

BZA 8-60 - ELLEN C. OTT, BY DOLAN
WELSH, OPTINEE, REQUEST VARIANCE
TO PERMIT EXCAVATION & DEVELOPMENT
OF PRIVATE PARK

~~3-31-60~~ meeting

COPY

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

OFFICE OF METROPOLITAN PLANNING

MARCH 28, 1960

TO LELAND R. EDMONDS, SECRETARY, BOARD OF ZONING APPEALS
FROM L. L. LITTLE, DIRECTOR OF PLANNING

SUBJECT: BZA 8-60

THIS WILL ACKNOWLEDGE RECEIPT OF YOUR MEMORANDUM REQUESTING COMMENTS RELATIVE TO THE SUBJECT VARIANCE APPLICATION.

THE PLANNING DEPARTMENT HAS LONG BELIEVED THAT THE COMMUNITY SHOULD MAKE EVERY EFFORT TO CAPITALIZE ON ANY NATURAL PHYSICAL FEATURES WHICH EXIST IN THE AREA. SIMILARLY, THE COMMUNITY SHOULD CONSIDER CAREFULLY ANY OPPORTUNITY TO CAPITALIZE ON POTENTIAL MAN-MADE PHYSICAL FEATURES. RECREATION AREAS, EITHER PRIVATE OR PUBLIC, CAN ADD MATERIALLY TO THE ASSETS OF A NEIGHBORHOOD AND TO THE WELFARE OF THE RESIDENTS OF THE NEIGHBORHOOD.

IN THE SUBJECT APPLICATION, THE BASIC PROBLEM IS ONE OF CONTROL OF THE DEVELOPMENT PROPOSED. RESTRICTIONS SHOULD BE CAREFULLY STATED TO PROVIDE FOR

- FULL PROTECTION OF THE PUBLIC HEALTH AND SAFETY;
- ATTRACTIVE AND COMPLETE DEVELOPMENT OF SURROUNDING AREA IN A MANNER HARMONIOUS WITH THE EXISTING DEVELOPMENT;
- ADEQUATE PROVISION FOR PERPETUAL MAINTENANCE;
- ADEQUATE PROVISION FOR LIABILITY FOR FUTURE DAMAGE TO ADJACENT OR NEARBY EXISTING PUBLIC OR PRIVATE IMPROVEMENTS;
- COMPLETE AND DETAILED DEVELOPMENT PLANS DESCRIBING THE TOTAL DEVELOPMENT PROPOSED; TOGETHER WITH TIME TABLE FOR DEVELOPMENT.

L. L. LITTLE
DIRECTOR OF PLANNING

LLL:LRE:BER



THE CITY OF WICHITA, KANSAS

BOARD OF ZONING APPEALS - 104 S. MAIN - WICHITA 2, KANSAS

APRIL 25, 1960

REPORT TO THE CITY COMMISSION REGARDING BOARD OF ZONING APPEALS
ACTION ON BZA 8-60 AND BZA 8-60 (AMENDED)

MR. DOLAN H. WELSH, AS OPTIONEE AND AUTHORIZED AGENT FOR MRS. ELLEN C. OTT, FILED AN APPLICATION WITH THE BOARD OF ZONING APPEALS REQUESTING A VARIANCE FROM THE STRICT APPLICATION OF THE ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE TO PERMIT THE EXCAVATION AND DEVELOPMENT OF A PRIVATE LAKE ON PROPERTY LOCATED BETWEEN 13TH AND 17TH STREETS EAST OF THE FLOOD CONTROL RIGHT-OF-WAY AND THE RAILROAD RIGHT-OF-WAY, AND WEST OF WEST STREET.

THIS APPLICATION WAS FILED ON MARCH 15, 1960. UPON THE REPRESENTATION THAT THIS WAS A MATTER OF CONSIDERABLE URGENCY, THE CHAIRMAN OF THE BOARD OF ZONING, UNDER AUTHORITY GRANTED TO HIM BY THE RULES AND REGULATIONS OF THE BOARD, AUTHORIZED A SPECIAL MEETING TO BE HELD TO CONSIDER THIS APPLICATION. ACCORDINGLY, DUE NOTICE WAS GIVEN AS REQUIRED BY ORDINANCE AND BY THE RULES AND REGULATIONS OF THE BOARD, AND A MEETING WAS HELD ON MARCH 31, 1960 TO CONSIDER THE REQUEST.

AT THIS HEARING THE BOARD OF ZONING APPEALS HEARD AN OPINION OF ITS COUNSEL, MR. EUGENE PIRTLE, ASSISTANT CITY ATTORNEY, AND HEARD ARGUMENTS FROM THE ATTORNEY FOR THE APPLICANT RELATIVE TO THE BOARD'S JURISDICTION TO CONSIDER THIS PROPOSAL. AFTER DUE CONSIDERATION OF THE OPINIONS OF BOTH THE ATTORNEYS, THE BOARD ADOPTED A RESOLUTION BY WHICH IT DETERMINED THAT IT DID NOT HAVE JURISDICTION TO CONSIDER THE APPLICATION FOR THE VARIANCE AS REQUESTED AND JURISDICTION WAS THEREBY DENIED.

AT THE MEETING OF MARCH 31, 1960, THE BOARD OF ZONING APPEALS INDICATED TO THE APPLICANT THAT IF HE CARED TO DO SO HE WOULD BE ALLOWED TO AMEND HIS APPLICATION SO THAT IT WOULD BE A REQUEST FOR A VARIANCE TO THE STRICT APPLICATION OF THE ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE TO PERMIT A BORROW PIT ON THE SAME TRACT OF LAND. THE BOARD ALSO AUTHORIZED CALLING ANOTHER SPECIAL MEETING TO CONSIDER SUCH AMENDED REQUEST AT THE EARLIEST POSSIBLE TIME IF THE APPLICANT CHOSE SO TO AMEND HIS APPLICATION REQUEST. THE AMENDMENT WAS FILED AND A SPECIAL MEETING WAS SCHEDULED FOR APRIL 18, 1960. APPROPRIATE NOTICE OF THE SECOND HEARING WAS GIVEN BY LEGAL PUBLICATION AND BY INDIVIDUAL NOTICE AS REQUIRED BY ORDINANCE AND BY THE RULES AND REGULATIONS OF THE BOARD.

AT THE MEETING OF APRIL 18, 1960, THE BOARD OF ZONING APPEALS DETERMINED THAT IT SHOULD TAKE JURISDICTION OF THE APPLICATION FOR A VARIANCE AND DID SO BY A VOTE OF TWO TO ONE. IT THEN HEARD THE MERITS OF THE CASE AS PRESENTED BY MR. WELSH, THE APPLICANT, HIS ATTORNEY, MR. PAUL W. SMITH, AND BY THE OPPOSITION REPRESENTED BY MR. KENT FRIZZELL, ATTORNEY, AND MR. NEVILLE McLEMORE, ATTORNEY, BOTH REPRESENTING PROPERTY OWNERS IN THE VICINITY OF THE SUBJECT PROPERTY. AT THAT MEETING COUNSEL FOR THE OPPOSITION PRESENTED A PETITION OF PROTEST BEARING THE SIGNATURES OF 31 PEOPLE REPRESENTING APPROXIMATELY 20 FAMILIES. THE BOARD OF ZONING APPEALS WAS ADVISED THAT ONE OF THOSE WHO HAD SIGNED THE PROTEST PETITION HAD SUBSEQUENTLY WITHDRAWN HIS PROTEST.

AFTER A COMPLETE HEARING OF THE FACTS PRESENTED IN THIS CASE, THE SECRETARY CALLED TO THE ATTENTION OF THE BOARD THE FOUR CONDITIONS WHICH ARE REQUIRED BY ORDINANCE TO BE PRESENT IN SUCH A REQUEST BEFORE IT COULD BE APPROVED. THESE FOUR POINTS WERE AS FOLLOWS:

1. THAT THE VARIANCE DESIRED ARISES FROM A CONDITION WHICH IS UNIQUE AND WHICH IS NOT ORDINARILY FOUND IN THE SAME ZONING DISTRICT.

THE APPLICANT AND HIS COUNSEL MAINTAINED THAT THIS CONDITION WAS MET BY VIRTUE OF THE FACT THAT THE RAILROAD RIGHT-OF-WAY HAD BEEN RAISED APPRECIABLY; AND THAT THE INTERSTATE 225 ROUTE WAS ESTABLISHED IN THE LOCATION NOW ADOPTED SUBSEQUENT TO THE DEVELOPMENT OF WEST LYNN; AND THAT THE FLOOD CONTROL PROJECT WAS NOT IN EXISTENCE WHEN WEST LYNN WAS STARTED. APPLICANT MAINTAINED THAT THESE CONDITIONS ARE NOT FOUND ELSEWHERE IN THE COMMUNITY AND THUS THE SITUATION AFFECTING THE WEST LYNN DEVELOPMENT AREA IS UNIQUE.

THE BOARD OF ZONING APPEALS BELIEVED THAT THIS IS A LESS UNIQUE SITUATION THAN OTHER BORROW PIT AREAS WHICH HAVE BEEN APPROVED, INASMUCH AS IT HAS MORE DIRECT ACCESS TO THE ADJACENT STREET SYSTEMS AND IS LESS ISOLATED FROM ADJACENT DEVELOPMENTS.

2. THAT THE GRANTING OF THE PERMIT FOR THE VARIANCE WILL NOT ADVERSELY AFFECT THE RIGHTS OF ADJACENT PROPERTY OWNERS OR RESIDENTS.

THE BOARD OF ZONING APPEALS WAS PRESENTED WITH A PETITION BEARING THE SIGNATURES OF 31 INDIVIDUALS LIVING NEAR THE PROPOSED DEVELOPMENT AND BEARING THE SIGNATURES OF TWO WHO WOULD BE IMMEDIATELY ADJACENT TO THE PROPERTY PROPOSED TO BE SO DEVELOPED.

3. THAT THE STRICT APPLICATION OF THE ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE WILL CONSTITUTE UNNECESSARY HARSHNESS UPON THE PROPERTY OWNER REPRESENTED IN THE APPEAL.

THE APPLICANT MAINTAINED THAT DENIAL OF THIS APPLICATION WOULD CREATE A HARDSHIP IN THAT IT WOULD LEAD TO CONSIDERABLE FINANCIAL LOSS, BOTH FROM THE STANDPOINT OF POTENTIALLY ADDED VALUE TO LOTS WHICH COULD BE PLATTED ADJACENT TO THE BORROW PIT AREA AND FROM THE STANDPOINT OF TIME AND MONEY WHICH HAVE BEEN INVESTED IN THE PREPARATION OF THE PRELIMINARY PLANS UP TO THIS POINT.

THERE APPEARED TO BE NO DISAGREEMENT FROM THE BOARD WITH RESPECT TO THIS PROVISION.

4. THAT THE VARIANCE DESIRED WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY OR GENERAL WELFARE.

THE APPLICANT MAINTAINED THAT THIS WOULD NOT ADVERSELY AFFECT THE PUBLIC WELFARE BUT WOULD INSTEAD HAVE A BENEFICIAL EFFECT UPON IT IN THAT IT WOULD PREVENT SUB-STANDARD, HIGH DENSITY HOUSING WHICH IS THE ONLY KIND OF HOUSING POSSIBLE IN THE AREA UNDER EXISTING ENVIRONMENTAL CONDITIONS. THE APPLICANT CONTENDED THAT SUCH SUBSTANDARD HOUSING WOULD NOT ONLY BE A LIABILITY IN ITSELF BUT WOULD DETERIORATE THE EXISTING WEST LYNN DEVELOPMENT WHICH IS WELL ABOVE AVERAGE RESIDENTIAL HOUSING.

THE BOARD OF ZONING APPEALS BELIEVED THAT THERE WERE A NUMBER OF CONSIDERATIONS CONCERNING THE LIABILITY OF THE PUBLIC IN THE EVENT OF

- FLOOD CONTROL LEVEE FAILURE AS A RESULT OF THIS EXCAVATION;
- FAILURE ON THE PART OF THE NON PROFIT CORPORATION OWNER TO MAINTAIN THE DEVELOPMENT;
- LOSS OF LIFE AND PROPERTY AS A RESULT OF THIS DEVELOPMENT.

THE BOARD RECOGNIZED THAT THE ORDINANCE REQUIRES THAT IT SHALL FIRST DETERMINE THAT ALL OF THE ABOVE CONDITIONS ARE PRESENT BEFORE A VARIANCE CAN BE GRANTED. IT WAS THE OPINION OF THE BOARD OF ZONING APPEALS, AS EXPRESSED IN A RESOLUTION ADOPTED BY A VOTE OF TWO TO ONE, THAT ALL FOUR OF THE CONDITIONS WERE NOT PRESENT AND THEREFORE THE VARIANCE COULD NOT BE GRANTED.

