIONAL USE PERMIT FOR THE FOLLOWING REASONS:
 To amend CU-33 to include the extraction of sand and gravel in the
 NW 1/4 of Section 11.

6. I (WE), THE APPLICANT(S), ACKNOWLEDGE RECEIPT OF THE INSTRUCTION SHEET
 EXPLAINING THE METHOD OF SUBMITTING THIS APPLICATION. I (WE) REALIZE
 THAT THIS APPLICATION CANNOT BE PROCESSED UNLESS IT IS COMPLETELY FILLED
 IN; IS ACCOMPANIED BY A CURRENT ABTRACTOR'S CERTIFICATE AS REQUIRED IN
 THE INSTRUCTION SHEET; AND IS ACCOMPANIED BY THE APPROPRIATE FEE. I (WE)
 FURTHER CERTIFY THAT THE ABOVE AND FOREGOING INFORMATION IS TRUE AND
 CORRECT TO THE BEST OF MY (OUR) KNOWLEDGE. I (WE) ACKNOWLEDGE THAT THE
 BOARD OF COUNTY COMMISSIONERS SHALL HAVE AUTHORITY TO IMPOSE SUCH CONDITIONS
 AT IT DEEMS NECESSARY IN ORDER TO SERVE THE PUBLIC INTEREST AND WELFARE.

NOTE: AT LEAST ONE OWNER MUST SIGN THIS APPLICATION. OTHER OWNERS MAY BE
 REPRESENTED BY AN AGENT OR AGENTS.

<u>Big River Sand Company, Inc.</u>	<u>Foundation, Inc.</u>
BY <u>Donald P. Cain, Sr.</u>	BY <u>Donald P. Cain, Sr.</u>
AUTHORIZED AGENT (IF ANY)	AUTHORIZED AGENT (IF ANY)
Donald P. Cain, Sr. President	Donald P. Cain, Sr. President

BY _____	BY _____
AUTHORIZED AGENT (IF ANY)	AUTHORIZED AGENT (IF ANY)

BY _____	BY _____
AUTHORIZED AGENT (IF ANY)	AUTHORIZED AGENT (IF ANY)

7. OFFICE USE ONLY

This application was received at the Planning Department at 130
 (AM, PM) on Oct 27, 1982 (day, month, year). It has been checked and
 found to be complete and accompanied by required documents and the appropriate
 fee of \$ 700⁰⁰.

Archie D. Chambers Name
Sr. Planner Title

OWNERSHIP LIST

<u>Lot</u>	<u>Block</u>	<u>Addition</u>	<u>Property Owner</u>
1	-	Keeler Addition	✓ Walter M. Keeler & Irma M. Keeler, 2124 Garland, 67203
1	-	Westeman Addition	✓ Jerry Westeman & Nancy Ann Westeman, 4832 W. 31st St. South, 67215
1	-	Section One, Missouri Pacific Industrial Park	✓ City of Wichita, 455 N. Main, 67202
1 exc. that - part replatted as Commerce & Industrial Park 2nd Addition		Commerce & Industrial Park Addition	"
Part of 1 1 beg. 436 ft. south of the NE corner thereof; then south 225 ft. to the SE corner of Lot 1; then west 500 ft. to the SW corner; then North along the west line & west line extended 230 ft. to a pt. 431 ft. south of the north line of lot 1; then east 400 ft.; then sely 50.23 ft. to a pt. 436 ft. south & 50 ft. west of the NE corner of Lot 1; then east 50 ft. to beg.		Commerce & Industrial Park 2nd Addition	✓ D. Ted J. Toon, 5151 S. 135th St. West, Clearwater, 67026 (see below) AND ✓ Kenneth Toon, 1731 E. Waterman, 67211
1 exc. that - part described immediately above		"	✓ Price Truck Lines Inc., 3221 S. West St., 67217
2	1	"	✓ William W. Oliver & Sallie Oliver a/k/a Sallie S. Oliver, 4000 W. 33rd St. South, 67215
3 & 4	1	"	✓ Toon Investment Inc., 5151 S. 135th St. West, Clearwater, 67026
5, 6, 7 & 8	1	"	✓ Ted J. Toon & Katherine A. Toon, 5151 S. 135th St. West, Clearwater, 67026
1	1	Mid Kansas Addition	✓ Mid Kansas Construction Co. Inc., 1245 S. Santa Fe, 67211

