

D-0641 - KG&E and Miles Sand Co.
dedicate for street r-o-w in an
area north of I-235W Bypass and
on the east side of Meridian.

POSTED
7-24-75
[Signature]

ACTION

DATE

8-2-75

S/D COMMITTEE *Accept*

8-14-75

M.A.P.C. *Approved*

8-26-75

B.C.C./B. CO. C. *Accepted*

DEDICATION REPORT AND PROGRESS

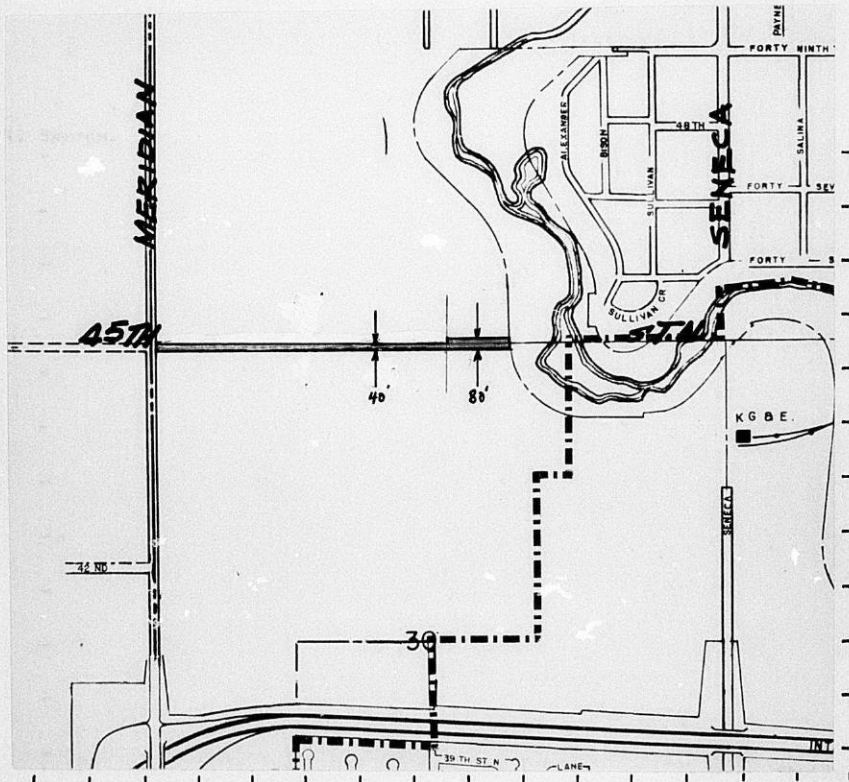
MAP No. 5352
SEC. No. 30
TWP. No. 26S
RANGE 1E

CASE No. D - 0641

I. OFFER TO DEDICATE: street right of way
GENERALLY LOCATED: In an area north of I-235W Bypass and on the east side of Meridian.

LEGALLY DESCRIBED AS: See attached

DEDICATED BY: Miles Sand, Inc.
AGENT: _____
ADDRESS: _____ PHONE _____
PURPOSE OF DEDICATION: _____



III. FILED 7-16-75 B.C.C. ACTION 8-26-75 *Waighed*
POSTED TO ATLAS YES
S/D COMM. ACTION 8-7-75 *acct* PLACED ON RECORD _____
M.A.P.C. ACTION 8-14-75 *Approved* CITY CLERKS No. _____

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

INSTRUCTIONS FOR VACATION REQUEST

1. The attached form must be completed before it can be presented to the Metropolitan Area Planning Commission. All spaces should be filled in or marked as "not applicable", i.e. (N.A.).
2. The completed form should be submitted to the Planning Department, City Hall, Tenth Floor, 455 North Main Street, Wichita, Kansas 67202.
3. Applications shall be accompanied by a certified ownership list prepared by an abstract company giving the names and addresses, with zip codes, of property owners as specified below, and must also be accompanied by the signatures of all abutting property owners or their authorized agent. MAILING ADDRESSES SUBMITTED WITHOUT ZIP CODES WILL BE RETURNED TO THE APPLICANT.

Type of Vacation

- a. Plats or City limit lines: Owners of all lots or parcels within the plat or tracts of land included in the application and the owners of all land abutting the area to be vacated.
- b. Streets and alleys or any public right-of-way: All land abutting that proposed to be vacated; and if such vacation would leave a deadend street or alley, all those abutting the remaining segment of the street or alley.
- c. Easements: Owners of all lots or tracts on which the easement is located and owners of all lots or tracts which abut the easement to be vacated.
- d. Access and setbacks: All lots or tracts involved plus all lots and tracts on the opposite side of the street involved and if involving areas greater than one block in length, then owners of all lots and tracts in the next block. In the event of a partial block, the balance of the block shall be included for notification purposes.

When the situation requires, the Planning Department may require ownership lists for additional areas or reduce the above requirements.

4. Applications for vacation must be accompanied by a filing fee in the amount of \$100.00 (make check payable to "City of Wichita") to defray the cost of proceedings.
5. A recommendation of the Subdivision Committee for approval or disapproval will be placed on the agenda of the Planning Commission to be heard one week following the action of the Subdivision Committee. A Planning Commission recommendation for approval will not be placed on the agenda for hearing by the appropriate governing body until such time as all requirements made by the Planning Commission have been met by the applicant.

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION
CITY HALL, TENTH FLOOR, 455 North Main
WICHITA, KANSAS 67203

REQUEST FOR VACATION - APPLICATION

V- _____

I. Name of Applicant _____ Phone _____

Mailing Address _____ Zip _____

Name of Applicant _____ Phone _____

Mailing Address _____ Zip _____

Name of Applicant _____ Phone _____

Mailing Address _____ Zip _____

Name of Applicant _____ Phone _____

Mailing Address _____ Zip _____

Name of Applicant _____ Phone _____

Mailing Address _____ Zip _____

Name of Applicant _____ Phone _____

Mailing Address _____ Zip _____

Name of Applicant _____ Phone _____

Mailing Address _____ Zip _____

Name of Applicant _____ Phone _____

Mailing Address _____ Zip _____

Name of Agent _____ Phone _____

Mailing Address _____ Zip _____

II. The applicant(s) hereby request(s) vacation of _____
(alley, street, easement, etc.) legally described as follows:

III. The general location is described as follows:

IV. The vacation described above is requested for the following reason(s):

V. In making this request for vacation of the above described property, I understand that the title of this property can be cleared only through legal proceedings before the Board of County Commissioners, subsequent to City Commission action where applicable. I further understand and agree that the vacation proceedings shall be at no cost to the City, County or any utility company; and I agree (if the request is approved) to pay all costs of the removal and relocation of all underground or surface utilities presently located in the public way or easement for which vacation is requested; or to make such other arrangements as may be agreeable to the utilities concerned.

