

Published in The Daily Reporter on November 21, 1990

R E S O L U T I O N   N O . 269-1990

A RESOLUTION AUTHORIZING A CONDITIONAL USE PERMIT FOR SAND EXTRACTION AND ASSOCIATED TEMPORARY ASPHALT MIXING PLANT IN THE "R-1" SUBURBAN RESIDENTIAL AND "R" RURAL RESIDENTIAL DISTRICTS ON CERTAIN LANDS LOCATED WITHIN THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED IN SECTION 17.C OF THE ZONING REGULATIONS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, DECEMBER 12, 1984, AND SUBSEQUENTLY AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF SEDGWICK COUNTY, KANSAS.

SECTION I. That after receiving a recommendation from the 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 17.C of the Zoning Regulations, a conditional use permit for sand extraction and associated temporary asphalt mixing plant on property zoned "R-1" Suburban Residential and "R" Rural Residential Districts is hereby approved on lands legally described below:

Case No. CU-328  
Conditional Use Permit for sand extraction and  
a temporary asphalt mixing plant  
on property zoned the "R-1" Suburban Residential  
and "R" Rural Residential Districts

That part of the West Half of the Southeast Quarter and the East Half of the Southwest Quarter of Section 15, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as commencing at the southeast corner of the West Half of said Southeast Quarter; thence north, along the east line of the West Half of said Southeast Quarter, 700 feet; thence west parallel with the south line of the West Half of said Southeast Quarter, 200 feet for a place of beginning; thence west, parallel with the south line of the West Half of said Southeast Quarter and the south line of the East Half of said Southwest Quarter to a point 380 feet east of the west line of the East Half of said Southwest Quarter; thence north, parallel with the west line of the East Half of said Southwest Quarter, 65 feet; thence west, parallel with the south line of the East Half of said Southwest Quarter 180 feet to a point 200 feet east of the west line of the East Half of said Southwest Quarter; thence north, parallel with the west line of the East Half of said Southwest Quarter to a point 200 feet south of the north line of the East Half of said Southwest Quarter; thence east, parallel with the north line of the East Half of said Southeast Quarter and the north line of the West Half of said Southeast Quarter to a point 200 feet west of the east line of the West Half of said Southeast Quarter; thence south, parallel with the East Half of the West Half of said Southeast Quarter to the place of beginning. Generally located on the north side of 53rd

Street North in an area approximately 1/3-mile  
east of Ridge Road.

SUBJECT TO THE FOLLOWING CONDITIONS:

- A. Since the proposed excavation is within 1,000 feet of a flood protection structure, the applicant shall obtain a permit from the County Engineer. This permit is required by K.S.A. 19-3309 and shall be obtained prior to this case being considered by the Board of County Commissioners.
- B. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the City-County Flood Control Office and as to form by the County Counselor. The covenant shall provide for the construction and/or maintenance of a loop levee on the premises at such a location as the Flood Control Office 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 City-County Flood Control Office. Said covenant shall run with the land and be binding on all owners, successors, or assigns.
- C. The extraction of sand on this site shall proceed in accordance with the operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan. The temporary asphalt mixing plant, which is an accessory use to the sand excavation operation, shall be placed on the site at the location labeled "permanent plant location" on the operational plan.
- D. Four copies of a revised operational plan shall be submitted which do not depict the fencing off of the temporary circular turnaround dedicated on this property to terminate Boyd Street to the south of this conditional use permit site. This temporary dedication was established when the McGonigle-Kessler Addition was platted. The instrument was filed on Film 495, Page 1475. The revised operational plan shall depict the temporary turnaround dedication, along with the pertinent recording information. Also, as approved by the MAPC, the revised operational plan shall depict realignment to the east of the operational roadway as it intersects with 53rd Street North.
- E. In order to assist in the enforcement of the operational plan for this extraction and temporary asphalt mixing plant, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.
- F. Adjacent to the north, west and east lines of the application area, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation (topsoil, subsoil or sand) and shall be maintained at the locations depicted on the operational plan. Said fence shall be placed on steel posts which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart. The fence shall be a minimum height of 60 inches and shall be of the following types of construction.
  1. A 50-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
  2. A 50-inch-high or higher solid metal or solid masonry fence with 3 or more strands of barbed wire;  
or

3. A 50-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 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 gate at an angle not to exceed 160° facing away from the excavation.