Luis A. Casado
LUIS A. CASADO, CHAIRMAN

SUBJECT: BZA 8-60, BZA 8-60 AMENDED

AN APPLICATION FOR A VARIANCE TO PERMIT THE EXCAVATION AND DEVELOPMENT OF A PRIVATE LAKE IN THE GENERAL AREA BETWEEN 13TH AND 17TH STREETS EAST OF THE FLOOD CONTROL RIGHT-OF-WAY, WAS FILED BY DOLAN H. WELSH, AUTHORIZED AGENT FOR ELLEN C. OTT, ON MARCH 15, 1960. AT THE REQUEST OF MR. WELSH, THE BOARD OF ZONING APPEALS CALLED A SPECIAL MEETING FOR MARCH 31, 1960. THIS APPLICATION, WHEN HEARD BEFORE THE BOARD OF ZONING APPEALS, WAS DENIED FOR LACK OF JURISDICTION. THIS ACTION WAS PREDICATED ON THE ADVICE OF THE BOARD OF ZONING APPEALS ATTORNEY, EUGENE PIRTLE, AND AFTER HEARING ARGUMENTS FROM THE APPLICANT'S COUNSEL. THE BOARD'S COUNSEL ADVISED THAT "THERE WAS LACK OF JURISDICTION BECAUSE THE BOARD OF ZONING APPEALS IS AN ADMINISTRATIVE BODY (G.S. 1949. 12-714,715) WITH 'POWER TO HEAR APPEALS FROM THE REFUSAL OF BUILDING PERMITS AND TO PERMIT EXCEPTIONS TO, OR VARIATIONS FROM, THE ZONING REGULATIONS IN THE CLASSES OF CASES OR SITUATIONS AND IN ACCORDANCE WITH THE PURPOSE, CONDITIONS, AND PROCEDURES SPECIFIED BY THE GOVERNING BODY OF THE CITY." COUNSEL FURTHER ADVISED THE BOARD THAT "THIS STATE STATUTE AND THE ORDINANCE CREATING THE BOARD OF ZONING APPEALS GIVES NO LEGISLATIVE AUTHORITY TO THE BOARD OF ZONING APPEALS TO ALLOW OR TO DETERMINE CONDITIONAL USES OF LAND SUCH AS THE EXCAVATION OF A PRIVATE LAKE." ON THE BASIS OF THIS ADVICE, AND WITHOUT HEARING THE MERITS OF THE APPLICATION, THE BOARD OF ZONING APPEALS TOOK THE POSITION THAT IT HAD NO JURISDICTION TO GRANT A VARIANCE ALLOWING A PRIVATE LAKE WITHIN THE CITY LIMITS.

THE BOARD ADVISED MR. WELSH THAT IT WOULD HOLD ANOTHER SPECIAL MEETING TO HEAR THE APPLICATION IF THE APPLICATION WAS AMENDED FROM APPLICATION FOR A "VARIANCE FOR A PRIVATE LAKE" TO READ A "VARIANCE FOR THE OPERATION AND MAINTENANCE OF A BORROW PIT." THE BOARD ALSO ADVISED MR. WELSH OF HIS RIGHTS OF APPEAL TO THE BOARD OF CITY COMMISSIONERS UNDER THE PRESENT CITY ORDINANCE. AT THE REQUEST OF MR. WELSH AND HIS COUNSEL, THE BOARD OF ZONING APPEALS HELD A SPECIAL MEETING UPON THE APPLICATION FOR A BORROW PIT ON APRIL 18, 1960.

AT THE MEETING OF APRIL 18, 1960, THE BOARD OF ZONING APPEALS UPON PROPER NOTICE AND LEGAL ADVERTISING, AND AFTER DISCUSSION, TOOK JURISDICTION OF THE BORROW PIT REQUEST. THE MINUTES INDICATE THAT MR. PIRTLE REMINDED THE BOARD THAT ITS AUTHORITY TO ACT ON ANY MATTER COMES FROM THE CITY ORDINANCE ADOPTED BY THE CITY COMMISSION AND SUGGESTED TO THE BOARD THAT IT IS AN ADMINISTRATIVE BODY AND DOES NOT HAVE LEGISLATIVE POWER. MR. PIRTLE ALSO NOTED, HOWEVER, THAT THE BOARD OF ZONING APPEALS HAD ON TWO PREVIOUS OCCASIONS ASSUMED JURISDICTIONS FOR AN APPLICATION FOR VARIANCE TO PERMIT A BORROW PIT WITHIN THE CITY LIMITS. THE MOTION TO ACCEPT JURISDICTION WAS CARRIED BY A VOTE OF TWO TO ONE (BRADFORD HALL AND KENNETH BECK VOTING IN FAVOR AND DAVE LESTER VOTING IN OPPOSITION). MR. CASADO AS CHAIRMAN, DID NOT VOTE.

MR. DOLAN WELSH AND HIS ATTORNEY, PAUL V. SMITH, PRESENTED THEIR ARGUMENTS IN FAVOR OF THE APPLICATION FOR THE BORROW PIT. FOLLOWING THE PRESENTATION, KENT FRIZZELL, ATTORNEY, REPRESENTING

CERTAIN ADJACENT PROPERTY OWNERS AND OTHER PROPERTY OWNERS WITHIN THE GENERAL AREA; AND NEVILLE McLEMORE, ATTORNEY FOR MR. KING, OWNER OF PROPERTY TO THE NORTH OF THE AREA, APPEARED IN OPPOSITION TO THE GRANTING OF THE APPLICATION FOR THE BORROW PIT. THEIR ARGUMENTS WERE BASED PRIMARILY ON THE GROUNDS THAT THE FOUR CONDITIONS AS SET FORTH IN THE ORDINANCE AS A NECESSARY REQUIREMENT FOR APPROVAL OF THE VARIANCE (UNIQUENESS, ABSENCE OF ADVERSE AFFECT ON ADJACENT PROPERTY OWNERS, ABSENCE OF UN-NECESSARY HARDSHIPS, AND THE ABSENCE OF AFFECT OF PUBLIC HEALTH, SAFETY, ORDER, AND CONVENIENCE) HAD NOT BEEN MET. THERE WAS ALSO A PROPERTY OWNER WHO SPOKE IN FAVOR OF THE APPLICATION. MR. K. O. TAYLOR, CONSULTING ENGINEER, GAVE INFORMATION REGARDING THE PROBABILITY OF SAND BOILS OCCURRING IN THE AREA. MR. KIRKPATRICK, A RESIDENT OF THE AREA, SPOKE IN OPPOSITION TO THE APPLICATION.

TWO MOTIONS WERE MADE BUT NOT VOTED ON AS BOTH FAILED TO OBTAIN A SECOND. ONE, THAT THE APPLICATION BE DENIED BEING THAT THE FOUR CONDITIONS REQUIRED BY ORDINANCE WERE NOT ALL PRESENT; AND TWO, A MOTION THAT THE APPLICATION BE APPROVED SUBJECT TO THE SPECIFIC CONDITIONS WHICH HAVE BEEN OFFERED BY MR. PAUL SMITH ON BEHALF OF THE APPLICANT, DOLAN WELSH. MR. LESTER INDICATED THAT HE DID NOT WISH TO SECOND EITHER OF THE MOTIONS INASMUCH AS IN HIS OPINION, THE BOARD HAD NO JURISDICTION TO DETERMINE THE MATTER. COUNSEL ADVISED THE BOARD THAT THE CHAIRMAN COULD NOT SECOND THE MOTION AND COULD VOTE ONLY IN THE EVENT OF A TIE. MR. HALL THEN MOVED THAT INASMUCH AS THE FOUR CONDITIONS AS REQUIRED BY ORDINANCE WERE NOT ALL PRESENT, THAT THE APPLICATION BE DENIED. MR. BECK SECONDED THE MOTION, NOTHING THAT HE DID SO ONLY SO THAT A VOTE COULD BE HAD ON THE MATTER AND A DETERMINATION MADE AT

THIS TIME. THE VOTE WAS A TIE, ONE IN FAVOR AND ONE OPPOSED. THE CHAIRMAN VOTED IN FAVOR OF THE MOTION TO DENY THE APPLICATION AND THE MOTION TO DENY CARRIED BY A VOTE OF TWO TO ONE. MR. LESTER ABSTAINED FROM VOTING.

ALTHOUGH MUCH DISCUSSION WAS HAD DURING THE HEARING OF APRIL 18, 1960, BY MR. WELSH AND HIS ATTORNEY AS TO THE PROPOSED METHODS OF CONSTRUCTION, LANDSCAPING, DEVELOPMENT, AND MAINTENANCE, IT IS RECOGNIZED THAT THE APPLICANT AND HIS ATTORNEY FAILED TO IDENTIFY SPECIFICALLY THE FOUR POINTS SET OUT IN THE ORDINANCE WHICH MUST BE SHOWN TO BE PRESENT BEFORE ANY VARIANCE MAY BE APPROVED. AS NOTED, THE FOUR POINTS WERE NOT SPECIFICALLY POINTED OUT AS HAVING BEEN MET BY THE APPLICANT; HOWEVER, IN THEIR GENERAL PRESENTATION IT COULD BE INFERRED THAT PERHAPS TWO OF THE POINTS HAD BEEN MET. ONE, THAT THE CONDITION IS UNIQUE AND NOT NORMALLY FOUND IN THE SAME ZONING DISTRICT IN THAT IT IS BOUNDED BY THE RAILROAD, THE FLOOD CONTROL PROJECT AND THE LAND IS SOMEWHAT LOWER THAN NORMAL, CREATING CERTAIN DRAINAGE AND DEVELOPMENT PROBLEMS. THE OTHER CONDITION WHICH MIGHT POSSIBLY BE CONSIDERED AS HAVING BEEN MET IS THAT THE PUBLIC WELFARE, HEALTH, SAFETY, AND MORALS, ORDER AND CONVENIENCE WERE NOT ADVERSELY AFFECTED, PROVIDED THAT THE CONDITIONS PROPOSED TO BE ENFORCED ON THE APPLICATION ON A VOLUNTARY BASIS BY THE APPLICANT WOULD SATISFY THIS REQUIREMENT. HOWEVER, THERE IS CONSIDERABLE DOUBT THAT THE OTHER TWO CONDITIONS: 1. THE GRANTING OF VARIANCE WILL NOT ADVERSELY EFFECT THE RIGHTS OF THE ADJACENT PROPERTY OWNERS OR RESIDENTS; AND 2. THE STRICT APPLICATION OF THE ENFORCEMENT PROVISIONS OF THE

ZONING ORDINANCE WILL CONSTITUTE UNNECESSARY HARDSHIP ON THE PROPERTY OWNER REPRESENTING APPEAL COULD BE FOUND TO BE PRESENT. SINCE THE ORDINANCE IS EXPLICITE IN THAT ALL FOUR CONDITIONS MUST BE FOUND TO BE PRESENT, THE BOARD ACTED TO DENY THE APPLICATION.

APPEALS - THE APPLICANT, THROUGH HIS ATTORNEY, FILED AN APPEAL TO BOTH DECISIONS OF THE BOARD OF ZONING APPEALS WITHIN THE TEN DAY PERIOD PRESCRIBED BY ORDINANCE. IT IS AT THIS POINT THAT THE APPLICATION NOW STANDS.

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

APRIL 22, 1960

TO WHOM IT MAY CONCERN:

RE: BZA 8-60 AND
BZA 8-60 (AMENDED)

THE BOARD OF ZONING APPEALS HAS BEEN ADVISED BY THE CITY CLERK THAT AN APPEAL HAS BEEN FILED ON EACH OF TWO DECISIONS RENDERED BY THE BOARD IN THE TWO SUBJECT CASES.

WE ARE FURTHER ADVISED BY THE CITY COMMISSIONERS THAT THESE APPEALS WILL BE PRESENTED TO THE CITY COMMISSION AT ITS MEETING ON APRIL 26, 1960. IF YOU CARE TO SPEAK ON THESE APPEALS YOU MAY WISH TO APPEAR BEFORE THE CITY COMMISSION AT THAT TIME.

THE MEETING OF THE BOARD OF CITY COMMISSIONERS WILL BEGIN AT 9 A.M. ON THE DATE INDICATED AND WILL BE HELD IN ROOM 201 CITY BUILDING, 204 SOUTH MAIN, WICHITA, KANSAS.


LELAND R. EDMONDS
SECRETARY

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

NOTICE TO ADJOINING PROPERTY OWNERS

AN APPLICATION FOR A VARIANCE HAS BEEN FILED BY Mrs. ELLEN C. OTRA OF 1405 N. WEST STREET, WICHITA, KANSAS, AS PROVIDED BY SECTION 21-27 OF THE CODE OF THE CITY OF WICHITA. THE APPLICANT DESIRES TO OPERATE AND MAINTAIN A BORROW PIT ON PROPERTY LOCATED BETWEEN 13TH AND 17TH STREETS, EAST OF THE FLOOD CONTROL CHANNEL AND RAILROAD RIGHT-OF-WAY AND LEGALLY DESCRIBED AS:

A TRACT IN THE SE $\frac{1}{4}$ OF SECTION 11, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF 6TH P.M., DESCRIBED AS FOLLOWS: BEGINNING 1090.62 FEET WEST AND 290 FEET NORTH OF THE SE CORNER OF SAID SE $\frac{1}{4}$, THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SE $\frac{1}{4}$, 246.87 FEET TO THE P.C. OF A CURVE, THENCE ON A CURVE TO THE LEFT HAVING A DEFLECTION ANGLE OF 39° 24' AND A RADIUS OF 279.29 FEET A DISTANCE OF 192.06 FEET TO THE P.T. OF SAID CURVE, THENCE NORTHWESTERLY ON A TANGENT TO SAID CURVE, 1067.05 FEET TO THE P.C. OF A CURVE, THENCE ON A CURVE TO THE RIGHT HAVING A DEFLECTION ANGLE OF 90° AND A RADIUS OF 110 FEET A DISTANCE OF 172.79 FEET TO THE P.T. OF SAID CURVE, THENCE NORTHEASTERLY ON A TANGENT TO SAID CURVE, 80 FEET, THENCE NORTHWESTERLY AT RIGHT ANGLES TO A POINT 1920 FEET WEST OF THE EAST LINE OF SAID SE $\frac{1}{4}$, THENCE NORTH PARALLEL TO AND 1920 FEET FROM THE EAST LINE OF SAID SE $\frac{1}{4}$ TO THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY #235 AS CONDEMNED IN CASE A-77187, THENCE SOUTHWESTERLY ON SAID HIGHWAY RIGHT-OF-WAY LINE TO THE EAST RIGHT-OF-WAY LINE OF THE MISSOURI PACIFIC R.R., THENCE SOUTHEASTERLY ON SAID R.R. RIGHT-OF-WAY LINE TO A POINT 180 FEET NORTH OF THE SOUTH LINE OF SAID SE $\frac{1}{4}$, MEASURED AT RIGHT ANGLES TO SAID SOUTH LINE OF SAID SE $\frac{1}{4}$, THENCE EAST PARALLEL TO SAID SOUTH LINE OF SAID SE $\frac{1}{4}$, 140 FEET, THENCE NORTHEASTERLY TO THE POINT OF BEGINNING, CONTAINING 27.2 ACRES, MORE OR LESS.