Signed _____ By _____
Applicant Agent

Applicant

Applicant

Applicant

Applicant

Applicant

Applicant

Applicant

Applicant

Applicant

Applicant

FOR OFFICE USE ONLY:

This application was received at the Planning Department at _____
(AM, PM) on _____ (Day, Month, Year). It
has been checked and found to be complete and accompanied by re-
quired documents and the appropriate fee of \$100.00.

Name and Title

Meridian

D0641 N 1/2 of 45th
Journal Entry - Court ordered
dedication to be made

S 1/2 Dedicated

45th

Annexation to 1/2
Section line

K&E
Dedicated

Dedicated in
1974

River

IMPORTANT MESSAGE

FOR Jack
DATE 8-14 TIME 9:53 A.M.

WHILE YOU WERE AWAY

Mark Vining

OF _____
PHONE No. 261-6420

TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>
WANTS TO SEE YOU	<input type="checkbox"/>	RETURNED YOUR CALL	<input checked="" type="checkbox"/>

MESSAGE PO Box 208
W 67201

SIGNED Aranda

FORM 000-017

M

D-01011
file

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

June 23, 1978

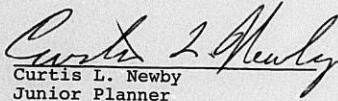
TO Jack H. Galbraith, Chief Planner
FROM Curtis L. Newby, Junior Planner
SUBJECT Street dedications in the 3 mile area around the City of
Wichita

For the record, as you are aware, at the instruction of Bob Lakin I contacted H. R. Kuhn, our attorney, concerning the questions of whether or not the County Commission needed to accept street dedications filed by separate instrument for streets in the 3 mile area around Wichita; and also concerning the method of accepting the 45th Street North Dedication which was done by District Court order.

Mr. Kuhn responded by phone to my memo and stated regarding the County Commission acceptance of the street dedications, he was of the opinion that the County Commission should be accepting these street dedications as well as the City since the State law clearly requires the County to approve street vacations which have been approved by the City. He thought that perhaps the reason the street dedications in the 3 mile area were being accepted only by the City was a holdover practice from the time when the City was not operating under the MAPC Subdivision Regulations.

With respect to the way the court ordered dedication of 45th Street should be accepted, Mr. Kuhn stated since the District Court is the higher authority, the court order as written makes the 45th Street dedication effective without acceptance by the City or County Commissions and all that needs to be done to set the record straight is to obtain a certified copy of the court order for the City Clerk's files and a copy for the Planning Department files so that the dedication would be picked up and properly posted to the maps.

With your permission, I will contact the District Court relative to obtaining certified copies of the Court Order.


Curtis L. Newby
Junior Planner

CLN:et
cc: Robert A. Lakin, Director of Planning

August 15, 1978

Donald C. Gisick, City Clerk

Curtis L. Newby, Junior Planner

Court ordered street dedication for a portion
of 45th Street North, east of Meridian

Attached herewith is a certified copy of a Journal Entry of Judgment from the District Court, in which the Court directed that in the event the defendant failed to dedicate the required property for street purposes, that a copy of the Journal Entry of Judgment when filed with the MAPC and the City Commission would serve as the dedication instrument. This condition is found on Page 9 of the Journal Entry.

The attached copy of the Journal Entry should be placed in your files, and it is our understanding from talking with our legal counsel that no formal action is required by the City Commission on this matter.

If you have any questions, please call.

Sincerely,

Curtis L. Newby
Junior Planner

CLN:bh
Attach.

July 26, 1978

Mr. Warren B. Wood
Attorney at Law
P. O. Box 208
Wichita, Kansas 67201

Re: Street dedication for 45th Street North

Dear Mr. Wood:

In response to your letter of a few weeks ago, this is to advise you that we have contacted our legal counsel regarding the matter of the Court ordered street dedication for 45th Street. Our counsel, R. H. Kuhn, advised us by phone, after examining the Journal Entry of Judgment from the District Court case, that the Journal Entry did in fact constitute the actual dedication and was legally in effect even though neither the City Commission or the County Commission had ever formally accepted the dedication because the District Court was the higher authority in this instance. He further advised that the only steps to be taken to make records clear concerning the dedication was to have the City Clerk and Planning Department file in their records a certified copy of the Journal Entry, so that the street dedication will be noted on the City and County street maps.

The certified copies of the Journal Entry have been obtained and a copy is being sent to the City Clerk. Enclosed herewith for your information and files is a certified copy of the Journal Entry and a copy of a memo from Curtis Newby of our staff outlining the opinion of our counsel, Mr. Kuhn.

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

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:CLN:et

Note: Robert B. Levens K G's E was given copy of the certified Court Journal Entry at the Subdivision Committee meeting on July 27, 1978 CLN

*Law Offices of
Ralph Foster*

RALPH FOSTER
ROBERT A. VOHS
D. DOUGLAS STRATTON
JOHN J. HEALER
WARREN B. WOOD
ROBERT D. STEIGER

(316) 263-0156
KANSAS GAS AND ELECTRIC BUILDING
P. O. BOX 208, WICHITA, KANSAS 67201

June 23, 1978



Mr. Robert A. Lakin, Director
Wichita-Sedgwick County Metropolitan
Area Planning Department
City Hall
455 North Main
Wichita, Kansas 67202

Re: Street Dedication of the South 40 Feet of the South-
west Quarter, Section 19, Township 26 South, Range 1
East of Sedgwick County, Kansas

Dear Mr. Lakin:

Several weeks ago, I talked with you about a street dedi-
cation concerning the above referenced property. You may
recall that this involved a strip of land which was to be
dedicated by Miles Sand, Inc., for a portion of 45th Street
North running east of Meridian Street to the river. Our
client, Kansas Gas and Electric Company finally had to sue
Miles Sand, Inc., to force it to dedicate the above land.
Although Miles Sand, Inc., never did file a street dedi-
cation in the usual form, the Journal Entry of Judgment
entered by Judge Robert Stephan, a copy of which is in your
files, provided that the filing of the Journal Entry with
your office would have the same operation and effect as
a usual dedication instrument (see page 9 of the Journal
Entry).