In order to fence the extraction area off from 53rd Street North, a minimum 72-inch-high fence shall be constructed from the east line of the application area to the west line of the application area. The fence shall be set back from 53rd Street as shown on the approved operational plan for this conditional use case. This fence may provide for a reasonable access gate installed at the same height and of the same construction as the fence. The fence and gate shall be a minimum height of 72 inches and shall be of the following types of construction:

1. A 62-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
2. A 62-inch-high or higher solid metal or solid masonry fence with 3 or more strands of barbed wire; or
3. A 62-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 or more strands of barbed wire.

These overall fence heights shall be shown on the revised operational plan.

- G. The earth and sand shall be extracted to at least a minimum depth of 6 feet below the normal water table, as determined by the City-County Health Department.
- H. To provide for bank stabilization and safety of future uses, the side slope of the extraction shall be no more steep than 5 horizontal to 1 vertical.
- I. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
- J. All of the area included within the fenced earth and sand extraction operation, except for the site of the asphalt mixing plant, shall be graded so as to drain into the lake.
- K. The owner of the property shall be responsible for:
  1. Insuring that the loop levee elevation be maintained if constructed.
  2. The asphaltting of all operational roads in order to minimize blowing dust from the site.
- L. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area after approval of the conditional use by the Board of County Commissioners.

- M. The applicant shall submit a covenant satisfactory in form to the County Counselor and Sedgwick County Department of Public Works which authorizes the use of the extraction area as a detention storage facility for public drainage purposes.
- N. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand extraction and temporary asphalt mixing plant.
- O. 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.
- P. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
- Q. To minimize blowing soil in this area, overburden shall not be removed more than one year in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover of help prevent erosion.
- R. The storage of equipment or stockpiling of sand is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.
- S. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment and the temporary asphalt mixing plant shall be removed from the subject site.
- T. The applicant shall dedicate, by separate instrument, the 60 feet of half-street right-of-way required for 53rd Street North adjacent to this property.
- U. All asphalt mixing shall cease and all asphalt mixing equipment shall be removed from the site within one year after County Commission approval of this conditional use permit, unless an extension of time for that temporary use is granted by the County Commission after the MAPC has reviewed the extension request at a formal public hearing. All sand extraction shall cease and all sand extraction equipment shall be removed from the site within 10 years after approval of this conditional use permit by the Board of County Commissioners. This conditional use shall expire 10 years from County Commission approval, unless an extension is granted by that governing body after a public hearing is held by the MAPC to review the application for extension.
- V. All waste generated by the asphalt mixing plant operation shall be disposed of in accordance with the standards of the Wichita-Sedgwick County Health Department and the Kansas Department of Health and Environment (KDHE). Solid waste is as defined by the Sedgwick County Health and Sanitation Code #5.
- W. The asphalt mixing plant shall meet the permitting, reporting and operating requirements of the Kansas Air Pollution Control Regulations. The asphalt mixing plant

shall not be operated when atmospheric conditions could cause emissions to impact surrounding properties. Hours of operation for both the asphalt mixing and the sand extraction business shall be limited to 6 a.m. to 6 p.m.

- X. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
- Y. The applicant shall install groundwater monitoring wells at locations to be determined by the Wichita-Sedgwick County Health Department. The monitoring wells shall be installed prior to the commencement of the sand extraction operation.
- Z. Prior to scheduling this conditional use request for County Commission consideration, conditions A, B, D, L, M and T shall be completed.
- AA. 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 permit 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.

Commissioners present and voting were:

DAVID BAYOUTH  
 PAUL W. HANCOCK  
 BERNARD A. HENTZEN  
 BILLY Q. McCRAY  
 MARK F. SCHROEDER

*[Handwritten signatures]*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

DATED this 7th day of November, 1990.