THIS APPLICATION HAS BEEN ASSIGNED CASE No. 8-60 (AMENDED). A HEARING WILL BE HELD BY THE BOARD OF ZONING APPEALS ON MONDAY, APRIL 18, 1960, AT 1:30 P.M., IN ROOM 401, CITY BUILDING ANNEX, 104 SOUTH MAIN, WICHITA, KANSAS, AT WHICH TIME YOU MAY APPEAR, IF YOU SO DESIRE, EITHER IN PERSON OR BY AGENT OR ATTORNEY.


LELAND R. EDMONDS, SECRETARY
BOARD OF ZONING APPEALS

RE: APPLICATION TO BOARD OF ZONING APPEALS OF
MRS. ELLEN C. OTT BY DOLAN H. WELSH, OPTIONEE

The applicant voluntarily offers to impose the following conditions in the event the request for variance is granted:

- 1) The excavation shall not approach nearer than 10 feet to the railroad right-of-way or nearer than 50 feet to the highway right-of-way.
- 2) The grade shall be no more steep than 5 horizontal to 1 vertical on all slopes, except next to the railroad right-of-way, where the grade shall be no more steep than 3 horizontal to 1 vertical.
- 3) The de-watering process during excavation shall be by a wellpoint system.
- 4) All dirt taken from the excavation shall be used exclusively for the construction of Interstate Highway #235.
- 5) The minimum water depth, with the exception of the area immediately around the bank line, shall be 3 feet.
- 6) All slopes shall be landscaped and planted with grass, trees shall be planted along the railroad and highway right-of-ways, and surface drainage shall be controlled to prevent any contaminating material from entering the water.
- 7) Restrictive covenants running with the land shall prohibit swimming and the operation of motor boats in the lake, and shall prohibit any building or development in the lake area surrounding the lake without the approval of the Wichita-Sedgwick County Metropolitan Area Planning Commission.
- 8) Permanent care, maintenance and supervision of the lake and lake area shall be exercised through the medium of a non-profit corporation. After the excavation has been completed, the lake area shall be conveyed by warranty deed to such corporation, and as consideration for such conveyance the corporation shall agree to assume the care, maintenance and supervision of the lake and lake area. Membership in the corporation shall be compulsory for the purchasers of all lots to be platted in the now unplatted property to the East of the lake area, and a majority of the Board of Directors of the corporation shall be owners of such lots, but membership in the corporation shall be open to other resident owners of property in the West Lynn Additions.

- 9) Restrictive covenants running with the land, to be approved by the City's Legal Department, shall be imposed on the lake area and on the unplatted adjacent property to the East. These restrictive covenants shall authorize the non-profit corporation to which the lake area is conveyed to assess and obligate the lots to be platted in the now unplatted property to the East of the lake area for the payment of an annual assessment, based on the area of such lots, sufficient with any other funds available to provide for the care, maintenance and supervision of the lake and lake area.
- 10) Performance of conditions through 5 above shall be secured by a bond to be filed with the City Clerk by the contractor doing the excavation.
- 11) Compliance with condition 6 above, preparation and filing of the restrictive covenants under conditions 7 and 9 above, organization of the non-profit corporation under condition 8 above, and conveyance of the lake area to said corporation, shall be secured by a bond to be filed with the City Clerk by the optionee.

Mrs. Ellen C. Ott

By Doan H. Welsh, Optionee

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

APRIL 22, 1960

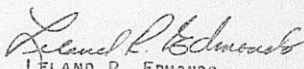
TO WHOM IT MAY CONCERN:

RE: BZA 8-60 AND
BZA 8-60 (AMENDED)

THE BOARD OF ZONING APPEALS HAS BEEN ADVISED BY THE CITY CLERK THAT AN APPEAL HAS BEEN FILED ON EACH OF TWO DECISIONS RENDERED BY THE BOARD IN THE TWO SUBJECT CASES.

WE ARE FURTHER ADVISED BY THE CITY CLERK THAT THESE APPEALS WILL BE PRESENTED TO THE CITY COMMISSION AT ITS MEETING ON APRIL 26, 1960. IF YOU CARE TO SPEAK ON THESE APPEALS YOU MAY WISH TO APPEAR BEFORE THE CITY COMMISSION AT THAT TIME.

THE MEETING OF THE BOARD OF CITY COMMISSIONERS WILL BEGIN AT 9 A.M. ON THE DATE INDICATED AND WILL BE HELD IN ROOM 201 CITY BUILDING, 204 SOUTH MAIN, WICHITA, KANSAS.


LELAND R. EDMONDS
SECRETARY

JUNE 2, 1960

MR. PAUL SMITH, ATTORNEY
SMITH, SHAY, FARMER & WETTA
929 BEACON BUILDING
WICHITA 2, KANSAS

RE: S/D60-7, WEST LYNN
LAKE ADDITION

DEAR MR. SMITH:

IN ACCORDANCE WITH YOUR LETTER OF JUNE 1, 1960,
REQUESTING THE WITHDRAWAL OF SUBJECT SUBDIVISION, WE
ARE ENCLOSING THE FOLLOWING:

1. ORIGINAL COPY OF THE APPLICATION
FOR SUBDIVISION APPROVAL.
2. ALL EXTRA COPIES OF THE SKETCH AND
PRELIMINARY PLAT.

THE PRELIMINARY PLAT IS SCHEDULED FOR HEARING BY
THE SUBDIVISION COMMITTEE OF THE METROPOLITAN AREA PLAN-
NING COMMISSION ON JUNE 9, 1960. YOUR LETTER REQUESTING
WITHDRAWAL WILL BE SUBMITTED AT THAT TIME IN ORDER TO
COMPLETELY CLOSE THIS CASE.

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

VERY TRULY YOURS,

LELAND R. EDMONDS
ASSISTANT PLANNING DIRECTOR

LRE:GOE:BR

CC: K. O. TAYLOR
524 1/2 NORTH MARKET
WICHITA, KANSAS



THE CITY OF WICHITA, KANSAS

BOARD OF ZONING APPEALS - 104 S. MAIN - WICHITA 2, KANSAS

MAY 23, 1960

BOARD OF CITY COMMISSIONERS
CITY BUILDING
WICHITA, KANSAS

GENTLEMEN:

SUBJECTS: BZA 8-60 AND
8-60 (AMENDED)

THE FOLLOWING IS A REPORT REGARDING THE APPLICATION OF MR. DOLAN WELSH, AUTHORIZED AGENT OF MRS. ELLEN C. OTT, OWNER OF THE PROPERTY IN THE GENERAL AREA BETWEEN 13TH AND 17TH STREET AND EAST OF THE FLOOD CONTROL AND RAILROAD RIGHT-OF-WAY FOR A VARIANCE TO PERMIT A PRIVATE LAKE, AND SUBSEQUENTLY A BORROW PIT. THIS APPLICATION FIRST CAME BEFORE THE BOARD OF ZONING APPEALS AT A SPECIAL MEETING HELD ON MARCH 31, 1960. THIS APPLICATION WAS ORIGINALLY SUBMITTED AS A REQUEST FOR A VARIANCE FOR THE EXCAVATION AND DEVELOPMENT OF A PRIVATE LAKE. PROPER NOTICES, BOTH WRITTEN AND BY PUBLICATION WERE HAD ON THIS CASE AND THE BOARD CONSIDERED THE APPLICATION. THE MATTER OF JURISDICTION WAS FIRST CONSIDERED, AND ON ADVICE OF THE BOARD OF ZONING APPEALS COUNSEL; THE BOARD FOUND THAT IT LACKED JURISDICTION TO HEAR THIS APPLICATION AS IT WAS SUBMITTED, FOR THE EXCAVATION AND DEVELOPMENT OF A PRIVATE LAKE. THE BOARD AT THIS MEETING, DID HEAR THE ADVICE AND ARGUMENTS OF BOTH THE COUNSEL FOR THE APPLICANT AND OF ITS OWN COUNSEL. THE COUNSEL OF THE BOARD OF ZONING APPEALS DID ADVISE THAT, IN HIS OPINION, THE BOARD OF ZONING APPEALS HAD NO JURISDICTION TO ALLOW THE APPLICATION FOR A VARIANCE TO PERMIT EXCAVATION AND DEVELOPMENT OF A LAKE. THE REASON BEING:

"THE STATE STATUTE AUTHORIZING THE CREATION OF A BOARD OF ZONING APPEALS GIVES NO SUCH AUTHORITY AND THE ORDINANCE CREATING THE BOARD OF ZONING APPEALS UNDER THAT STATUTE GIVES NO SUCH AUTHORITY. THE ZONING ORDINANCES ARE SILENT AS TO THE RIGHT TO EXCAVATING FOR A LAKE WITHIN THE CITY LIMITS. IN THE ABSENCE OF SUCH LEGISLATION, THE BOARD, AS AN ADMINISTRATIVE BODY, IS NOT IN A POSITION TO LEGISLATE AUTHORITY FOR THIS TYPE OF LAND USE."

THE BOARD OF ZONING APPEALS DID ADVISE THE APPLICANT THAT IF HE WISHED TO AMEND HIS APPLICATION TO PROVIDE FOR THE EXCAVATION OPERATION AND MAINTENANCE OF A BORROW PIT, THAT THE BOARD WOULD HOLD A SPECIAL MEETING AT THE EARLIEST POSSIBLE DATE TO HEAR SUCH AN APPLICATION.

THE APPLICANT DID SUBSEQUENTLY AMEND HIS APPLICATION TO PROVIDE FOR EXCAVATION FOR A BORROW PIT IN LIEU OF A PRIVATE LAKE AND PROPER NOTICE BOTH BY LETTER AND BY LEGAL PUBLICATION WAS HAD. THIS APPLICATION IDENTIFIED AS 8-60 (AMENDED) WAS HEARD AT A SPECIAL MEETING ON APRIL 18, 1960, BY THE BOARD OF ZONING APPEALS. AGAIN, LEGAL COUNSEL ADVISED THAT THE BOARD OF ZONING APPEALS IS AN ADMINISTRATIVE BODY AND DOES NOT HAVE LEGISLATIVE POWERS. IT WAS NOTED BY THE BOARD OF ZONING APPEALS, HOWEVER, THAT JURISDICTION HAD BEEN ACCEPTED ON TWO PREVIOUS APPLICATIONS FOR VARIANCE TO PERMIT A BORROW PIT WITHIN THE CITY LIMITS. BY A VOTE OF TWO TO ONE, THE BOARD OF ZONING APPEALS DID TAKE JURISDICTION FOR CASE NO. BZA 8-60 (AMENDED).

MR. DOLAN WELSH PRESENTED HIS ARGUMENTS FOR THE APPROVAL OF THE APPLICATION, ASSISTED BY HIS ATTORNEY, MR. PAUL V. SMITH. MR. KENT FRIZZELL, ATTORNEY, AND MR. NEVILLE MCLENORE, ATTORNEY, APPEARED IN OPPOSITION TO THE PROPOSED APPLICATION. ALSO, OTHER PARTIES APPEARED BOTH IN FAVOR AND IN OPPOSITION TO THE PROPOSED CHANGE. MR. WELSH AND HIS ATTORNEY WENT INTO MUCH DETAIL AS TO THEIR PROPOSED DEVELOPMENT, IN PARTICULAR THE MANNER IN WHICH THE AREA WOULD BE LANDSCAPED AND DEVELOPED AND BY WHICH MAINTENANCE WOULD BE PROVIDED.

IT WAS POINTED OUT BY THE SECRETARY THAT IN ORDER TO APPROVE THE APPLICATION, THE BOARD MUST FIRST FIND THAT THE FOLLOWING CONDITIONS ARE PRESENT:

- A) THAT THE VARIANCE DESIRED ARISES FROM SUCH CONDITION WHICH IS UNIQUE AND WHICH IS NOT ORDINARILY FOUND IN THE SAME ZONING DISTRICT;
- B) THAT THE GRANTING OF THE PERMIT FOR THE VARIANCE WILL NOT ADVERSELY AFFECT THE RIGHTS OF ADJACENT PROPERTY OWNERS OR RESIDENTS;
- C) THAT THE STRICT APPLICATION OF THE ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE WILL CONSTITUTE UNNECESSARY HARDSHIP UPON THE PROPERTY OWNER REPRESENTED IN THE APPEAL;
- D) THAT THE VARIANCE DESIRED WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY OR GENERAL WELFARE.

IT IS THE FEELING OF THE BOARD OF ZONING APPEALS REPRESENTING THE MAJORITY OPINION OF THE VOTE, THAT

- ITEM A) ABOVE WAS MET, IN THAT THIS PARTICULAR AREA IS UNIQUE IN THAT IT IS BOUNDED BY THE FLOOD CONTROL PROJECT AND THE RAILROAD RIGHT-OF-WAY AND IS SOMEWHAT LOWER THAN USUAL LAND AREAS, CREATING DRAINAGE PROBLEMS.