At the time we discussed this matter, I requested that you
review the situation and advise me as to whether anything
remains to be done in order for that tract of land to be
fully dedicated and accepted as a street. Would you please
advise me as to your findings?

Very truly yours,

Warren B. Wood
Warren B. Wood

WBW/jc
cc: Mr. BRuddick

June 23, 1978

Jack H. Galbraith, Chief Planner

Curtis L. Newby, Junior Planner

Street dedications in the 3 mile area around the City of
Wichita

For the record, as you are aware, at the instruction of Bob Lakin I contacted H. R. Kuhn, our attorney, concerning the questions of whether or not the County Commission needed to accept street dedications filed by separate instrument for streets in the 3 mile area around Wichita; and also concerning the method of accepting the 45th Street North Dedication which was done by District Court order.

Mr. Kuhn responded by phone to my memo and stated regarding the County Commission acceptance of the street dedications, he was of the opinion that the County Commission should be accepting these street dedications as well as the City since the State law clearly requires the County to approve street vacations which have been approved by the City. He thought that perhaps the reason the street dedications in the 3 mile area were being accepted only by the City was a holdover practice from the time when the City was not operating under the MAPC Subdivision Regulations.

With respect to the way the court ordered dedication of 45th Street should be accepted, Mr. Kuhn stated since the District Court is the higher authority, the court order as written makes the 45th Street dedication effective without acceptance by the City or County Commissions and all that needs to be done to set the record straight is to obtain a certified copy of the court order for the City Clerk's files and a copy for the Planning Department files so that the dedication would be picked up and properly posted to the maps.

With your permission, I will contact the District Court relative to obtaining certified copies of the Court Order.

Curtis L. Newby
Junior Planner

CLN:et

cc: Robert A. Lakin, Director of Planning

June 1, 1978

H. R. Kuhn
Attorney at Law
R. H. Garvey Building
Wichita, Kansas 67202

Re: Additional information requested concerning dedication of
45th Street North

Dear Mr. Kuhn:

Enclosed herewith is a copy of the memo you requested from Bob
Lakin. Sorry I am so slow getting this to you.

Sincerely,

Curtis L. Newby
Junior Planner

CLN:et
Enclosure

May 17, 1978

H. R. Kuhn
Attorney at Law
R. H. Garvey Building
Wichita, Kansas 67202

Re: Dedications for street rights-of-way within the 3 mile area
of the City of Wichita

Dear Mr. Kuhn:

As I discussed briefly on the phone with you last week, we have some questions concerning acceptance of street right-of-way dedications in the County 3 mile ring around Wichita.

First, should the County Commission be accepting the street dedications in the 3 mile ring? To date the practice has been to have the dedication processed through the Subdivision Committee and Planning Commission, and then accepted by the Board of City Commissioners. The dedication is then filed with the Register of Deeds. Of course the City does have subdivision jurisdiction in its 3 mile ring, but as you know, the County Commission also signs all plats acknowledging and accepting the public street dedications shown on the plat. Thus the question, should the County Commission likewise acknowledge street dedications which are submitted by separate instrument?

The other question concerning street dedications has to do with a specific case. In 1972, Kansas Gas and Electric Company submitted dedications for portions of 45th Street North from Meridian east to the Little Arkansas River as they were wanting the County to open the street. A second property owner in the area had at one time submitted dedications for the balance of 45th Street pending final approval of a Conditional Use case for a sand pit operation on his property. That case was never completed and the landowner subsequently withdrew his street dedications. KG&E filed suit against the land owner to force him to go ahead and dedicate his portion of 45th Street so that the road could be opened. In 1974 the District Court rendered a judgment against the defendant landowner to file

within 45 days a dedication for the street and in the event the defendant fails to file the dedication, a copy of the Journal Entry of Judgment when filed with MAPC and the City Commission was to serve as the dedication instrument. A copy of this Journal Entry was submitted to the Planning Department and was included in the case file with the KG&E dedications which were then accepted by the City Commission. However, there was never any formal acceptance of the Journal Entry as a street dedication by the City Commission.

What we need to know now is: does the City Commission need to formally accept the Journal Entry? Also, how do they accept the Journal Entry as a bona fide street dedication? And the Court instructed that only the City Commission accept the dedication, what about the County?

Enclosed with this letter is a copy of the Journal Entry and I would appreciate your consideration of these matters. You may want to meet with Lakin, Galbraith and myself to discuss these questions and what procedural changes, if any, we need to make in the street dedication acceptance process. If you have any questions, please call.

Sincerely,

Curtis L. Newby
Junior Planner

CLN:et
Enclosure

MAPC CASE NO. D-0641 Dedication of street

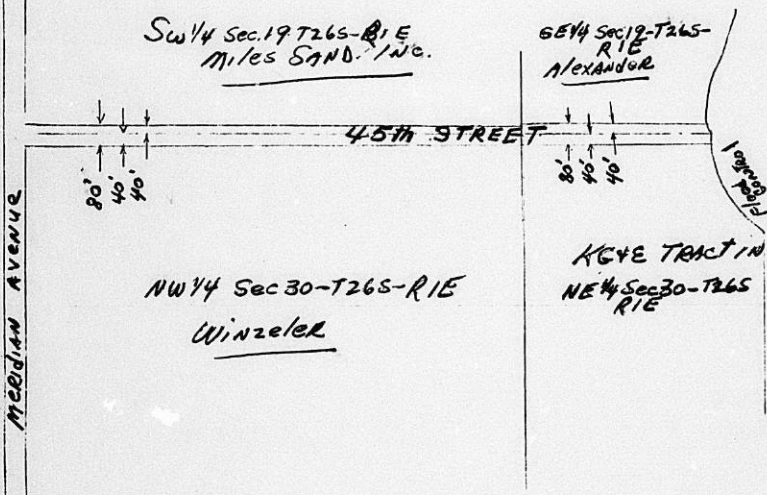
Dedicated by: Moyle and Marguerite Alexander, et al.

Generally being for a portion of right-of-way for
45th Street North in an area between
Meridian and Seneca

This dedication is given for the following reason:
street right-of-way

ACTION: Accept the dedication and instruct the City Clerk to
file with the Register of Deeds.

T9-325



Road dedications on 45th Street
 EAST OF Meridian Avenue

Jan 4th Jan 11

1-24-75
County

al

IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS

KANSAS GAS AND ELECTRIC COMPANY, a corporation,)	
)	
)	Plaintiff,
)	
vs.)	Case No. C-28908
)	
MILES SAND, INC., a corporation,)	
)	Defendant.