BOARD OF COUNTY COMMISSIONERS OF  
SEDGWICK COUNTY, KANSAS

*[Signature: Mark F. Schroeder]*  
 \_\_\_\_\_  
 MARK F. SCHROEDER, Chairman

*[Signature: David Bayouth]*  
 \_\_\_\_\_  
 DAVID BAYOUTH, Chairman Pro Tem

*[Signature: Paul W. Hancock]*  
 \_\_\_\_\_  
 PAUL W. HANCOCK, Commissioner

*[Signature: Bernard A. Hentzen]*  
 \_\_\_\_\_  
 BERNARD A. HENTZEN, Commissioner

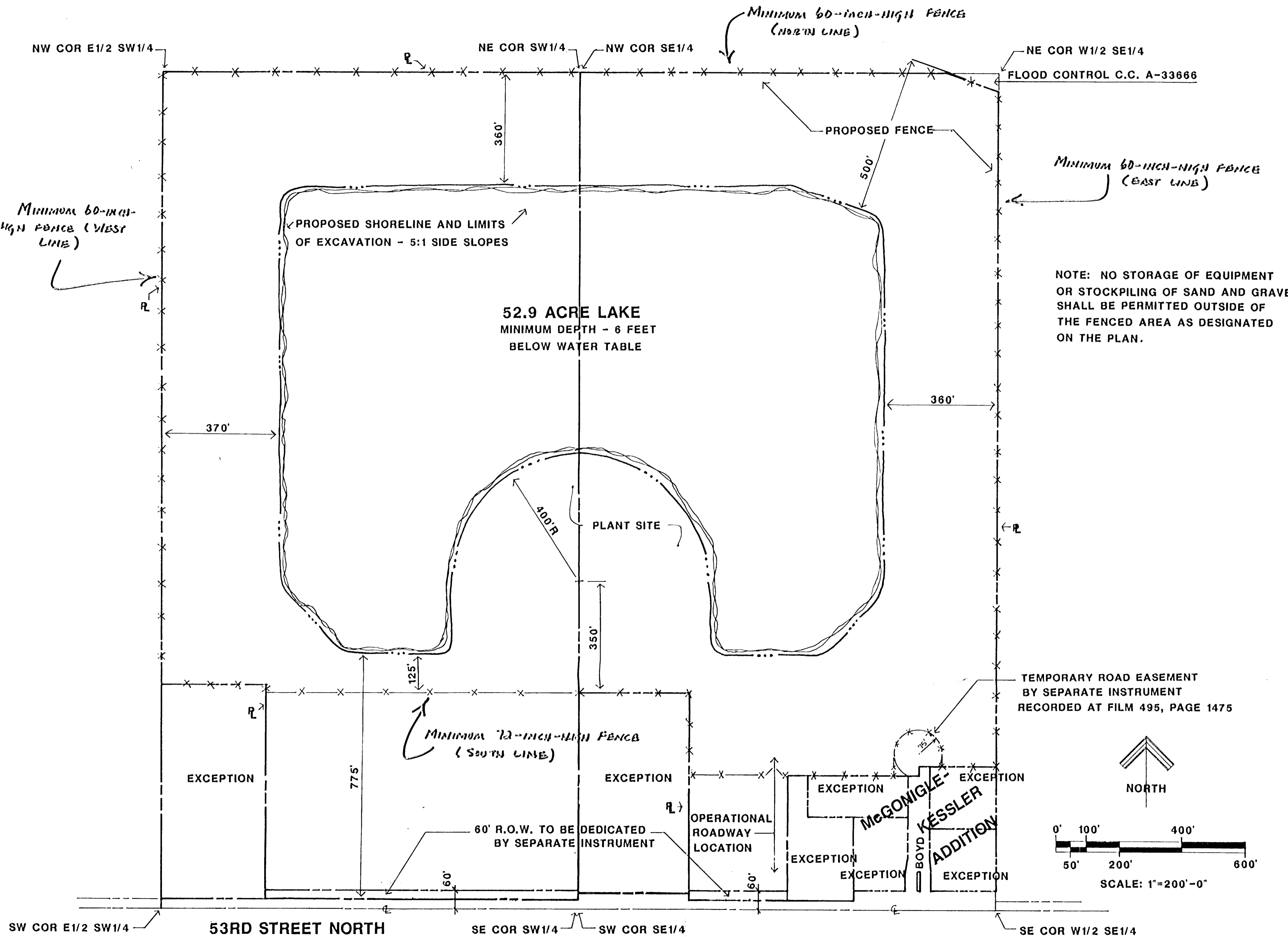
*[Signature: Billy Q. McCray]*  
 \_\_\_\_\_  
 BILLY Q. McCRAY, Commissioner