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MAY 23, 1960

- THAT THE GRANTING OF THE PERMIT FOR THE VARIANCE WILL NOT ADVERSELY AFFECT THE RIGHTS OF ADJACENT PROPERTY OWNERS OR RESIDENTS, WAS NOT MET BY THE FACT THAT CERTAIN ADJACENT PROPERTY OWNERS AND PROPERTY OWNERS IN THE GENERAL AREA, DID OBJECT AND DID FEEL THAT THE PROJECT AND DEVELOPMENT WOULD ADVERSELY AFFECT THEIR RIGHTS AS PROPERTY OWNERS.
- STRICT APPLICATION OF THE ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE WILL CONSTITUTE AN UNNECESSARY HARDSHIP ON THE PROPERTY OWNER REPRESENTED IS NOT MET AND THAT NO INDICATION OF EITHER FINANCIAL LOSS OR OTHER HARDSHIP WAS MADE BY THE APPLICANT, MRS. ELLEN C. OTT, OR BY THE AGENT OF MRS. OTT, MR. DOLAN WELSH.
- THAT THE VARIANCE DESIRED WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY AND GENERAL WELFARE WAS NOT MET IN THAT CONCLUSIVE INFORMATION AND/OR PROOF AS TO THE ABOVE POINTS WAS NOT SUBMITTED AND THAT SPECIFIC CONDITIONS AS PROPOSED WERE DEEMED ADEQUATE TO PROTECT THE GENERAL PUBLIC AND THE CHILDREN IN THE GENERAL AREA.

INASMUCH AS THE ORDINANCE SPECIFICALLY REQUIRED THAT THE BOARD FIND ALL FOUR OF THE CONDITIONS TO BE PRESENT AND NOT JUST ONE OR MORE, IT WAS THE DECISION OF THE MAJORITY OF THOSE VOTING OF THE BOARD OF ZONING APPEALS, THAT THIS APPLICATION FOR A BORROW PIT BE DENIED.

RESPECTFULLY SUBMITTED,

LUIS A. CASADO
CHAIRMAN

Mr. Edmonds. |

I have made copies of
this for Commissioners. -
Mr. Carlton brought
these in to Mr. Backstrom.

Dracena

MISSOURI PACIFIC RAILROAD COMPANY

BZA
8-60

H. B. DAVIS
SUPERINTENDENT

WICHITA, KAN.

May 15, 1960

603

Mr. Leland R. Edmonds
Asst. Planning Director
City of Wichita
104 South Main Street
Wichita, Kansas

Dear Mr. Edmonds:

This is in regard to request for comments as to conditions which we would recommend in connection with application for a borrow pit to be located generally north of 13th Street; south of 17th Street east of the Flood Control Project and Railroad and west of the West Lynn Additions.

As we understand the construction plan, the boundary of area is to be 10 feet from our right-of-way line and edge of excavation is to be 9 feet from boundary with excavation to have vertical face for 3 foot depth and then 3 to 1 slope to bottom of borrow pit with approximate depth of 10 feet.

If our understanding of plan is correct, we have no objection to proposed permit as amended.

We appreciate your extending us this courtesy in bringing this matter to our attention for our comments.

Yours truly,


Superintendent

cc- G. W. Carleton

MISSOURI PACIFIC RAILROAD COMPANY

H. B. DAVIS
SUPERINTENDENT

WICHITA, KAN.

May 16, 1960

603-190

Mr. Leland R. Edmonds
Asst. Planning Director
City of Wichita
104 South Main Street
Wichita, Kansas

Dear Mr. Edmonds:

Your letter dated May 10, to Mr. G. W. Carleton, was referred to us for comments in connection with conditional use permit application for a sand plant in the vicinity of 29th Street North and Ridge Road near Wichita, Kansas.

It is noted that one of the conditions is that no excavation be permitted nearer than 100 feet to the Railroad right-of-way line. We have no objection to excavation within 50 feet of our right-of-way line, provided that side slopes of excavation are not steeper than 5 foot horizontal to 1 vertical.

Wish to express our appreciation to you for bringing this matter to our attention; also for the opportunity to express our views and comments.

Yours truly,

H. B. Davis
Superintendent

cc- G. W. Carleton

BOARD OF ZONING APPEALS

MAY 11, 1960

FRANK H. BACKSTROM, CITY MANAGER

LELAND R. EDMONDS, SECRETARY

BZA 8-60, 8-60 AMENDED.

THE DOCUMENTS FORWARDED TO THE DIRECTOR OF PLANNING IN THE DOLAN WELSH MATTER HAVE BEEN EXAMINED. AS SECRETARY OF THE BOARD OF ZONING APPEALS, THE FOLLOWING COMMENTS ARE SUBMITTED. ALL OF THE DOCUMENTS SUBMITTED AND ALL OF THE PRESENTATION WHICH HAS BEEN MADE BEFORE THE BOARD OF CITY COMMISSIONERS HAS OVERLOOKED THE BOARD OF ZONING APPEALS IN THIS MATTER. FROM THE STANDPOINT OF PROTECTION TO THE CITY, AS WELL AS PROTECTION TO THE APPLICANT HIMSELF, THE BOARD'S POSITION SHOULD BE CLARIFIED.

MR. WELSH ORIGINALLY APPLIED TO THE BOARD OF ZONING APPEALS FOR A "VARIANCE TO THE STRICT APPLICATION OF THE ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE" TO PERMIT THE EXCAVATION, OPERATION AND MAINTENANCE OF A PRIVATE LAKE.

A - LACK OF JURISDICTION

THE BOARD OF ZONING APPEALS RULED THAT IT DID NOT HAVE JURISDICTION TO CONSIDER SUCH AN APPLICATION. IT DID NOT, THEREFORE, CONSIDER THE MERITS OF THE PROPOSAL. THE ADVICE OF CITY COUNSEL, AND ARGUMENTS FROM THE APPLICANT'S COUNSEL WERE CONSIDERED BEFORE THIS DECISION WAS MADE. THIS ACTION WAS REFLECTED IN A FORMAL RESOLUTION, APPROPRIATELY SIGNED BY THE CHAIRMAN AND SECRETARY OF THE BOARD, AND FORWARDED TO THE CITY CLERK; ALL IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 2.12.560 THROUGH 2.12.610 OF THE CODE OF THE CITY OF WICHITA.

IN ACCORDANCE WITH THE PROVISIONS OF THE ABOVE NOTED SECTIONS OF THE CODE, THE APPLICANT FILED AN APPEAL WHEREBY HE APPEALED THE DECISION OF THE BOARD.

CAN AN APPEAL TO THE BOARD OF CITY COMMISSIONERS BE TAKEN ON THE JURISDICTIONAL ISSUE?

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FRANK H. BACKSTROM, CITY MANAGER
MAY 11, 1960

B - BORROW PIT "VARIANCE"

IMMEDIATELY FOLLOWING THE REJECTION OF JURISDICTION BY THE BOARD OF ZONING APPEALS, THE APPLICANT SUBMITTED AN AMENDED APPLICATION BY WHICH HE REQUESTED A "VARIANCE TO THE STRICT APPLICATION OF THE ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE" TO PERMIT THE EXCAVATION, OPERATION AND MAINTENANCE OF A BORROW PIT.

THIS WAS DULY CONSIDERED BY THE BOARD, AFTER NOTICE AND ADVERTISING AS PRESCRIBED BY ORDINANCE, AND AT THE HEARING ON THE BORROW PIT REQUEST, THE BOARD TOOK JURISDICTION. AFTER HEARING THE MERITS OF THE CASE FROM THE PROPONENTS AND THE OPPONENTS, THE BOARD MOVED THAT THE REQUIREMENTS FOR APPROVAL IMPOSED BY ORDINANCE HAD NOT BEEN MET. THEREFORE, THE APPLICATION WAS DENIED.

THIS DENIAL OF APPLICATION FOR VARIANCE WAS APPEALED TO THE CITY COMMISSION BY THE APPLICANT.

C - STATUS OF APPEALS

THE CODE SPECIFIES THAT "UPON RECEIPT OF AN APPEAL, THE BOARD OF CITY COMMISSIONERS SHALL REFER ONE COPY OF THE APPEAL TO THE BOARD OF ZONING APPEALS. THEREUPON, THE BOARD OF ZONING APPEALS SHALL MAKE A REPORT TO THE BOARD OF CITY COMMISSIONERS DISCLOSING IN WHAT RESPECT THE APPLICATION AND FACTS, OFFERED IN SUPPORT THEREOF MET, OR FAILED TO MEET, THE NECESSARY REQUIREMENTS."

BOTH APPEALS OF THE BOARD'S DECISIONS (A AND B ABOVE) WERE PLACED BEFORE THE CITY COMMISSION ON APRIL 26, 1960. THESE APPEALS WERE NOT DISCUSSED AND NO FORMAL ACTION AS REQUIRED BY ORDINANCE WAS TAKEN EXCEPT TO DEFER CONSIDERATION OF THEM. UNDER TERMS OF THE ORDINANCE, THE CITY COMMISSION MUST DISPOSE OF THESE TWO APPEALS BY OBTAINING A REPORT FROM THE BOARD AND THEN DETERMINING THAT IT SHOULD UPHOLD THE TWO DECISIONS OF THE BOARD, OR THAT IT SHOULD REVERSE THE DECISIONS OF THE BOARD.

IT APPEARS THAT THE CITY COMMISSION HAS ONLY HEARD "AN ORAL PRESENTATION".

LELAND R. EDMONDS
SECRETARY

LRE:BR

METROPOLITAN PLANNING

MAY 11, 1960.

FRANK H. BACKSTROM, CITY MANAGER

L. L. LITTLE, DIRECTOR OF PLANNING

DOLAN WELSH REQUEST FOR
BORROW PIT APPROVAL

BY YOUR MEMORANDUM OF MAY 5, 1960, YOU FORWARDED COPIES OF RESTRICTIVE COVENANTS, SPECIFICATIONS FOR DEVELOPMENT, ARTICLES OF INCORPORATION, A PROPOSED AGREEMENT BETWEEN DOLAN WELSH AND THE CITY OF WICHITA, AND A MAP OF THE AREA INVOLVED. YOU REQUESTED COMMENTS PRIOR TO MAY 11 REGARDING THESE ATTACHMENTS.

RESTRICTIVE COVENANTS: IN THE RESTRICTIVE COVENANTS AS PROPOSED, REFERENCE IS MADE TO THE WEST LYNN LAKE ADDITION. REFERENCE ALSO IS MADE TO A REQUIREMENT THAT THE OWNERS OF WEST LYNN LAKE ADDITION SHALL FORM A NON-PROFIT CORPORATION FOR THE CARE AND MAINTENANCE OF A LAKE.

- 1) THIS ADDITION IS NON-EXISTENT AT THIS TIME.
- 2) THE LAND IN QUESTION IS NOW UNPLATTED.
- 3) THERE IS NO SUBDIVISION PROPOSAL PENDING FOR WEST LYNN LAKE ADDITION.
- 4) THE DEPARTMENT HAS NOT BEEN CONTACTED AS IS REQUIRED BY THE SUBDIVISION RULES AND REGULATIONS CONCERNING AN APPLICATION FOR SUBDIVISION APPROVAL OR A PROPOSED SKETCH PLAT FOR THIS ADDITION.

THE DEPARTMENT OF LAW SHOULD BE ADVISED THAT THE PLAT REFERRED TO IN THESE RESTRICTIVE COVENANTS DOES NOT EXIST; AND THIS DEPARTMENT HAS NOT BEEN OFFICIALLY ADVISED THAT ANY IS CONTEMPLATED. WOULD THIS FACT INVALIDATE PART OR ALL OF THE RESTRICTIVE COVENANTS?

COVENANT 11 AS PROPOSED, PROVIDES THAT COVENANTS 1 THROUGH 10 SHALL BE IN EXISTENCE FOR TWENTY YEARS AND THAT THEY WILL BE RENEWED FOR ADDITIONAL PERIODS OF TEN YEARS THEREAFTER, UNLESS A MAJORITY OF THE PROPERTY OWNERS AGREE TO THEIR REMOVAL AND DISCONTINUANCE. NO REFERENCE IS MADE TO COVENANTS 12 THROUGH 21 AS TO THEIR BEING PERPETUALLY IN EXISTENCE OR AS TO THEIR SUSCEPTIBILITY TO BEING CANCELLED AFTER A PERIOD OF TIME.

COVENANTS 12 THROUGH 21 ARE SPECIFICALLY CONCERNED WITH THE CONSTRUCTION, OPERATION AND MAINTENANCE OF THE PRIVATE LAKE.

THESE RESTRICTIONS SHOULD BE ESTABLISHED TO RUN IN PERPETUITY, SHOULD BE SO SPECIFIED IN THIS STATEMENT OF RESTRICTIONS AND BECOME A LIEN AGAINST THE LAND. ANY OPTION TO CANCEL THESE RESTRICTIONS SHOULD BE GIVEN TO THE CITY OF WICHITA RATHER THAN TO THE PROPERTY OWNERS THEMSELVES. IT IS OBVIOUS THAT IF PRIVATE MAINTENANCE IS NOT

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ASSURED IN PERPETUITY, THEN MAINTENANCE WILL AT SOME TIME,
BECOME THE RESPONSIBILITY OF THE PUBLIC.