JOURNAL ENTRY OF JUDGMENT

NOW on this 30th day of October, 1974, this cause comes regularly on for trial before this Court sitting without a jury. The plaintiff appears by and through its attorney, Michael T. Harris; the defendant appears by and through its chief executive officer, V. Harley Miles, and by its attorney, Mr. Ronald Nieto.

Thereupon, the plaintiff presents its evidence and rests, and the defendant moves for judgment, which motion is taken under advisement by the Court.

Thereupon, the defendant presents its evidence and rests.

Thereupon, the Court orders that the depositions of Jackie Wassall and John E. Pearson may be taken by the parties and submitted to this Court as and for their testimony.

Thereupon, the deposition of John E. Pearson was taken by the plaintiff on November 4, 1974, the deposition of Jackie Wassall not being taken and the time for the taking of it having expired.

Having heard the evidence and examined the exhibits,

LAW OFFICES
RALPH FOSTER
KANSAS GAS AND
ELECTRIC BUILDING
P. O. BOX 208
WICHITA, KANSAS 67201
(316) 263-0156
RALPH FOSTER
ROBERT A. VOHS
MICHAEL T. HARRIS

the Court hereby overrules the Defendant's motion for judgment, and having read the depositions and being fully advised in the premises, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

FIRST: The Court finds that the parties have agreed in the Pre-Trial Conference Order to be bound by certain stipulations; they are hereby approved, incorporated herein, and made a part of these findings:

"a. That this Court has jurisdiction over the parties and the subject matter of this lawsuit, and that venue has been properly laid in this Court.

"b. Plaintiff, at all times relevant, was a corporation authorized to do business in the State of Kansas and was duly authorized by the State Corporation Commission of Kansas to operate as a public utility in Sedgwick County, Kansas. Defendant, at all times relevant, was a Kansas domestic corporation.

"c. That a certain real estate purchase contract dated March 4, 1970, between John E. Pearson, Daisy S. Pearson, Francis M. Pearson, Nora B. Doane and Miles Sand, Inc., whereby the said individuals conveyed to Miles Sand, Inc., the following described property:

That part of Lots 1 and 2 of the Southwest Quarter (SW 1/4), also known as the Southwest Quarter (SW 1/4) of Section 19, Township 26 South, Range 1 East, and beginning at the Northwest Corner of the Northeast Quarter (NE 1/4) of Section 30, Township 26 South, Range 1 East; thence south 74 rods, thence east 80 rods, thence north 74 rods, thence west 80 rods to the place of beginning, except that part condemned under the Chisholm Creek Diversion Ditch and Dike in Sedgwick County District Court Case No. A-39338.

was duly executed and is authentic.

"d. That a certain real estate purchase contract dated October 15, 1970, between plaintiff and defendant, whereby defendant conveyed to plaintiff the following described property:

Beginning at the Northwest Corner of the Northeast Quarter (NE 1/4) of Section 30, Township 26 South, Range 1 East; thence south 74 rods, thence east 80 rods, thence north 74 rods, thence west 80 rods to the place of beginning, except that part condemned under the Chisholm Creek Diversion Ditch and Dike in Sedgwick County District Court Case No. A-39338.

was duly executed and is authentic.

"e. That a certain amendment to real estate purchase contract dated January 7, 1972, between John E. Pearson, Daisy S. Pearson, Francis M. Pearson, Nora B. Doane and Miles Sand, Inc., was duly executed and is authentic.

"f. That at all times relevant hereto defendant has either owned in fee simple or owned a beneficial interest in the following described property, by virtue of the real estate purchase contract referred to in paragraph I(c) hereof, to-wit:

The SW 1/4 of Sec. 19, T 26 S, R 1 E, Sedgwick County, Kansas

"g. That plaintiff was aware that defendant was a contract purchaser on the tract to be purchased by Kansas Gas and Electric Company, prior to entering into the October 15, 1970 real estate purchase contract."

SECOND: The plaintiff, in August or September of 1970, through its authorized agent, Jack King, entered into negotiations with the defendant's authorized agent, Mr. V. Harley Miles, to purchase the real estate described in the first Finding of Fact, subsection d. The parcel of land adjoined the Ripley Power Station of the plaintiff, and its intended use

was as a service building site and as a means of access from the Ripley Power Station area onto Meridian Street, which in turn provided access to the I-254 by-pass around the City of Wichita. The sales negotiations culminated in the execution of a contract on October 15, 1970 to convey the aforementioned tract of property, and also provided in pertinent part:

"6. It is further agreed that both parties to this contract are desirous of accomplishing the opening of 45th Street from Meridian Avenue to the Arkansas River and both parties hereto agree to dedicate, without charge, one-half the width of the street on properties owned by each party which abut 45th Street from Meridian Avenue east to the Arkansas River."

THIRD: The purpose of the aforementioned dedications was to provide ingress and egress to the parcel of land sold under the contract, and to the Ripley Power Station location. Although the defendant, acting through its agent, Harley Miles, at one time filed the necessary dedications to open up 45th Street to the plaintiff's parcel of land, it later withdrew them and has refused to refile them.

FOURTH: The tract of land to be conveyed to plaintiff in the October 15, 1970 contract, along with a larger parcel of land (which includes the area to be dedicated by defendant for street purposes), was held in escrow by the Arkansas Valley State Bank under the terms of a Real Estate Purchase Contract dated March 4, 1970 between John Pearson, Daisy Pearson, Francis Pearson, Nora Doane (sellers) and defendant (buyer), whereby the defendant was to receive a Warranty Deed after paying off the purchase price of the land at \$38,721.27 per year at interest of 7-1/2% per annum.

FIFTH: The October 15, 1970 contract between plaintiff and defendant was to be closed by March 1, 1971, and the plaintiff contacted defendant February 8, 1971 by means of a letter from Jack King to the defendant's attorney. The letter forwarded for

execution a Warranty Deed and stated that a check would be delivered when the deed was executed.

SIXTH: Sometime soon after March 1, 1971, Mr. Harley Miles came to the offices of Jack King, agent for Kansas Gas and Electric Company, and advised him that the Pearsons and Mrs. Doane were not wanting to release the tract of land in the October 15, 1970 contract between the parties without being paid an additional sum of money. King, Miles and Ralph Foster, general counsel for Kansas Gas and Electric Company, met in Mr. Foster's office that same day, and Mr. Miles stated that it would take an additional \$3,000.00 over and above the \$42,000.00 consideration agreed to in the October 15, 1970 contract in order for Miles to get the Pearsons and Mrs. Doane to release the parcel of land from the escrow contract.