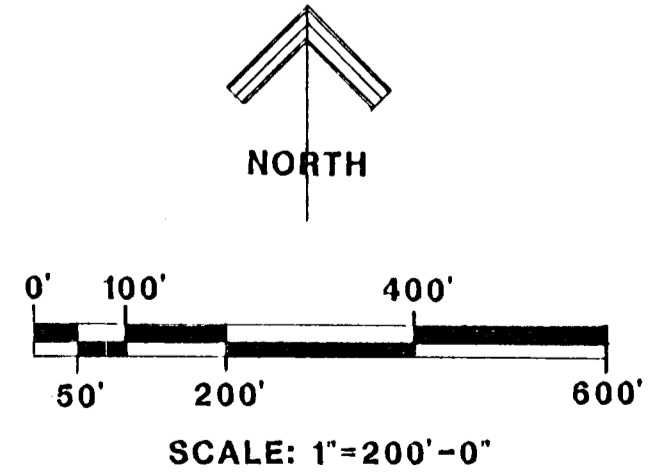
*[Signature: Don Wright]*  
 \_\_\_\_\_  
 DON WRIGHT, County Clerk

APPROVED AS TO FORM ONLY:  
*[Signature: Henry H. Base]*  
 \_\_\_\_\_  
 County Counselor/Assistant

PART OF SEC 15, TWP 26-S, R-1-W OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS



NOTE: NO STORAGE OF EQUIPMENT OR STOCKPILING OF SAND AND GRAVEL SHALL BE PERMITTED OUTSIDE OF THE FENCED AREA AS DESIGNATED ON THE PLAN.



**CONDITIONAL USE**  
**L. A. KNEBLER CONSTRUCTION CO., INC.**

**OPERATIONAL PLAN**

April 12, 1990

STAFF REPORT

CASE NUMBER: CU-328

OWNER/APPLICANT/AGENT: Jerome and Margaret Kessler &  
Leslie and Delora Kohl (owners/applicants)  
Robert W. Kaplan (agent)

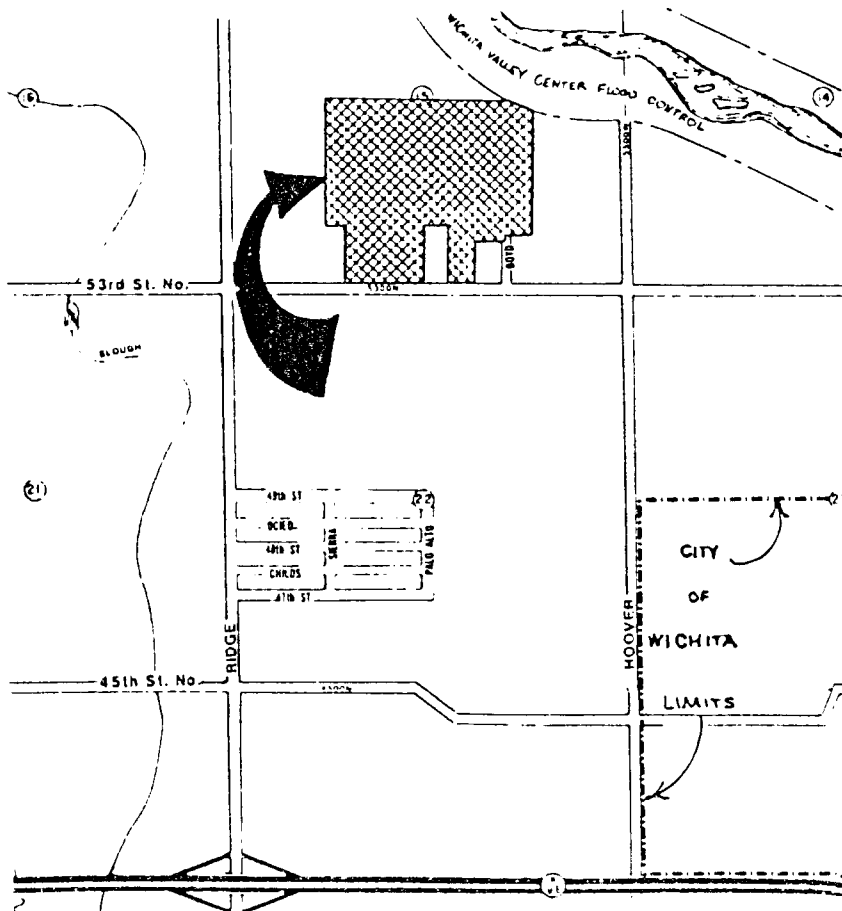
REQUEST: Conditional Use Permit for sand extraction  
& associated temporary asphalt mixing plant.