THE RESTRICTIONS PROVIDE THAT THERE WILL BE NO SWIMMING ALLOWED
IN THE LAKE AND THAT THERE WILL BE NO MOTORBOATS IN THE LAKE.
PRIOR CONVERSATIONS WITH THE PROPONENT OF THIS LAKE INDICATED
THAT HIS ONLY PLAN FOR BOATING WOULD BE RESTRICTED CANOEING, AND
THAT NO FISHING WOULD BE PERMITTED IN THIS LAKE. ONE CONCERN
IS THAT THIS LAKE MIGHT BECOME A COMMERCIAL ENTERPRISE IN FUTURE
YEARS. IF FISHING IS PERMITTED OR IF ALL BOATS OTHER THAN POWER
BOATS ARE PERMITTED, THERE SEEMS TO BE A LIKELIHOOD THAT THIS
MIGHT LEAD TO REQUESTS TO RENT BOATS, TO SELL SOME FISHING
SUPPLIES, ETC.

THIS CONDITION NOW EXISTS AT THE RITCHIE SAND PIT SOUTH OF 21ST
STREET NORTH AND WOODLAND WHERE A 50¢ CHARGE IS MADE FOR FISHING.

SPECIFICATIONS FOR DEVELOPMENT: THE ADEQUACY OF THE SPECIFICA-
TIONS FOR DEVELOPMENT IS AN ENGINEERING CONCERN. WE NOTE HOWEVER,
THAT AN EXCAVATION WITH A THREE TO ONE SLOPE IS PROPOSED, TO
BEGIN ONLY NINE FEET AWAY FROM THE RIGHT-OF-WAY LINE OF THE
MISSOURI PACIFIC RAILROAD. WE SUGGEST THAT THE MISSOURI PACIFIC
BE SPECIFICALLY CONTACTED IN REGARD TO THIS PART OF THE PROPOSAL,
SO THAT THE EFFECT OF CONSTRUCTION ON THE STABILITY OF ITS TRACKAGE
AND ROAD BED CAN BE MADE.

AGREEMENT:

POINT 3: "WELSH AGREES TO PLANT APPROPRIATE SCREENING, TREES AND
SHRUBBERY FOR THE BEAUTIFICATION OF THE PARK AREA ALONG THE RAIL-
ROAD AND HIGHWAY RIGHT-OF-WAY." IT SEEMS THAT SCREENING AND
BEAUTIFICATION IS OBVIOUSLY NECESSARY TO THE SUCCESS OF THIS PROJECT.
IF THIS IS TRUE, IT WOULD APPEAR THAT A MORE SPECIFIC STATEMENT
SHOULD BE MADE AS TO THE TYPE OF TREES, THE NUMBER OF ROWS OF
TREES, ETC., WHICH WILL BE REQUIRED. WE WOULD SUGGEST THAT THE SOIL
CONSERVATION SERVICE OF THE U. S. DEPARTMENT OF AGRICULTURE SHOULD
BE CONTACTED FOR ITS ASSISTANCE IN DETERMINING THE TYPES OF TREES
BEST SUITED TO THE PARTICULAR CONDITIONS IN THIS LOCATION, AS HAS
BEEN DONE IN CONDITIONAL USE PERMITS UNDER THE TERMS OF THE COUNTY
ZONING RESOLUTION. CONSIDERATION ALSO SHOULD BE GIVEN TO THE EFFECT
OF TREES ON THE STABILITY OF THE BANKS OF THE RAILROAD RIGHT-OF-WAY.

POINT 11: THE PROPONENT OFFERS A PERFORMANCE BOND IN THE AMOUNT OF
\$13,000 TO GUARANTEE THE TERMS OF THIS AGREEMENT FOR A TWO YEAR
PERIOD. THIS IS BASICALLY TO PROVIDE FOR LANDSCAPING; TREE PLANTING,
SODDING OR SEEDING AS MAY BE NECESSARY. WE WOULD SUGGEST THAT THIS
AMOUNT BE REVIEWED AND APPROVED BY THE DIRECTOR OF THE PARK BOARD TO
DETERMINE WHETHER, IN THE TERMS OF HIS EXPERIENCE, IT WOULD BE AN
ADEQUATE AMOUNT TO PAY FOR SUCH WORK IN THE EVENT OF DEFAULT BY THE
APPLICANT. WE SUGGEST THAT THE PERFORMANCE BOND SHOULD BE CORPORATE.

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MAY 11, 1960

PROPOSED PLAT: THE MAP WHICH WAS ATTACHED APPEARS TO BE A SKETCH PROPOSAL OF THE MANNER IN WHICH THIS PROPERTY MAY ULTIMATELY BE SUBDIVIDED. AS NOTED EARLIER, THIS PROPERTY IS NOT NOW SUBDIVIDED, NOR IS THERE AN APPLICATION ON FILE REQUESTING SUBDIVISION APPROVAL.

SUBDIVISION OF LAND IS SPECIFICALLY CONTROLLED BY STATE LAW AND THE SUBDIVISION RULES AND REGULATIONS FOR THE WICHITA METROPOLITAN AREA. A SUBDIVISION OF THIS TRACT WOULD, THEREFORE, HAVE TO FOLLOW THE PRESCRIBED PROCEDURE TO GAIN APPROVAL AND WOULD HAVE TO BE APPROVED BY BOTH THE METROPOLITAN AREA PLANNING COMMISSION AND THE CITY COMMISSION. THIS WOULD REQUIRE ABOUT 60 DAYS OF PROCESSING TIME.

IF IT CAN BE ASSUMED THAT THE ATTACHED MAP IS IN FACT A PROPOSED PLAT OF THE AREA, THE FOLLOWING COMMENTS ARE APPROPRIATE:

1. THE PLAT HAS NOT BEEN SUBMITTED TO THE PLANNING DEPARTMENT FOR CONSIDERATION AS REQUIRED BY RULES AND REGULATIONS AND BY STATE STATUTE.
2. THE PROPOSED BLOCK 4 AT THE SOUTH END OF THE AREA IN QUESTION IS A TRACT MUCH LARGER THAN THE OTHER LOTS. IS IT FOR RESIDENTIAL USE? THERE IS NO INDICATION OF THE ANTICIPATED USE FOR THIS BLOCK.
3. THE PROPOSED PLAT SUGGESTS SEVERAL HUNDRED FEET OF PRIVATE ROAD. THE SUBDIVISION CONTROL ORDINANCE RECENTLY SUBMITTED BY THE CITY COMMISSION TO THE PLANNING COMMISSION FOR REVIEW AND REPORT, CONTAINS A PROVISION IN IT SPECIFICALLY PROHIBITING PRIVATE DRIVES OR PRIVATE ROADS WITHIN THE AREA WHICH WOULD BE COVERED BY THIS ORDINANCE. THIS PARTICULAR SUBDIVISION ORDINANCE IS NOW UNDER CONSIDERATION AND WILL BE THE SUBJECT OF A PUBLIC HEARING ON MAY 19, 1960.
4. TEN LOTS IN BLOCK 3 ARE PROPOSED TO FRONT ON A PRIVATE DRIVE. EACH OF THESE LOTS IS PROPOSED AS THE SITE OF A RESIDENCE WHICH SHOULD PROBABLY BE VALUED IN EXCESS OF \$20,000. FULL ASSURANCE SHOULD BE GIVEN BY SOME LEGAL DOCUMENT THAT THE PUBLIC WOULD HAVE FULL AND COMPLETE ACCESS IN THE EVENT OF EMERGENCY, PARTICULARLY FIRE, SO THAT THIS VERY SIZEABLE RESIDENTIAL INVESTMENT CAN BE GIVEN ADEQUATE PROTECTION.

IN ADDITION TO THE COMMENTS NOTED, THE PLANNING DEPARTMENT BELIEVES THAT THE DEPARTMENT OF LAW MUST DETERMINE WHETHER SUCH A USE WOULD IN FACT CONTRAVENE ZONING REGULATIONS AS CONTAINED IN THE CODE OF THE CITY OF WICHITA. PRIVATE LAKES OR BORROW PITS ARE AT NO TIME MENTIONED IN THE ZONING ORDINANCE. HOWEVER, THE ORDINANC

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IS SO CONSTRUCTED THAT EVERY CONCEIVABLE USE IS PROVIDED FOR UNDER ITS TERMS. ARE BORROW PITS AND PRIVATE LAKES EXCEPTIONS TO THIS GENERAL STATEMENT?

ZONING DISTRICTS "AA", "A", "RB", "B", "BB", AND "LC", (SECTIONS 28.04.040 THROUGH 28.04.090 INCLUSIVE) LIST THOSE USES WHICH ARE SPECIFICALLY PERMITTED WITHIN THOSE ZONING DISTRICTS. ZONING DISTRICTS "C", "D", "E" AND "F" (SECTIONS 28.04.100 THROUGH 28.04.130 INCLUSIVE) ARE WRITTEN IN A NEGATIVE FASHION. IN THESE SECTIONS OF THE CODE, ALL USES ARE PERMITTED WHICH ARE NOT SPECIFICALLY EXCLUDED IN A LIST THAT FOLLOWS. THUS, ANY USE WOULD FIRST BE PERMITTED IN A "C" DISTRICT IF IT WERE NOT SPECIFICALLY EXCLUDED IN THE LANGUAGE OF SECTION 28.04.100.8.1 THROUGH 20 INCLUSIVE. PRIVATE LAKES AND BORROW PITS ARE NOT SPECIFICALLY EXCLUDED IN THE "C" ZONING DISTRICT, AND THEREFORE, IT APPEARS THAT THEY ARE PERMITTED, AND ARE IN FACT FIRST PERMITTED IN THIS ZONING DISTRICT. WE WOULD SUGGEST THAT THE APPLICANT IN THIS CASE CANNOT COMPLY WITH THE ZONING ORDINANCE AS IT NOW EXISTS INASMUCH AS SUBJECT PROPERTY IS ZONED "A", SINGLE FAMILY DWELLING DISTRICT.

THE PLANNING DEPARTMENT, BECAUSE OF ITS REGULATORY ACTIVITIES, IS CONCERNED THAT IF THIS APPLICANT IS ALLOWED TO CIRCUMVENT THE ZONING ORDINANCE IN THIS CASE BECAUSE THE USE CONTEMPLATED IS NOT AT SOME POINT SPECIFICALLY MENTIONED OR SPECIFICALLY PROHIBITED IN THE "AA" ZONE, IT WILL ESTABLISH A PRECEDENT FOR MANY OTHER USES WHICH SIMILARLY ARE NOT SPECIFICALLY MENTIONED IN THE ZONING ORDINANCE.

WHILE IT MAY BE THAT THE USE CONTEMPLATED IN THIS INSTANCE IS JUSTIFIABLE AND IN FACT IS TO BE ENCOURAGED, THE DEPARTMENT BELIEVES THAT IT CANNOT BE ALLOWED WITHIN THIS ZONING DISTRICT UNDER THE TERMS OF THE EXISTING ZONING ORDINANCE; AND THAT NO AGENCY OF THE CITY IS NOW EMPOWERED TO PERMIT THIS USE WITHOUT A CHANGE OF ZONING TO "C" COMMERCIAL DISTRICT.

PUBLIC LIABILITY

IS THERE ANY, IF GRANTED?

LLL:BER

L. L. LITTLE
DIRECTOR OF PLANNING

THE CITY OF WICHITA

OFFICE OF The City Manager

DATE May 5, 1960

	Director of Planning	Park Board Director	City Attorney
	Director of Water	City Engineer	Eugene Pirtle, Asst.
TO	Director of Public Works	Supt. of Building Inspection	City Attorney
	Director of Public Health	Supt. of Public Works	
FROM	Frank H. Backstrom, City Manager	Maintenance	
	SUBJECT	Dolan Welsh Matter	

The City Commission requested Dolan Welsh to submit in writing his proposal relative to the lake development in the West Lynn Addition. The staff is then to review the proposal and make recommendations to the City Commission relative to any conditions which should be imposed or changes in the various instruments involved in this matter. One copy of the map of the area is being sent to each department for review. Attached are the following instruments: Restrictive Covenants; Specifications for Development; Articles of Incorporation - West Lynn Park, Inc.; Agreement between Dolan H. Welsh and the City of Wichita.

I am advised by the attorney representing Mr. Welsh that they are endeavoring to secure a compliance bond in order to assure the city that the lake development will be completed. They have received assurance from their surety company that they will write such a bond. However, the form of the bond has not been submitted to this office.

Please review this proposal from the standpoint of the various operations of each department and prepare your recommendations relative to any additional conditions which should be imposed or changes in the restrictive covenants, specifications for development, articles of incorporation, or the agreement between Dolan Welsh and the City of Wichita.

In order that the contractor can secure the dirt fill, it is necessary that this matter be placed on the agenda for the City Commission meeting to be held Tuesday, May 17, 1960. Therefore, it will be necessary for us to finalize our recommendations at the staff level before that date.

Please review this matter and be prepared to meet in my office on Wednesday, May 11, 1960, at 2:00 P. M. for a general discussion of this problem in an effort to finalize any decisions in this matter. It will be helpful for me to have your written recommendations at that time, if possible, in order that we can prepare a final report for the City Commission agenda on Thursday, May 12, 1960.

Frank H. Backstrom

Frank H. Backstrom
City Manager

att.

RESTRICTIVE COVENANTS

We, the undersigned, owners of West Lynn Lake Addition, to Wichita, Sedgwick County, Kansas, do hereby create and impose on all of the Lots, West Lynn Lake and West Lynn Park areas in said Addition the following restrictive covenants, which shall be filed of record in the Office of the Register of Deeds of Sedgwick County, Kansas, and shall be applied in full to all of said lots, lake and park area, and all deeds to said lots that shall be given shall be subject thereto:

1) All lots in said Addition shall be used exclusively for residential purposes, and not more than one single family house shall be constructed on any lot.