<u>Lot</u>	<u>Block</u>	<u>Addition</u>	<u>Property Owner</u>
1	A	Royal Industrial Addition	✓ Builders, Inc., Suite-755, 300 W. Douglas, 67202
2	A	<i>This address was given by Builders Inc. 7/26/68</i> Royal Industrial Addition	✓ 1000 S. Cowley, SA 306, 67218 Robert L. Bergkamp & Helen L. Bergkamp, 3709 S. West St., 67217
3 exc. the south 180 ft.	A	"	✓ Hampel Oil Distributors, Inc., 3727 S. West St., 67217

Tracts

Property Owner

All of the SW $\frac{1}{2}$ of 2-28-1W lying East of the Big Ditch-Cowskin Floodway, except that part platted as Keeler Addition	D	Walter M. Keeler & Irma M. Keeler, 2124 Garland, 67203
That part of the SE $\frac{1}{2}$ of 2-28-1W lying west of Interstate 235 and north of the Protection Drainage District r/o/w	"	"
That part of the SE $\frac{1}{2}$ of 2-28-1W lying east of Interstate 235 and west of the Missouri Pacific Railroad r/o/w	X	Missouri Improvement Co., Address <u>Unknown</u>
East $\frac{1}{2}$ of the NW $\frac{1}{2}$ of 11-28-1W lying East of the Wichita-Valley Center Floodway	D	Victor B. Eisenring, 4700 W. 21st St. North, 67212
That part of the NE $\frac{1}{2}$ of 11-28-1W lying southwest of Interstate 235 and west of the Missouri Pacific Railroad	D	Big River Sand Co. Inc., 8027 W. Kellogg, 67209
Tract in the NE $\frac{1}{2}$ of 11-28-1W bordered on the north by 31st St. South, the Missouri Pacific Railroad on the East, the Protection Drainage Canal on the South, & I-235 on the West	✓	Major Inc., 1850 S. West St., 67213
That part of the North $\frac{1}{2}$ of the SW $\frac{1}{2}$ of 11-28-1W lying East of the Wichita-Valley Center Floodway	D	Victor B. Eisenring, 4700 W. 21st St. North, 67212
Tract in the SE $\frac{1}{2}$ of 11-28-1W beg. 35 ft. south of the NE corner of the SE $\frac{1}{2}$; then west 500 ft.; then south 300 ft.; then east 500 ft.; then north 300 ft. to beg.	X	Golden Plains Express Inc., Address <u>Unknown</u>
The SE $\frac{1}{2}$ of 11-28-1W except the tract described immediately above, & except the south 1133 ft. of the west 933 ft. of said SE $\frac{1}{2}$, & except that part platted as Royal Industrial Addition	✓	Kessler Brothers Inc., 1905 Southwest Blvd., 67213

page 3

We hereby certify the foregoing to be a true and correct list of the property owners within a 1000 foot radius of

The East Half of the Northwest Quarter of Section 11, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, lying East of the Wichita-Valley Center Floodway

AND

The Northeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, lying Southwest of Interstate 235 and West of the Missouri Pacific Railroad Right-of-Way

as shown by the last deed of record on file in the Office of the Register of Deeds of Sedgwick County, Kansas, on the 21st day of October, 1982 at 7:00 A.M.

THE SECURITY ABSTRACT & TITLE CO. INC.

By

Mary Hable
Vice-President

Order No. 313287
GE

*OK for
Legal*

FORM 29-C

PAYMENT NOTICE
City of Wichita

Bldg.	Use of Str.	Code Bks	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Fav. Cuts	Cert.
Pibg	Exam Fees	Sewer	Elev.
Signs	Plan Rev. (P.W.)	Cement	M.S.P.
	Planning		

DESCRIPTION	AMOUNT
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NAME

ADDRESS

FUND	DUE DATE
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COMMENTS

DATE	BY
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This CU File

Has a Large Drawing

On 35mm Microfilm.

Roll # 1

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