CURRENT ZONING: "R-1" Suburban Residential & "R" Rural  
Residential Districts

SITE SIZE: 102 acres (irregular shape)

LOCATION: On the north side of 53rd St. N., approx.  
1/3-mile east of Ridge Road.

PROPOSED USE: Sand extraction operation with associated  
temporary asphalt mixing plant.



BACKGROUND: The applicants are requesting a conditional use permit to establish a sand extraction operation with an accessory temporary asphalt mixing plant on an unplatted tract of property located on the north side of 53rd Street North, approximately 1/3-mile east of Ridge Road. The application area measures 102 acres and involves two different zoning districts. That portion of the site within the southwest quarter of the subject section is presently zoned "R" Rural Residential. That portion of the site within the southeast quarter of the subject section is zoned "R-1" Suburban Residential.

The applicants have submitted an operational and redevelopment plan indicating the limits of excavation, the location of the permanent plant, approximate shoreline, stockpiling area, perimeter fencing, access road to 53rd Street, and future lotting arrangements around the lake. The applicants' agent has advised that the excavation operation will take between 8 and 10 years to complete and that it has been estimated that approximately 200,000 tons of material will be removed from the site annually. The applicants' redevelopment plan depicts the reuse of this land with 2-acre lots around the perimeter of the sand pit excavation. Lots of this size either meet or exceed the minimum lot size required by the "R" and "R-1" zoning districts, respectively. The applicants are advised, however, that if a minimum of 10 feet of separation cannot be maintained between a septic tank sewage disposal system and groundwater, then an alternate means of sewerage will need to be provided. The minimum lot size for use of on-site sewage lagoons is 5 acres.

The associated temporary asphalt mixing plant that is requested as part of this conditional use case is not proposed to provide paving materials for a specific road or highway project, but rather as an accessory use to the overall sand excavation operation. In May of 1985, the County Zoning Text was amended to allow a concrete or asphalt mixing facility as a temporary accessory use to an approved raw materials extraction operation. The first zoning district in the County which permits asphalt and concrete manufacturing plants is the "E" Light Industrial District. One of the major issues that the MAPC needs to discuss regarding this case is if the accessory asphalt mixing plant should be authorized for perhaps only one year at a time, rather than permitting it to be authorized for 10 years. Review and reapproval on an annual basis would allow staff and the MAPC to have the opportunity to address any problems caused by the asphalt mixing operation and propose solutions. Condition "U" of the recommended approval conditions authorizes the temporary asphalt mixing facility for only one year. Provision for a time extension is included in the approval condition.

CASE HISTORY: None.

ADJACENT ZONING AND LAND USE:

NORTH	"R"	Single-family residence & agricultural use
SOUTH	"R-1"	Single-family residences & agricultural use
EAST	"R-1"	Agricultural use
WEST	"R"	Single-family residence & agricultural use

PUBLIC SERVICES: Adjacent 53rd Street is a paved, two-lane, F.A.S. road for which additional street right-of-way is required. Nearby Ridge Road also offers two lanes of pavement, as well as access onto the K-96 Expressway. This site is not served with either sanitary sewer or municipal water.

CONFORMANCE TO PLANS/POLICIES: Sections 4(A)(9)(f) and 5(A)(10)(f) of the County Zoning Resolution provides for extraction of raw materials, along with an associated temporary asphalt mixing plant in the "R" and "R-1" zoning districts, provided the Metropolitan Area Planning Commission reviews the request and the Board of County Commissioners approves the use by issuing a conditional use permit. The Land Use Element of the Comprehensive Plan depicts this area of the County for agricultural purposes. Development of the proposed extraction facility with on-site water and sewerage facilities will require Health Department approval.

RECOMMENDATION: It is recommended that this conditional use permit for a sand extraction operation and an associated temporary asphalt mixing plant be approved, subject to the following conditions:

- A. Since the proposed excavation is within 1,000 feet of a flood protection structure, the applicant shall obtain a permit from the County Engineer. This permit is required by K.S.A. 19-3309 and shall be obtained prior to this case being considered by the Board of County Commissioners.
- B. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the City-County Flood Control Office and as to form by the County Counselor. The covenant shall provide for the construction and/or maintenance of a loop levee on the premises at such a location as the Flood Control Office 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 City-County Flood Control Office. Said covenant shall run with the land and be binding on all owners, successors, or assigns.
- C. The extraction of sand on this site shall proceed in accordance with the operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan. The temporary asphalt mixing plant, which is an accessory use to the sand excavation operation, shall be placed on the site at the location labeled "permanent plant location" on the operational plan.