2) No owner of any of said lots may construct thereon any private disposal system without the approval of the Wichita Sedgwick County Health Department.

3) No building or fence shall be located nearer to any street than the set-back lines shown on the recorded plat of said Addition, and no building shall be located nearer than 8 feet to any side lot line.

4) The ground floor area of the main structure on each lot, exclusive of the breeze-ways, porches, utility rooms and garages, shall be less than 1,000 square feet.

5) No trailer, basement, tent, shack, garage, barn, or other out buildings erected in said Addition shall, at any time, be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence, and no structure existing or erected elsewhere shall be moved upon any lot in said Addition.

6) No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to the quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot line nearer to any street than the minimum building set-back line unless similarly approved. The Architectural Control Committee is composed of:

- | | |
|--------------------|-----------------------------------|
| 1. Dolan H. Welsh | 1660 North Nevada Street, Wichita |
| 2. Gladys A. Welsh | 1660 North Nevada Street, Wichita |
| 3. Paul V. Smith | 929 Beacon Building, Wichita |

A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties. The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

7) No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

8) No separate buildings to house or stable horses, cows, hogs, goats, chickens, or other similar domestic or wild animals or fowls shall be erected or maintained in said Addition, and no such animals or fowls shall be brought or kept there. No more than one dog or one cat per household shall be allowed as pets, and the raising of dogs or cats for sale as a business is prohibited.

9) Easements for the construction and maintenance of public utilities are reserved as shown on the recorded plat of said addition.

10) No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

11) These covenants one through ten are to run with the land and shall be binding until January 1, 1980, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless vote of a majority of the then owners of the lots it is agreed to change said covenants in whole or in part.

12) The undersigned owners of the West Lynn Lake Addition shall forthwith cause to be formed a non-profit corporation to be known as West Lynn Park, Inc., the purposes and duties of said corporation being to construct, supervise, maintain, improve, finance, and beautify West Lynn Lake and West Lynn Park as shown on the recorded plat and to promote the safety, health, order, prosperity, and general welfare of said lake and park areas. Said corporation shall levy annual or special assessments against all owners of the lots in said Addition and any other members of such corporation, for the purpose of raising money to maintain, supervise, and control said lake and park areas, the amount of such assessments to be determined by the financial necessities of the corporation in carrying out its functions, provided that the total of such assessments shall not exceed \$100 for any one lot in any one calendar year. The corporation will hold fee simple title to all of the land shown on the plat as the lake and park area to be deeded it by the undersigned, and as a consideration for such conveyance, the corporation shall agree to assume the care, maintenance and supervision of such area. The corporation shall not sell, convey, or deed any interest to any other person or corporation in said lake or park area, but the obligations and privileges herein contained of the corporation shall run with the land and ownership of the lots in the West Lynn Lake Addition.

13) Membership in said corporation shall be compulsory for the owners of all Lots in the West Lynn Lake Addition and a majority of the Board of Directors of such corporation shall be composed of such owners, provided however, any resident property owner in any West Lynn Addition shall be eligible for membership in said corporation as provided in the by-laws of said corporation. The minority of the Board of Directors may be composed of such members, however, qualifications for such memberships shall be no more stringent than the conditions imposed for membership on the owners of lots in West Lynn Lake Addition.

14) Any annual or special assessments levied against the owners of the Lots in the West Lynn Lake Addition, by the corporation, shall be paid promptly and shall be an obligation running with the land of each lot until paid. In the event such assessments shall not be paid as provided herein, the corporation shall, without delay, file a lien against such lot or lots owned by the defaulting obligor with the Register of Deeds of Sedgwick County, Kansas, in the amount of money then due, and if the same is not paid within a reasonable time, said corporation shall institute appropriate foreclosure proceedings against such property of the obligor to effect collection.

15) Swimming and the operation of motor boats shall be prohibited on the lake.

16) Any building or other developments in the lake area shall be prohibited without the approval of the City Building Inspector and other Interested City Departments.

17) A four foot chain link fence shall be constructed and maintained from a point connecting with the fence on the right-of-way of Interstate Highway 235 on the north end of said lake area and thence running south along the crest of the east bank of the park area to a point south of the southernmost point of the excavated area, thence following the contours of the lake in a westerly direction to a point where it connects with the fence along the Missouri Pacific right-of-way.

18) The corporation shall carry appropriate public liability insurance coverage on the lake and park areas in an amount of not less than \$100,000 for personal injury and death and \$100,00 for property damage.

19) The corporation shall carry a Performance Bond guarantying to the City of Wichita, Kansas, the performance of all of its obligations hereunder in an amount commensurate with the estimated annual cost of maintenance, supervision, and control of the lake and park areas, such bond to be carried until May 1, 1956, and thereafter for additional periods should the appropriate officials of the City of Wichita deem the same desirable.

20) Invalidation of any one of these covenants by judgment or Court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

21) These provisions may be enforced by appropriate injunctive proceedings by owners of any lot in said Addition, by the Board of County Commissioners of Sedgwick County, Kansas, or by the City of Wichita, Kansas.

IN WITNESS WHEREOF, we, the undersigned owners, have hereunto set our hands this _____ day of May, 1960.

Dolan H. Welsh

Gladys A. Welsh

STATE OF KANSAS)
) SS:
SEDGWICK COUNTY)

BEFORE ME, the undersigned, a Notary Public within and for the County and State above, on this ____ day of May, 1960, personally appeared DOLAN H. WELSH and GLADYS A. WELSH, husband and wife, to me personally known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name the day and year first above written.

Notary Public

My commission expires:

SPECIFICATIONS FOR DEVELOPMENT

STATE OF KANSAS)
) SS:
SEDGWICK COUNTY)


DOLAN H. WELSH, of lawful age, being first duly sworn on his oath, avers and states:

1. That he has a contract with Grosshans and Petersen, Inc., of Marysville, Kansas, for excavation of a minimum of 700,000 cubic yards of dirt and a maximum of 750,000 cubic yards of dirt from the proposed lake and park area and extractions from said contract pertaining to the specifications are as follows:

- (a) No excavation shall be made nearer than 10 feet to the railroad right of way or nearer than 50 feet to the highway right of way.
- (b) The grade shall be no more steep than 5 horizontal to 1 vertical on all slopes except next to the railroad right of way and Interstate Highway #235 right of way where the grade shall be no more steep than 3 horizontal and 1 vertical and the water depth in the center of said area will be approximately 10 feet deep.
- (c) Grosshans and Petersen will stabilize all banks to the center of the lake area.
- (d) All dirt taken from the excavation shall be used exclusively for the construction of Interstate Highway #235.
- (e) Excavation shall start 15 feet from the outer lines of the proposed lake area, thence down 3 feet, thence maintaining the slopes forementioned. The top soil of the 15 feet herein mentioned will be graded down over the slope to provide top soil for a seed bed. On the 3 to 1 slopes above mentioned, excavation will start 9 feet from the outer line, thence down 3 feet, instead of the above mentioned 15 feet. All slopes shall be maintained to the maximum depth of excavation.

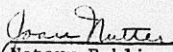
(f) It is understood that in constructing said lake Grosshans and Petersen will be an independent contractor, and not acting as agent for either of the other parties hereto, and Grosshans and Petersen agree to indemnify the other parties hereto and to save them harmless from any and all claims or actions for damages to person or property arising out of its work in constructing said lake and in removing dirt from said real estate. Grosshans and Petersen further agree at its own cost to carry public liability insurance protecting the parties from damages arising out of its work in constructing said lake, and workmens' compensation insurance on its employees engaged in such work

FURTHER affiant saith not.



Dolan H. Welsh

Subscribed and sworn to before me this 4th day of May, 1960.



(Notary Public

My commission expires:

April 25, 1964

Note—Articles may be prepared independently of this form. This form to be used if space is adequate.

Articles of Incorporation

We, the undersigned, incorporators, hereby associate ourselves together to form and establish a corporation
NOT for profit under the laws of the State of Kansas.

FIRST: The Name of the Corporation is WEST LYNN PARK, INC.

SECOND: The Location of its Principal Place of Business in this state is.....

1660 Nevada Street Wichita Sedgwick
(Number) (Street) (Town or City) (County)

THIRD: The Location of its Registered Office in this State is.....

1660 Nevada Street Wichita Sedgwick
(Number) (Street) (Town or City) (County)

FOURTH: The Name and Address of its Resident Agent in this State is.....

Dolan H. Welsh
(Individual or Corporation)

1660 Nevada Wichita Sedgwick
(Number) (Street) (Town or City) (County)

FIFTH: This Corporation is organized NOT for profit and the objects and purposes to be transacted and

carried on are: (1) To construct, supervise, maintain, improve and beautify, without profit to itself, the lake commonly known as West Lynn Lake and the private park surrounding said lake commonly known as West Lynn park, and all other property located in said lake and park area as shown in the plat of West Lynn Lake Addition to the City of Wichita as duly recorded in the office of the Register of Deeds of Sedgwick County, Kansas.

(2) To promote plans and specifications for the safety, health, morals, order and prosperity, general welfare, and pleasure of the members of the corporation and to maintain and control said lake and park in such manner as to protect the safety, morals, health and general welfare of the resident property owners in the West Lynn Additions.

(3) To enforce, carry out and insure compliance with the restrictive covenants filed of public record pertaining to the property located in the plat of West Lynn Lake Addition to the City of Wichita, Kansas, and in connection therewith to obligate the property described in said plat to the payment of an assessment as provided for in the restrictive covenants and to use such funds for the maintenance, general care, and upkeep of such lake and park areas, and for the purposes and objects of this corporation.

(4) To enter into contracts with private individuals or corporations for the purpose of carrying out the objects of this corporation, and to do all and everything necessary, suitable and proper for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers herein set forth, either alone or in association with any corporation, firm or individual and to do every other act or acts, thing or things, incidental or appurtenant to or growing out of or connected with the aforesaid purposes herein set forth providing the same may not be inconsistent with the laws of the State of Kansas or the ordinances of the City of Wichita.

(5) In general, but in connection with the foregoing, said corporation shall have and exercise all the powers conferred by the laws of the State of Kansas upon non-profit corporations, it being hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner such general purpose.

The corporation shall not have authority to issue capital stock.

SIXTH: The total amount of capital of this corporation is
and the total number of shares into which it is divided is as follows:

..... shares of stock, class par. value of dollars each

..... shares of stock, class par value of dollars each

..... shares of stock, class without nominal or par value and

Consideration therefor \$

..... shares of stock, class without nominal or par value and

Consideration therefor \$

Statement of all or any of the designations and the powers, preferences and rights and the qualifications,
limitations or restrictions thereof, in respect to any class.....
.....
.....
.....
.....

Statement of Grant of Authority, as may be desired to be given to the Board of Directors, if given.
.....
.....
.....
.....
.....
.....

The conditions of membership shall be fixed by the by-laws.

(OR) The conditions of membership are: ~~Any resident property owner in the West
Lynn Additions to the City of Wichita may become members of said cor-
poration under such terms and conditions as may be provided in the
by-laws of said corporation.~~

SEVENTH: The Amount of Capital with which this Corporation will commence business is Dollars

EIGHTH: The Names and Places of Residence (P. O. Address) of each of the INCORPORATORS:

Dolan Welsh	1660 Nevada	Wichita, Kansas
Cladys A. Welsh	1660 Nevada	Wichita, Kansas
Beulah Metcalfe	1736 Colorado	Wichita, Kansas

A G R E E M E N T

THIS AGREEMENT made and entered into this _____ day
of _____, 1960, by and between

DOLAN H. WELSH and GLADYS A.
WELSH, husband and wife, herein-
after referred to as

"WELSH"

and

THE CITY OF WICHITA, KANSAS,
hereinafter referred to as

"CITY"

W I T N E S S E T H:

WHEREAS, Welsh is the optionee and has the right to
enter into this Agreement pertaining to the following described
real property, to-wit:

A tract in the SE $\frac{1}{4}$ of Sec 11, T 27 S, R 1 W,
of the 6th P. M., described as follows:

Beginning 1090.62 feet west and 290 feet north
of the SE corner of said SE $\frac{1}{4}$, thence north
parallel to the east line of said SE $\frac{1}{4}$, 246.87
feet to the P. C. of a curve, thence on a curve
to the left having a deflection angle of 39°
24' and a radius of 279.29 feet a distance of
192.06 feet to the P. T. of said curve, thence
northwesterly on a tangent to said curve, 1067.05
feet to the P. C. of a curve, thence on a curve
to the right having a deflection angle of 90°
and a radius of 110 feet a distance of 172.79
feet to the P. T. of said curve, thence north-
easterly on a tangent to said curve, 80 feet,
thence northwesterly at right angles to a point
1920 feet west of the east line of said SE $\frac{1}{4}$, thence
north parallel to and 1920 feet from the east
line of said SE $\frac{1}{4}$ to the easterly right of way
line of Interstate Highway #235 as condemned in
Case A-77197, thence southwesterly on said Highway
right of way line to the east right of way line of
the Missouri Pacific R. R., thence southeasterly

on said R. R. right of way line to a point 180 feet north of the south line of said SE $\frac{1}{4}$, measured at right angles to said south line of said SE $\frac{1}{4}$, thence east parallel to said south line of said SE $\frac{1}{4}$, 140 feet, thence northeasterly to the point of beginning, containing 27.2 acres, more or less.

WHEREAS, Welsh has entered into an Agreement with Grosshans and Petersen, Inc, a corporation, whereby said corporation will excavate a minimum of 700,000 cubic yards of dirt from the foresaid real property in accordance with the specifications set forth in said Agreement, a copy of such specifications is attached hereto.

WHEREAS, Welsh is desirous of developing said area, subsequent to excavation, into a private lake and park area.