SEVENTH: No agreement was made at the meeting mentioned above to pay an additional sum of money to defendant. Mr. Foster said he would contact the attorney for the Pearsons and Mrs. Doane to attempt to work out a means of conveying marketable title to the defendant so it could convey marketable title to the plaintiff. No mention was made by anyone at the meeting that defendant did not intend to dedicate the 45th Street land pursuant to paragraph 6 of the October 15, 1970 contract.

EIGHTH: At no time did John Pearson, Francis Pearson or Nora Doane ask Miles for an additional sum of money to release the parcel of land from the original escrow contract.

NINTH: On March 22, 1971, Harley Miles, along with his attorney, Mr. Beaty, met in the offices of Ralph Foster to discuss the title problems. Mr. Beaty wrote a letter to Mr. Foster the same day which offered to execute a Warranty Deed

subject to the escrow contract, or to pay off the escrow contract balance if the plaintiff would pay defendant an additional \$6,000.00.

At no time during the March 22, 1971 meeting or the earlier meeting did Mr. Miles or his counsel indicate that they did not want to dedicate the property abutting 45th Street per the October 15, 1970 contract. No money changed hands during the March 22, 1971 meeting nor were any deeds to the property executed.

TENTH: On May 5, 1971 defendant's counsel, Mr. Beaty, sent to plaintiff's counsel, Mr. Foster, a check from Miles Sand, Inc. in the sum of \$4,200.00 which represented the sum plaintiff paid as earnest money pursuant to the October 15, 1970 contract. The check was forwarded with a letter which stated that it was being returned, "until the matter with Mr. Miles can be worked out." Plaintiff did not cash the check.

ELEVENTH: On November 19, 1971, by letter to defendant's attorney Beaty, plaintiff demanded performance under the October 15, 1970 contract. On November 23, 1971 Mr. Beaty responded with a lengthy letter which provides in pertinent part:

"It is my present understanding that you have reached an agreement with the attorney for the Pearsons to amend the contract between my client and the Pearsons to the extent that the contract would allow for a partial prepayment and release of the property from the escrow. It is not satisfactory with Miles Sand, Inc. that the contract between it and the Pearsons be amended in a manner inconsistent with the original terms unless it is firmly understood at this time that the right of prepayment of the entire balance does exist.

"If your agreement with Mr. Bell is to amend the contract between my client and the Pearsons in such a way as will clearly indicate the right of prepayment of the entire balance, we are willing to accept the amendments to the contract which you have negotiated with Mr. Bell. Under the circumstances, however, since you and Mr. Bell

have made the arrangements, I suggest that you prepare such documents as you may deem necessary for you to obtain title to the property. Although it is my opinion that the contract with Kansas Gas & Electric long since expired, Miles Sand, Inc. is willing to convey the property described for the consideration recited in the contract. [Emphasis supplied]

Nothing in the letter of November 23, 1971 states that the defendant would not dedicate the 45th Street property as provided by paragraph 6 of the October 15, 1970 contract.

TWELFTH: On January 7, 1972, an attempted real estate closing was had at the Security Abstract in Wichita. The closing was not finalized since the deed from the Pearsons and Mrs. Doane to the defendant, which was necessary to release the parcel from the escrow contract, was not executed.

THIRTEENTH: On January 28, 1972, there was another closing held at Security Abstract. Those present were Mr. Knighton for the plaintiff, Mr. Beaty for the defendant, Harley Miles, and Jackie Wassall, a Security Abstract employee. The necessary deeds were properly executed and the balance of the consideration of \$42,000.00 was exchanged.

CONCLUSIONS OF LAW

The Court concludes as a matter of law:

FIRST: Part of the consideration for the October 15, 1970 contract was that the defendant dedicate a portion of his property for street purposes so as to provide access to the land to be conveyed under the contract.

SECOND: The plaintiff tendered performance under the October 15, 1970 contract by its letter to the defendant's attorney on February 8, 1971.

THIRD: A Warranty Deed to plaintiff by defendant, subject to the existing escrow contract, would not convey merchantable title to the land under the October 15, 1970 contract.

FOURTH: The defendant had a duty to make reasonable efforts to secure and convey merchantable title; and the plaintiff's knowledge that the land was subject to the escrow contract does not relieve defendant of its duty to convey merchantable title. 55 Am. Jur. Sec. 154, Vendor and Purchaser.

FIFTH: Although the contract was to be performed by March 1, 1971, the performance time was waived due to defendant's inability to convey merchantable title on that date and by the later actions of the parties.

SIXTH: There was no agreement, written or oral, between the parties to change the terms and conditions of the October 15, 1970 contract. The terms of that contract cannot be changed unilaterally by the defendant as there must be mutuality to amend its terms. Guy Pine, Inc. v. Chrysler Motors Corp., 201 Kan. 371 (1968).

SEVENTH: The plaintiff has fully performed under the October 15, 1970 contract, having paid to the defendant the agreed to sum of \$42,000.00, which was accepted by defendant. The defendant has not fully performed under the contract, the 45th Street dedications remaining unfiled.

EIGHTH: The plaintiff has no adequate remedy at law and is entitled to a decree of specific performance directing the defendant to dedicate the 45th Street property, as set forth in the October 15, 1970 contract.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED:

1. Within forty-five (45) days of the date of the filing of this Journal Entry of Judgment, the defendant, by and

through its proper officers and agents, file with the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Board of Commissioners of the City of Wichita, Kansas, a dedication to the public for street purposes of the South 40 feet of the Southwest Quarter (SW 1/4) of Section 19, Township 26 South, Range 1 East, Sedgwick County, Kansas. In the event that the defendant fails or refuses to dedicate the hereinabove described property for public purposes within the forty-five (45) days allotted, it is ordered that a copy of this Journal Entry of Judgment, when filed with the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Board of Commissioners of the City of Wichita, Kansas, shall serve as and for and in place of for all purposes the dedication instrument.

2. IT IS FURTHER ORDERED that the defendant pay the costs of this action.

DONE at Wichita, Kansas, on this 24 day of

January, 1975.