- D. Four copies of a revised operational plan shall be submitted which do not depict the fencing off of the temporary circular turnaround dedicated on this property to terminate Boyd Street to the south of this conditional use permit site. This temporary dedication was established when the McGonigle-Kessler Addition was platted. The instrument was filed on Film 495, Page 1475. The revised operation plan shall depict the temporary turnaround dedication, along with the pertinent recording information.
- E. In order to assist in the enforcement of the operational plan for this extraction and temporary asphalt mixing plant, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.
- F. A minimum 58-inch-high fence shall be constructed prior to the beginning of the extraction operation and shall be maintained at the locations depicted on the operational plan. Said fence shall be placed on steel posts which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart. The fence may provide for a reasonable access gate installed at the same height and of the same construction as the fence. The fence and gate shall be a minimum height of 58 inches and shall be of the following types of construction.
1. A 48-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
  2. A 48-inch-high or higher solid metal or solid masonry fence with 3 or more strands of barbed wire; or
  3. A 48-inch-high or higher wood fence which may have cracks or openings not in excess of 5% or the area of such fence, with 3 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 gate at an angle not to exceed 160° facing away from the excavation.
- G. The earth and sand shall be extracted to at least a minimum depth of 6 feet below the normal water table, as determined by the City-County Health Department.
- H. To provide for bank stabilization and safety of future uses, the side slope of the extraction shall be no more steep than 5 horizontal to 1 vertical.
- I. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.

- J. All of the area included in the earth and sand extraction operation, except for the site of the asphalt mixing plant, shall be graded so as to drain into the lake.
- K. The owner of the property shall be responsible for:
  - 1. Insuring that the loop levee elevation be maintained if constructed.
  - 2. Maintaining all operational roads in a sanded or graveled condition so as to minimize blowing dust.
- L. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area after approval of the conditional use by the Board of County Commissioners.
- M. The applicant shall submit a covenant satisfactory in form to the County Counselor and Sedgwick County Department of Public Works which authorizes the use of the extraction area as a detention storage facility for public drainage purposes.
- N. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand extraction and temporary asphalt mixing plant.
- O. 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.
- P. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
- Q. To minimize blowing soil in this area, overburden shall not be removed more than one year in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
- R. The storage of equipment or stockpiling of sand is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.

- S. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment and the temporary asphalt mixing plant shall be removed from the subject site.
- T. The applicant shall dedicate, by separate instrument, the 60 feet of half-street right-of-way required for 53rd Street North adjacent to this property.
- U. All asphalt mixing shall be completed and cease within one year after County Commission approval of this conditional use permit, unless an extension of time for that temporary use is granted by the County Commission after the MAPC has reviewed the extension request at a formal public hearing. All sand extraction shall be completed within 10 years after approval of this conditional use permit by the Board of County Commissioners. This conditional use shall expire 10 years from County Commission approval, unless an extension is granted by that governing body after a public hearing is held by the MAPC to review the application for extension.
- V. All waste generated by the asphalt mixing plant operation shall be disposed of in accordance with the standards of the Wichita-Sedgwick County Health Department and the Kansas Department of Health and Environment (KDHE). Solid waste is as defined by the Sedgwick County Health and Sanitation Code #5.
- W. The asphalt mixing plant shall meet the permitting, reporting and operating requirements of the Kansas Air Pollution Control Regulations. The asphalt mixing plant shall not be operated during evening hours or when atmospheric conditions could cause emissions to impact surrounding properties. Evening hours is defined as the time frame between 6 p.m. and 6 a.m.
- X. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
- Y. If determined to be necessary by the Wichita-Sedgwick County Health Department, groundwater monitoring wells may be installed on this site to help determine if groundwater contamination is resulting because of the uses permitted by this conditional use permit.
- Z. Prior to scheduling this conditional use request for County Commission consideration, conditions A, B, D, L, M and T shall be completed.
- AA. Any violation of conditions attached shall declare the conditional use permit null and void.