AND WHEREAS, the City is desirous of promoting the health, safety, beautification, and general welfare of the residents of the City of Wichita, and of the immediate property owners in the lake and park area hereinbefore mentioned, and is agreeable to having said lake and park areas developed by Welsh.

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained and for other valuable consideration, the sufficiency of which is hereby acknowledged by the parties, the parties hereto agree as follows:

1. Subsequent to excavation of the forementioned area Welsh agrees to have all of the remaining area, not excavated, landscaped in such a manner that commencing with the waterline of the lake a slope of 3 feet horizontal and 1 vertical on the west and north sides and 5 feet horizontal and 1 vertical on the east and south sides will be made up to the ground level on all sides of the lake area.

2. Welsh agrees to level off and grade for proper drainage all of the remaining land in the foredescribed area.

3. Welsh agrees to plant appropriate trees and shrubbery for screening and beautification of the park area along the railroad right of way and the highway right of way.

4. Welsh will, as soon as is reasonably possible, plant the landscaped area in rye so as to immediately control erosion and plant growth, and in the spring of 1961 will plant all of the park area in Bermuda grass.

5. Surface drainage shall be controlled in such manner as to comply with the requirements of the City Health Department.

6. Welsh will supervise, control, and maintain all of said lake and park area at his own expense for a period of two years.

7. On the completion of the excavation of the lake area, Welsh will, at his own expense, cause the formation of a non-profit corporation, the duties and functions of which will be the maintenance, supervision, and operation of said lake area, a copy of the Articles of Incorporation are attached hereto.

8. Upon the completion of the formation of said corporation, Welsh will convey to said corporation the foredescribed lake area and adjacent park area as shown on the plat of the West Lynn Lake Addition, by Warranty Deed, and as a consideration for such conveyance, the corporation shall agree to assume the care, maintenance and supervision of the lake and lake area. Membership in said corporation shall be compulsory for the owners of all lots platted adjacent to the lake area as shown on the plat thereof. A copy of said Warranty Deed is attached hereto.

9. Restrictive covenants running with the land will be filed of record, a copy of which is attached hereto.

10. Appropriate insurance coverage will be maintained on the lake and park area in an amount of not less than \$100/300,000 for public liability and \$100,00 for property damage covering any injuries to person or property arising out of the maintenance and operation of said lake and park area after development thereof, a copy of said insurance policy is attached hereto.

11. Welsh will obtain a Performance Bond in the amount of \$13,000.00 guarantying the performance of the terms and conditions of this contract for a period of two (2) years, and at the end of that time he will guarantee that the corporation will obtain a similar bond for a period of three (3) years thereafter at the end of which time said bond may be renewed if the City feels such renewal is desirable, such subsequent Performance Bond is to be in an amount commensurate with the estimated annual cost of supervision and maintenance of the lake and park area.

Time is of the essence of this contract and the same is to remain in full force and effect for a period of two (2) years from the date hereof and for such additional time as may be necessary for the non-profit corporation to be in the position of properly performing its purposes and functions as set forth in the Articles of Incorporation and until such time as it shall have obtained the forementioned Performance Bond and complied with any additional conditions or requirements as may be set up by the City.

Signed the year and date first above written.

Dolan H. Welsh

Gladys A. Welsh

The above Agreement is hereby approved by order of the Board of Commissioners on this ___ day of _____, 1960.

Mayor, City of Wichita, Kansas

APPROVED:

City Clerk

(Seal)

APRIL 19, 1960

MR. DOLAN H. WELSH
1500 NORTH NEVADA
WICHITA, KANSAS

DEAR MR. WELSH:

RE: BZA 8-60 (AMENDED)

THIS IS TO ADVISE YOU THAT AT A SPECIAL MEETING OF THE BOARD OF ZONING APPEALS HELD ON APRIL 18, 1960, THE ABOVE SUBJECT APPLICATION WAS CONSIDERED. THIS WAS AN APPLICATION FOR A VARIANCE TO THE STRICT ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE TO PERMIT THE OPERATION AND MAINTENANCE OF A BORROW PIT.

THE BOARD DETERMINED THAT IT HAD JURISDICTION TO HEAR THE SUBJECT CASE. AFTER DUE CONSIDERATION AND AFTER HEARING ARGUMENTS BY BOTH YOU AND YOUR COUNSEL AND BY COUNSELS FOR PROTESTANTS, THE BOARD DETERMINED THAT THIS CASE DID NOT MEET ALL OF THE FOLLOWING REQUIREMENTS PRESCRIBED AND SET FORTH BY ORDINANCES:

- THAT THE VARIANCE DESIRED ARISES FROM SUCH CONDITIONS WHICH IS UNIQUE AND WHICH IS NOT ORDINARILY FOUND IN THE SAME ZONING DISTRICT;
- THAT THE GRANTING OF THE PERMIT FOR THE VARIANCE WILL NOT ADVERSELY AFFECT THE RIGHTS OF ADJACENT PROPERTY OWNERS OR RESIDENTS;
- THAT THE STRICT APPLICATION OF THE ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE WILL CONSTITUTE UNNECESSARY HARSHNESS UPON THE PROPERTY OWNER REPRESENTED IN THIS APPEAL;
- THAT THE VARIANCE DESIRED WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROPRIETY OR GENERAL WELFARE.

ATTACHED IS A COPY OF THE RESOLUTION SETTING FORTH THE BOARD'S ACTION IN THIS CASE.

YOU ARE ADVISED THAT UNDER SECTION 21-27-F, VOLUME I OF THE CODE OF THE CITY OF WICHITA, DECISIONS OF THE BOARD OF ZONING APPEALS MAY BE APPEALED TO THE BOARD OF CITY COMMISSIONERS WITHIN A PERIOD OF TEN DAYS AFTER THE BOARD HAS TAKEN ITS ACTION. AN APPEAL WOULD, THEREFORE,

PAGE 2 - DOLAN H. WELSH
APRIL 19, 1960

HAVE TO BE FILED IN THE OFFICE OF THE CITY CLERK ON OR BEFORE
APRIL 29, 1960. IN THE EVENT NO APPEAL IS FILED ON OR BEFORE THAT
DATE, THE DECISION OF THE BOARD OF ZONING APPEALS WILL BECOME
FINAL.

VERY TRULY YOURS,

LELAND R. EDMONDS
SECRETARY

LEISERLISER

ENCLOSURE

CC: MRS. WILLIAM C. GYI, 1415 NORTH WEST STREET
MR. PAUL W. SMITH, BEACON BUILDING
MR. KENT W. FRIZZELL, 619 WEST DOUGLAS
MR. BEVILLE McLEMORE, 914 EAST GILBERT

BOARD OF ZONING APPEALS

APRIL 19, 1960

C. H. FUNK, CITY CLERK

LELAND R. EDMONDS, SECRETARY, BOARD OF ZONING APPEALS
BZA 8-60 (AMENDED)

ATTACHED TO THIS MEMORANDUM IS ONE COPY OF A RESOLUTION SETTING FORTH THE ACTION OF THE BOARD OF ZONING APPEALS IN CASE BZA 8-60 (AMENDED) OF THE BOARD OF ZONING APPEALS. SECTION 21-27-F, VOLUME I OF THE CODE OF THE CITY OF WICHITA PROVIDES THAT THESE DECISIONS MAY BE APPEALED WITHIN A PERIOD OF TEN DAYS FOLLOWING THE DATE OF THE BOARD'S ACTION.

IT APPEARS THAT THE APPEAL PERIOD SHOULD END ON APRIL 29, 1960, AND THAT INDIVIDUALS WOULD HAVE A RIGHT TO APPEAL ON OR BEFORE THAT DATE.

LELAND R. EDMONDS
SECRETARY

LRE:RAL:BER

ATTACHMENT



Felle

THE CITY OF WICHITA, KANSAS

DEPARTMENT OF LAW

April 25, 1960

Hon. Frank H. Backstrom
City Manager
City of Wichita
City Building
Wichita, Kansas

Re: BZA 8-60, Mrs. Ellen C. Ott
Boian Welsh

Dear Mr. Backstrom:

As attorney assigned to the Board of Zoning Appeals, I submit herewith report of circumstances relating to the appeal in the above matter now pending before the Board of the City Commissioners.

I

APPLICATION FOR PRIVATE LAKE

Mrs. Ellen C. Ott's application for a variance from AA zoning to permit the excavation and development of a private lake within the City limits between 13th and 17th Streets, east of the Flood Control rights of way, was denied for lack of jurisdiction by the Board of Zoning Appeals on March 31, 1960.

(a) There was lack of jurisdiction because the Board of Zoning Appeals is an administrative body (G.S. 1949, 12-714, 715) with "power to hear appeals from the refusal of building permits and to permit exemptions to, or variations from, the zoning regulations in the classes of cases or situations and in accordance with the purpose, conditions and procedure specified by the governing body of the City."

Frank H. Backstrom
April 25, 1960
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(b). This state statute and the ordinance creating the Board of Zoning Appeals gives no legislative authority to the Board of Zoning Appeals to allow or determine conditional uses of land such as the excavation of a private lake.

Without hearing the merits of the application, the Board of Zoning Appeals followed the opinion of the Legal Department that the Board had no jurisdiction for the granting of a conditional use allowing a private lake within the City limits.

II

At the Board's suggestion, Mr. Dolan Welsh appealed the Board's ruling on jurisdiction and simultaneously filed a new application for the location of a borrow pit in the same location. The Board had recently allowed two conditional uses for borrow pits within the City limits. In the interest of time and due to Mr. Welsh's request for prompt rulings, the Board held a special meeting upon the borrow pit application on April 18, 1960.

Mr. Welsh and his attorney Paul V. Smith, of Smith, Shay, Farmer & Wetta, presented the application for a borrow pit location to the Board of Zoning Appeals.

Following the presentation, adjacent landowners represented by Attorney Kent Frizell and a land developer north of 17th Street in the same vicinity represented by Neville McLemore, the Board by a vote of 2 to 1 denied the application for a borrow pit upon the grounds that the four conditions (uniqueness, absence of adverse effect upon adjacent property owners, absence of unnecessary hardship, and the absence of effect upon public health, safety, order and convenience) had not been met in accordance with the provisions of Sections 21-27-d of Volume 1 of the Code of the City of Wichita, Kansas, as amended by ordinance 24-606.

III

ANTICIPATED QUESTIONS OF LAW

1. City Commission Appeal.

Paragraph (f) of Ordinance 24-606 provides for the appeal to the City Commissioners of a ruling of the Board of Zoning Appeals within ten days from the date

Frank H. Backstrom
April 25, 1960
Page three

of such ruling. The validity of this provision in the City Ordinance has never been tested. The state statutes of Kansas authorizing the creation of a Board of Zoning Appeals (G.S. 1949-- 12-714 and following) do not provide for an appeal from an adverse ruling of the Board of Zoning Appeals. Ordinarily the rulings of an administrative body may be tested by appeal upon the grounds that the rulings may have been capricious, arbitrary and outside the scope of the specific authority granted by legislation to the administrative agency. In the absence of state statutes governing this type of appeal, the Legal Department has been of the opinion that such a review would be afforded in the State District Court upon the application for an injunction to restrain the execution of a ruling or order by the Board of Zoning Appeals.

We are of the opinion that the provision in the ordinance for appeal to the City Commission from the ruling of the Board of Zoning Appeals is without statutory authority.

2. What are the remedies of the Landowner in this Type of Application?

It appears likely that adjacent landowners will test the validity of any grant of permits to excavate a borrow pit within the City limits either by the Board of Zoning Appeals or the Board of Commissioners on the grounds that the Board of Zoning Appeals has no jurisdiction upon this subject matter in the absence of specific legislative authority.

The location of a lake in an area adjacent to a platted area raises questions of control involving public health, sanitation, safety and general welfare which appear to require legislation.

The Board of Commissioners could legislate authority in the Planning Commission to make recommendations for conditions to be applicable to conditional uses of land. The Commission could thereafter approve or disapprove the recommendations of the Planning Commis-

Frank H. Backstrom
April 25, 1960
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sion.

CONCLUSION

The Board of Zoning Appeals, following its hearing upon the application for a borrow pit has determined that the four factors mentioned above are not present and that within the prohibitions contained in Section 21-27D. 2 Sub (a) (b) (c) and (d) the Board is without authority to grant the borrow pit application. It is not likely that a District Court would disturb this administrative ruling as being arbitrary, capricious or without legal authority.

Very truly yours,

Eugene L. Pirtle

EUGENE L. PIRTLE
Assistant City Attorney

ELP/wcb

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

APRIL 22, 1960


TO WHOM IT MAY CONCERN:

RE: BZA 8-60 AND
BZA 8-60 (AMENDED)

THE BOARD OF ZONING APPEALS HAS BEEN ADVISED BY THE CITY CLERK THAT AN APPEAL HAS BEEN FILED ON EACH OF TWO DECISIONS RENDERED BY THE BOARD IN THE TWO SUBJECT CASES.

WE ARE FURTHER ADVISED BY THE CITY CLERK THAT THESE APPEALS WILL BE PRESENTED TO THE CITY COMMISSION AT ITS MEETING ON APRIL 26, 1960. IF YOU CARE TO SPEAK ON THESE APPEALS YOU MAY WISH TO APPEAR BEFORE THE CITY COMMISSION AT THAT TIME.

THE MEETING OF THE BOARD OF CITY COMMISSIONERS WILL BEGIN AT 9 A.M. ON THE DATE INDICATED AND WILL BE HELD IN ROOM 201 CITY BUILDING, 204 SOUTH MAIN, WICHITA, KANSAS.