Robert T. Stephan
Robert T. Stephan, Judge

APPROVED:

LAW OFFICES OF RENDER, KAMAS & KELLY

By Ronald L. Nieto
Ronald L. Nieto
Attorneys for Defendant

LAW OFFICES OF RALPH FOSTER

By Michael T. Harris
Michael T. Harris
Attorneys for Plaintiff

Certificate of Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file or of record in this court.

Done this 26th day of July 1978

DOROTHY I. VAN ARSDALE, Clerk

By L. Schulte Deputy



DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, THE FOURTH NATIONAL BANK AND TRUST COMPANY, WICHITA, a National banking association, A. R. WINZELER and RICHARD JONES, trustees being the owners of the following described real estate in Sedgwick County, Kansas, to wit:

✓ The North 40 feet of Government Lot 2 in the Northwest 1/4 of Section 30, Township 26 South, Range 1 East, Sedgwick County, Kansas

do ___ hereby dedicate the above described real estate to the public for ___ street ___ purposes.

Executed this 27 day of September 1972.

[Signature]
A. R. WINZELER, Trustee

[Signature]
RICHARD JONES, Trustee

STATE OF KANSAS)
SEDGWICK COUNTY)^{ss} By [Signature]
JACK W. SHANE, Senior Vice President and Trust Officer

BE IT REMEMBERED, that on this 27 day of September, 1972 came THE FOURTH NATIONAL BANK AND TRUST COMPANY, WICHITA, by JACK W. SHANE, Senior Vice President and Trust Officer, A. R. WINZELER and RICHARD JONES, Trustees

to me personally known to be the same persons who executed the foregoing instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Submitted to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Board of Commissioners of the City of Wichita, Kansas, and approved by said Board of Commissioners of the City of Wichita, Kansas,
this _____,

City Clerk

[Signature]
Lorrayne Porter Notary Public

My Commission Expires _____



DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby

acknowledged, the undersigned, Kansas Gas and Electric Company

a corporation, by E. S. Hall, Vice President

being the owner of the following described real estate in Sedgwick County, Kansas, to wit:

✓ The north forty (40) feet of that part of the Northeast 1/4 of Section 30, Township 26 South, Range 1 East, lying west of the land acquired in Chisholm Creek Diversion Condemnation Case No. A-39338

does hereby dedicate the above described real estate to the public for road purposes.

Executed this 27th day of July 19 72.



[Signature]
Secretary

Kansas Gas and Electric Company

BY E. S. Hall
E. S. Hall, Vice President

STATE OF KANSAS)
SEDGWICK COUNTY) ss

BE IT REMEMBERED, that on this 27th day of July, 1972,

came E. S. Hall, Vice President of Kansas Gas and Electric Company, a corporation

to me personally known to be the same person who executed the foregoing instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Submitted to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Board of Commissioners of the City of Wichita, Kansas, and approved by said Board of Commissioners of the City of Wichita, Kansas,
this _____
City Clerk

John R. King
John R. King Notary Public

My Commission Expires _____



DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, Moyle Alexander and Marguerite Alexander, his wife; Robert Y. Alexander and Kathleen Alexander, his wife; Roberta Alexander Hyndman and Harold Hyndman, her husband; and Helen Alexander McCluggage Ryan, a widow

being the owners of the following described real estate in Sedgwick County, Kansas, to wit:

The South 40 feet of that part of the Southeast 1/4 of Section 19, Township 26 South, Range 1 East lying West of the Land Acquired in Chisholm Creek Diversion Condemnation Case No. A-39338.

do hereby dedicate the above described real estate to the public for _____ road purposes.

Executed this 25th day of July 19 72.

Moyle Alexander
Moyle Alexander
Robert Y. Alexander
Robert Y. Alexander
Roberta Alexander Hyndman
Roberta Alexander Hyndman

Marguerite Alexander
Marguerite Alexander
Kathleen Alexander
Kathleen Alexander
Harold Hyndman
Harold Hyndman
Helen Alexander McCluggage Ryan
Helen Alexander McCluggage Ryan

STATE OF KANSAS)
SEDGWICK COUNTY) ss

BE IT REMEMBERED, that on this 25th day of July, 1972,

came Moyle Alexander and Marguerite Alexander, his wife; Robert Y. Alexander and Kathleen Alexander, his wife; Roberta Alexander Hyndman and Harold Hyndman, her husband; and Helen Alexander McCluggage Ryan, a widow

to me personally known to be the same persons who executed the foregoing instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Submitted to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Board of Commissioners of the City of Wichita, Kansas, and approved by said Board of Commissioners of the City of Wichita, Kansas,

this _____

City Clerk

Rosemary Joelyn
Notary Public



Expires: February 13, 1973



KANSAS GAS AND ELECTRIC COMPANY

July 14, 1975

DON H. ELLIOTT
DIVISION MANAGER

Mr Curt Newby
Metropolitan Area Planning
Department
City of Wichita
104 South Main
Wichita, Kansas 67202

Re: KG&E, Miles Sand &
45th Street North

Dear Curt:

Enclosed is a copy of the Judgment against Miles Sand Company in the KG&E vs Miles Sand, Inc action. Our previous request for the opening of 45th Street to MAPC was deferred in 1972 pending conclusion of this action. I have also enclosed a copy of a letter from Bob Lakin regarding the city's law department interpretation of this judgment. I believe this completes the information you requested relative to this matter. If you have any questions, please don't hesitate to call me.

Sincerely,

DHE/jh
enclosures





METROPOLITAN AREA PLANNING
DEPARTMENT

252 0611 — AREA CODE 316
CITY BUILDING ANNEX
104 S. MAIN ST.
WICHITA, KANSAS 67202

F.D.
7/7/76

June 27, 1975

Mr. Don Elliott
Kansas Gas and Electric Building
P. O. Box 208
Wichita, Kansas 67201

Re: KG&E v. Miles Sand, Inc.

Dear Mr. Elliott:

Dekker advises me that we should really have no interest in how you approach the dedication issue. He feels the Journal Entry speaks for itself. If your counsel feels that the dedication could be made on other forms, this would be fine with us.

Sincerely,



Robert A. Lakin
Director of Planning

RAL:ber

Enclosure

1-24-75
County

al

IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS

KANSAS GAS AND ELECTRIC COMPANY,
a corporation,

Plaintiff,

vs.

MILES SAND, INC., a corporation,

Defendant.

Case No. C-28908

JOURNAL ENTRY OF JUDGMENT

NOW on this 30th day of October, 1974, this cause comes regularly on for trial before this Court sitting without a jury. The plaintiff appears by and through its attorney, Michael T. Harris; the defendant appears by and through its chief executive officer, V. Harley Miles, and by its attorney, Mr. Ronald Nieto.

Thereupon, the plaintiff presents its evidence and rests, and the defendant moves for judgment, which motion is taken under advisement by the Court.

Thereupon, the defendant presents its evidence and rests.

Thereupon, the Court orders that the depositions of Jackie Wassall and John E. Pearson may be taken by the parties and submitted to this Court as and for their testimony.

Thereupon, the deposition of John E. Pearson was taken by the plaintiff on November 4, 1974, the deposition of Jackie Wassall not being taken and the time for the taking of it having expired.

Having heard the evidence and examined the exhibits,

LAW OFFICES
RALPH FOSTER
KANSAS GAS AND
ELECTRIC BUILDING
P. O. BOX 208
WICHITA, KANSAS 67201
(316) 263-0156
RALPH FOSTER
ROBERT A. VOHS
MICHAEL T. HARRIS

the Court hereby overrules the Defendant's motion for judgment, and having read the depositions and being fully advised in the premises, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

FIRST: The Court finds that the parties have agreed in the Pre-Trial Conference Order to be bound by certain stipulations; they are hereby approved, incorporated herein, and made a part of these findings:

"a. That this Court has jurisdiction over the parties and the subject matter of this lawsuit, and that venue has been properly laid in this Court.

"b. Plaintiff, at all times relevant, was a corporation authorized to do business in the State of Kansas and was duly authorized by the State Corporation Commission of Kansas to operate as a public utility in Sedgwick County, Kansas. Defendant, at all times relevant, was a Kansas domestic corporation.

"c. That a certain real estate purchase contract dated March 4, 1970, between John E. Pearson, Daisy S. Pearson, Francis M. Pearson, Nora B. Doane and Miles Sand, Inc., whereby the said individuals conveyed to Miles Sand, Inc., the following described property:

That part of Lots 1 and 2 of the Southwest Quarter (SW 1/4), also known as the Southwest Quarter (SW 1/4) of Section 19, Township 26 South, Range 1 East, and beginning at the Northwest Corner of the Northeast Quarter (NE 1/4) of Section 30, Township 26 South, Range 1 East; thence south 74 rods, thence east 80 rods, thence north 74 rods, thence west 80 rods to the place of beginning, except that part condemned under the Chisholm Creek Diversion Ditch and Dike in Sedgwick County District Court Case No. A-39338.

was duly executed and is authentic.

"d. That a certain real estate purchase contract dated October 15, 1970, between plaintiff and defendant, whereby defendant conveyed to plaintiff the following described property:

Beginning at the Northwest Corner of the Northeast Quarter (NE 1/4) of Section 30, Township 26 South, Range 1 East; thence south 74 rods, thence east 80 rods, thence north 74 rods, thence west 80 rods to the place of beginning, except that part condemned under the Chisholm Creek Diversion Ditch and Dike in Sedgwick County District Court Case No. A-39338.

was duly executed and is authentic.

"e. That a certain amendment to real estate purchase contract dated January 7, 1972, between John E. Pearson, Daisy S. Pearson, Francis M. Pearson, Nora B. Doane and Miles Sand, Inc., was duly executed and is authentic.

"f. That at all times relevant hereto defendant has either owned in fee simple or owned a beneficial interest in the following described property, by virtue of the real estate purchase contract referred to in paragraph I(c) hereof, to-wit:

The SW 1/4 of Sec. 19, T 26 S, R 1 E, Sedgwick County, Kansas

"g. That plaintiff was aware that defendant was a contract purchaser on the tract to be purchased by Kansas Gas and Electric Company, prior to entering into the October 15, 1970 real estate purchase contract."

SECOND: The plaintiff, in August or September of 1970, through its authorized agent, Jack King, entered into negotiations with the defendant's authorized agent, Mr. V. Harley Miles, to purchase the real estate described in the first Finding of Fact, subsection d. The parcel of land adjoined the Ripley Power Station of the plaintiff, and its intended use

was as a service building site and as a means of access from the Ripley Power Station area onto Meridian Street, which in turn provided access to the I-254 by-pass around the City of Wichita. The sales negotiations culminated in the execution of a contract on October 15, 1970 to convey the aforementioned tract of property, and also provided in pertinent part:

"6. It is further agreed that both parties to this contract are desirous of accomplishing the opening of 45th Street from Meridian Avenue to the Arkansas River and both parties hereto agree to dedicate, without charge, one-half the width of the street on properties owned by each party which abut 45th Street from Meridian Avenue east to the Arkansas River."

THIRD: The purpose of the aforementioned dedications was to provide ingress and egress to the parcel of land sold under the contract, and to the Ripley Power Station location. Although the defendant, acting through its agent, Harley Miles, at one time filed the necessary dedications to open up 45th Street to the plaintiff's parcel of land, it later withdrew them and has refused to refile them.

FOURTH: The tract of land to be conveyed to plaintiff in the October 15, 1970 contract, along with a larger parcel of land (which includes the area to be dedicated by defendant for street purposes), was held in escrow by the Arkansas Valley State Bank under the terms of a Real Estate Purchase Contract dated March 4, 1970 between John Pearson, Daisy Pearson, Francis Pearson, Nora Doane (sellers) and defendant (buyer), whereby the defendant was to receive a Warranty Deed after paying off the purchase price of the land at \$38,721.27 per year at interest of 7-1/2% per annum.

FIFTH: The October 15, 1970 contract between plaintiff and defendant was to be closed by March 1, 1971, and the plaintiff contacted defendant February 8, 1971 by means of a letter from Jack King to the defendant's attorney. The letter forwarded for

execution a Warranty Deed and stated that a check would be delivered when the deed was executed.

SIXTH: Sometime soon after March 1, 1971, Mr. Harley Miles came to the offices of Jack King, agent for Kansas Gas and Electric Company, and advised him that the Pearsons and Mrs. Doane were not wanting to release the tract of land in the October 15, 1970 contract between the parties without being paid an additional sum of money. King, Miles and Ralph Foster, general counsel for Kansas Gas and Electric Company, met in Mr. Foster's office that same day, and Mr. Miles stated that it would take an additional \$3,000.00 over and above the \$42,000.00 consideration agreed to in the October 15, 1970 contract in order for Miles to get the Pearsons and Mrs. Doane to release the parcel of land from the escrow contract.

SEVENTH: No agreement was made at the meeting mentioned above to pay an additional sum of money to defendant. Mr. Foster said he would contact the attorney for the Pearsons and Mrs. Doane to attempt to work out a means of conveying marketable title to the defendant so it could convey marketable title to the plaintiff. No mention was made by anyone at the meeting that defendant did not intend to dedicate the 45th Street land pursuant to paragraph 6 of the October 15, 1970 contract.

EIGHTH: At no time did John Pearson, Francis Pearson or Nora Doane ask Miles for an additional sum of money to release the parcel of land from the original escrow contract.

NINTH: On March 22, 1971, Harley Miles, along with his attorney, Mr. Beaty, met in the offices of Ralph Foster to discuss the title problems. Mr. Beaty wrote a letter to Mr. Foster the same day which offered to execute a Warranty Deed

subject to the escrow contract, or to pay off the escrow contract balance if the plaintiff would pay defendant an additional \$6,000.00.

At no time during the March 22, 1971 meeting or the earlier meeting did Mr. Miles or his counsel indicate that they did not want to dedicate the property abutting 45th Street per the October 15, 1970 contract. No money changed hands during the March 22, 1971 meeting nor were any deeds to the property executed.

TENTH: On May 5, 1971 defendant's counsel, Mr. Beaty, sent to plaintiff's counsel, Mr. Foster, a check from Miles Sand, Inc. in the sum of \$4,200.00 which represented the sum plaintiff paid as earnest money pursuant to the October 15, 1970 contract. The check was forwarded with a letter which stated that it was being returned, "until the matter with Mr. Miles can be worked out." Plaintiff did not cash the check.

ELEVENTH: On November 19, 1971, by letter to defendant's attorney Beaty, plaintiff demanded performance under the October 15, 1970 contract. On November 23, 1971 Mr. Beaty responded with a lengthy letter which provides in pertinent part:

"It is my present understanding that you have reached an agreement with the attorney for the Pearsons to amend the contract between my client and the Pearsons to the extent that the contract would allow for a partial prepayment and release of the property from the escrow. It is not satisfactory with Miles Sand, Inc. that the contract between it and the Pearsons be amended in a manner inconsistent with the original terms unless it is firmly understood at this time that the right of prepayment of the entire balance does exist.

"If your agreement with Mr. Bell is to amend the contract between my client and the Pearsons in such a way as will clearly indicate the right of prepayment of the entire balance, we are willing to accept the amendments to the contract which you have negotiated with Mr. Bell. Under the circumstances, however, since you and Mr. Bell

have made the arrangements, I suggest that you prepare such documents as you may deem necessary for you to obtain title to the property. Although it is my opinion that the contract with Kansas Gas & Electric long since expired, Miles Sand, Inc. is willing to convey the property described for the consideration recited in the contract.: [Emphasis supplied]

Nothing in the letter of November 23, 1971 states that the defendant would not dedicate the 45th Street property as provided by paragraph 6 of the October 15, 1970 contract.

TWELFTH: On January 7, 1972, an attempted real estate closing was had at the Security Abstract in Wichita. The closing was not finalized since the deed from the Pearsons and Mrs. Doane to the defendant, which was necessary to release the parcel from the escrow contract, was not executed.

THIRTEENTH: On January 28, 1972, there was another closing held at Security Abstract. Those present were Mr. Knighton for the plaintiff, Mr. Beaty for the defendant, Harley Miles, and Jackie Wassall, a Security Abstract employee. The necessary deeds were properly executed and the balance of the consideration of \$42,000.00 was exchanged.

CONCLUSIONS OF LAW

The Court concludes as a matter of law:

FIRST: Part of the consideration for the October 15, 1970 contract was that the defendant dedicate a portion of his property for street purposes so as to provide access to the land to be conveyed under the contract.

SECOND: The plaintiff tendered performance under the October 15, 1970 contract by its letter to the defendant's attorney on February 8, 1971.

THIRD: A Warranty Deed to plaintiff by defendant, subject to the existing escrow contract, would not convey merchantable title to the land under the October 15, 1970 contract.

FOURTH: The defendant had a duty to make reasonable efforts to secure and convey merchantable title; and the plaintiff's knowledge that the land was subject to the escrow contract does not relieve defendant of its duty to convey merchantable title. 55 Am. Jur. Sec. 154, Vendor and Purchaser.

FIFTH: Although the contract was to be performed by March 1, 1971, the performance time was waived due to defendant's inability to convey merchantable title on that date and by the later actions of the parties.

SIXTH: There was no agreement, written or oral, between the parties to change the terms and conditions of the October 15, 1970 contract. The terms of that contract cannot be changed unilaterally by the defendant as there must be mutuality to amend its terms. Guy Pine, Inc. v. Chrysler Motors Corp, 201 Kan. 371 (1968).

SEVENTH: The plaintiff has fully performed under the October 15, 1970 contract, having paid to the defendant the agreed to sum of \$42,000.00, which was accepted by defendant. The defendant has not fully performed under the contract, the 45th Street dedications remaining unfiled.

EIGHTH: The plaintiff has no adequate remedy at law and is entitled to a decree of specific performance directing the defendant to dedicate the 45th Street property, as set forth in the October 15, 1970 contract.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED:

1. Within forty-five (45) days of the date of the filing of this Journal Entry of Judgment, the defendant, by and

through its proper officers and agents, file with the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Board of Commissioners of the City of Wichita, Kansas, a dedication to the public for street purposes of the South 40 feet of the Southwest Quarter (SW 1/4) of Section 19, Township 26 South, Range 1 East, Sedgwick County, Kansas. In the event that the defendant fails or refuses to dedicate the hereinabove described property for public purposes within the forty-five (45) days allotted, it is ordered that a copy of this Journal Entry of Judgment, when filed with the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Board of Commissioners of the City of Wichita, Kansas, shall serve as and for and in place of for all purposes the dedication instrument.

2. IT IS FURTHER ORDERED that the defendant pay the costs of this action.

DONE at Wichita, Kansas, on this 24 day of

January, 1975.

Robert T. Stephan
Robert T. Stephan, Judge

APPROVED:

LAW OFFICES OF RENDER, KAMAS & KELLY

By Ronald L. Nieto
Ronald L. Nieto
Attorneys for Defendant

LAW OFFICES OF RALPH FOSTER

By Michael T. Harris
Michael T. Harris
Attorneys for Plaintiff

Certificate of Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file or of record in this court.

Done this 24th day of January 1975
DOROTHY I. VAN ARSDALE, Clerk

By L. Schulte Deputy