LELAND R. EDMONDS
SECRETARY

KENT FRIZZELL, ATTORNEY
619 WEST DOUGLAS

PAUL W. SMITH, ATTORNEY
927 BEACON BUILDING

NEVILLE McLEMORE
1613 SOUTH HILLSIDE

R. J. KING
1613 SOUTH HILLSIDE

HAROLD J. ORINDGREFF
LOIS ORINDGREFF
1756 NORTH YOUNG

MAYNARD A. JONES
MARY E. JONES
1736 NORTH YOUNG

BYRON M. DICKEY
BLANCH E. DICKEY
1726 NORTH YOUNG

JOE H. YEAGER
ELIZABETH ANN YEAGER
1716 NORTH YOUNG

HOMER W. ERHARD
GLADYS E. ERHARD
1702 NORTH YOUNG

W. R. WHITEHEAD
FRANCES M. WHITEHEAD
1653 NORTH SABIN

C. W. BARNHART, JR.
G. HELEN BARNHART
4411 WEST 16TH

ROY R. WINTER
ALICE E. WINTER
1643 NORTH SABIN

PAUL J. WEBER
REBA M. WEBER
1635 NORTH SABIN

ARTHUR HOLTSCLAW
PAULINE HOLTSCLAW
1627 NORTH SABIN

CHARLES J. WHITE
HELEN I. WHITE
1619 NORTH SABIN

GERALD V. HARMON
HELEN L. HARMON
4404 OTT

LOYD & PRESTON
BUILDERS, INC.
1717 COLORADO

VICTOR RIFFEL, JR.
VELMA L. RIFFEL
1512 NORTH SABIN

GLENN J. SWONGER
MARGARET K. SWONGER
1505 NORTH SABIN

DOLAN H. WELSH
1660 NORTH NEVADA

LARUTAN FUEL COMPANY
C/O CONSOLIDATED GAS COMPANY
CENTRAL BUILDING

MARTIN P. STUMP
BERNADINE L. STUMP
1517 NORTH SABIN

ELLEN C. OTT
1405 NORTH WEST STREET

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

APRIL 22, 1960

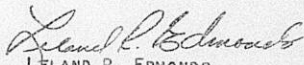
TO WHOM IT MAY CONCERN:

RE: BZA 8-60 AND
BZA 8-60 (AMENDED)

THE BOARD OF ZONING APPEALS HAS BEEN ADVISED BY THE CITY CLERK THAT AN APPEAL HAS BEEN FILED ON EACH OF TWO DECISIONS RENDERED BY THE BOARD IN THE TWO SUBJECT CASES.

WE ARE FURTHER ADVISED BY THE CITY CLERK THAT THESE APPEALS WILL BE PRESENTED TO THE CITY COMMISSION AT ITS MEETING ON APRIL 26, 1960. IF YOU CARE TO SPEAK ON THESE APPEALS YOU MAY WISH TO APPEAR BEFORE THE CITY COMMISSION AT THAT TIME.

THE MEETING OF THE BOARD OF CITY COMMISSIONERS WILL BEGIN AT 9 A.M. ON THE DATE INDICATED AND WILL BE HELD IN ROOM 201 CITY BUILDING, 204 SOUTH MAIN, WICHITA, KANSAS.


LELAND R. EDMONDS
SECRETARY

Rec'd 4-18-60
BZA
J.K.
Mig

PETITION BY PROPERTY OWNERS OF WEST LYNN ADDITION TO
THE BOARD OF ZONING APPEALS, REQUESTING DENIAL OF
VARIANCE FROM ZONING RESTRICTION.

To The Board of Zoning Appeals of The City of Wichita:

WHEREAS, Dolan H. Welsh has petitioned the Board of Zoning Appeals of The City of Wichita for a variance to permit the construction of a private lake located West of Sagin & Young Street, East of the By-pass, and between Thirteenth Street and Seventeenth Street, consisting of approximately twenty-six acres, all in Wichita, Sedgwick County, Kansas; and

WHEREAS, the said property is presently zoned for residential purposes; and

WHEREAS, the immediately adjacent property and surrounding area is zoned for residential purposes and is fully developed, consisting of single-family dwellings;

NOW, THEREFORE, we, the undersigned property owners, hereby respectfully petition the Board to deny such application for a variance upon the following grounds:

1. Our community is residential in nature and to permit a part of such area to be used for a lake site, and particularly for a "borrow-pit" would violate the spirit of the zoning ordinances, impair public safety and welfare, and would do substantial injustice not only to the owners of properties immediately adjacent to the proposed site, but to the owners in the entire neighborhood.

2. We feel that the close proximity of such a lake to the O. K. Elementary School attended by our children would create a hazard and particularly to the younger children who might be obliged, in some instances, to pass the lake site going to and returning from school.

3. We further feel that such a lake site without constant and continuing supervision and care would become an eyesore and beset with problems of weeds, trash, waste, erosion, etc.

WHEREFORE, we respectfully ask that the application be denied.

IN WITNESS WHEREOF, we have hereunto set our hands, this 14-30 day of March, 1960, on Exhibit "A" attached hereto and hereby made a part hereof.

"EXHIBIT A"

Dwight D. Hurteg 1421 Lynnhurst ✓
Alma J. Huraga 1505 Sabin ✓
Walter Edison 1652 Sabin ✓
Ralph S. Hook 1725 Lynnhurst ✓
Jesse Hurteg 1421 Lynnhurst ✓
Luen Shurt 1506 N. Sabin ✓
Mrs. Alma P. Young 1505 Sabin ✓
Harry W. Young 1506 N. Sabin ✓
Elyse Schreiner 1523 Sabin ✓
Lanna Schreiner 1523 Sabin ✓
Carl F. Smith 1630 Lynnhurst ✓
Ruth M. Smith 1631 Lynnhurst ✓
Mrs. Patt. Balin 1724 Lynnhurst ✓
Kerna Shelton 1727 N. Sabin ✓
Kenneth J. Shelton 1727 N. Sabin ✓
Edw. A. Guedy 1620 Lynnhurst ✓
Kedney R. Hoffner 1631 Lynnhurst ✓
Harold J. Wall 1701 Lynnhurst ✓
Iue Wall 1701 Lynnhurst ✓
Ben Haberman 1700 Lynnhurst ✓
Mrs. Ben Haberman 1700 Lynnhurst ✓
Robert Balin 1734 Lynnhurst ✓
Mertue P. Stuep 1517 N. Sabin ✓
Mrs. M. P. Stuep 1517 N. Sabin ✓
H. J. Rasmussen 1513 Lynnhurst ✓
Naomi Rasmussen 1513 Lynnhurst ✓
James E. Kirkpatrick 1635 N. Sabin ✓
Mrs. Patsy Jane Kirkpatrick 1635 N. Sabin ✓

Arthur H. Silliman ✓ 1627 Sabin
~~Harold J. Lindgoff 1456 W. Young~~
Keith W. Griggs ✓ 1510 Y. Sabin
Viola Griggs 1510 W. Sabin

THE CITY OF WICHITA


OFFICE OF Public Works Maintenance **DATE** April 14, 1960

TO Leland R. Edmonds, Secretary
FROM G. H. Wilton, Supt. of Public Works Maintenance
SUBJECT : BZA 8-60

In reference to your memorandum of April 1.

There is no difference, as far as Flood Control operation and maintenance is concerned, in the original and your amended variance requests.

Please refer to our memorandum of March 25, 1960.



G. H. Wilton
Supt. of Public Works Maintenance

MH:fb

cc: M. S. Mitchell
Sand Pit Corresp. File
Metro. Plan. Corresp. File



File

THE WICHITA-SEDGWICK COUNTY DEPARTMENT OF PUBLIC HEALTH

OFFICE OF PUBLIC HEALTH ENGINEERING

DATE April 13, 1960

TO Leland R. Edmonds, Secretary, Board of Zoning Appeals
THROUGH: M. Leon Bauman, M.D., M.P.H.
FROM James F. Aiken, Jr.

SUBJECT BZA 8-60 (Amended)

This is in reply to your memorandum of April 1, 1960 concerning an application for a variance to allow the operation and maintenance of a borrow pit on property located generally north of 13th, south of 17th, east of the Flood Control Project and the Railroad and west of the West Lynn Addition.

It appears to me that the construction of a borrow pit in a residential area such as is adjacent to the proposed location would have a blighting influence on the housing in the area unless the borrow pit and adjoining area would be subsequently developed and maintained as a park area.

If the borrow pit is permitted and subsequently developed as a park area, I would suggest that the following conditions be considered as being appropriate for such development:

1. That a means of financing and that the responsibility for continuous maintenance and upkeep be provided in a very definitive way.
2. That the borrow pit and park area be controlled so that the accessibility of the water area would not result in a safety hazard. Depending upon the development and utilization, complete fencing might be desirable.
3. That the adjacent area to the borrow pit as depicted on the sketch, outside of the platted area, be restricted to no development unless any proposed development would be in keeping with a park area and that such proposed development be reviewed through the normal channels of the Planning Commission.
4. That the borrow pit be so constructed that future surface drainage would be controlled to prevent any contaminating material from entering the water.
5. That no swimming be permitted in the borrow pit after it is constructed.
6. That the minimum water depth of the borrow pit, with the exception of the area immediately around the bank line, be three feet as a means of controlling aquatic plant growth and mosquito breeding.



Leland R. Edmonds, Secretary, Board of Zoning Appeals
EZA 8-60 (Amended)
April 13, 1960
Page two

7. That the maximum bank slope on the borrow pit be constructed so that the banks may be properly maintained with mechanical equipment. This maximum bank slope should probably be approximately four horizontally to one vertically.
8. That the area adjacent to the lake be grassed and landscaped.

These comments and suggestions are preliminary in nature, however, it is my opinion that if a borrow pit is permitted at this location that some appropriate use should be made of the facility after its utilization as a borrow pit. I have suggested that an appropriate use would be as a park facility. This suggestion certainly would not preclude consideration being given to other proposed programs or utilization of the facility if permitted and after its construction.

James F. Aiken, Jr.
James F. Aiken, Jr.
Public Health Engineering Director

JFA:rc

THE CITY OF WICHITA

OFFICE OF PARK BOARD

DATE April 12, 1960

TO Leland R. Edmonds, Secretary, Board of Zoning Appeals

FROM Emory L. Cox, Director of Park Board

SUBJECT BZA 8-60 (Amended)

While we are not experts on "borrow pits," we do have some convictions, which you are welcome to at this time (for whatever they may be worth).

A borrow pit could be no more than the refuse, leavings or left-overs from an exploitation of our natural resources. In our opinion, the entire value of the land has been depreciated, and that which is left is of little questionable value to the landowner, the neighborhood or the City.

We have been approached on several occasions by landowners who propose to excavate earth from their property, inquiring as to what interest we might have in purchasing the "hole" after excavation. We have told each of these landowners that we have absolutely no interest in borrow pits, that they are not an asset, but somebody's obligation and the only interest the City might have would be as a dump site for refuse.

These pits seem to us to be sort of a no man's land -- neither fish nor fowl. The two or three feet of shallow water may not be suitable for a recreation area and, of course, being submerged, the land is of no value for surface land use.

The land itself, in its present grade, is an asset to the community; but upon changing the grade and forming a pit, the asset has been lost, and it seems to me we have a first-class case of permitting the formation of a condition or situation leading to or causing blight or decay, not only on the site, but adjacent to and immediately surrounding the area.

If the only effect of the borrow pit was on the property owners and not on the neighbors around the area, I would see no objection to letting a man do whatever he wanted to do with his land; but since it is obvious he cannot do anything with his land without affecting his neighbors somewhat, the neighbors certainly should be protected whenever it is legal and when the City has the authority to do so.

Emory L. Cox
Emory L. Cox
Director

ELC:zs



THE CITY OF WICHITA
OFFICE OF City Attorney

DATE April 8, 1960

File

TO Eugene L. Pirtle, Assistant City Attorney
FROM Fred W. Aley

SUBJECT EZA 8-60 (Amended)

You have received a copy of the memo from Leland R. Edmonds to the writer. Will you confer with Mr. Edmonds in reference to same.

Very truly yours,

Fred W. Aley
City Attorney

FWA/r
cc Leland R. Edmonds ✓



B-2A

NOTICE IS HEREBY GIVEN THAT
ON THE 15th day of April 1966,
said Board of Zoning Appeals, in Room
City Building Annex, 104 South
West, Wichita, Kansas, at 1:00
P.M. considered the following application
for a Variance: Mrs. Eileen
O'Neil, by Dolan Welsh, acting
agent, requests a variance to the
enforcement provisions of the
Ordinance to permit the
alter and maintenance of a
lot within property legally described
as follows:
A tract in the SE1/4 of Section 1

thence on a curve to the left having
a deflection angle of 39°20' and
a radius of 572.50 feet a distance
of 102.06 feet to the P.T. of said
curve, thence northwesterly on a
tangent to said curve, 1067.00 feet
to the P.C. of a curve, thence
on a curve to the right having
a deflection angle of 90° and
a radius of 100 feet a distance
of 112.78 feet to the P.T. of said
curve, thence northeasterly on a
tangent to said curve, 20 feet
thence northwesterly at right angles
to a point 1920 feet west of the
east line of said SE1/4, then
north parallel to and 1920 feet
from the east line of said SE1/4,
thence easterly right-of-way line
Interstate Highway No. 225
contemned in Case A-77197, then
southeasterly on said Inter-
state right-of-way line to the east
right-of-way line of the Missouri Pacific
R.R. thence southeasterly on said
R.R. right-of-way line to a point
150 feet north of the south line
of said SE1/4, measured at right
angles to said south line of said
SE1/4, thence east parallel to said
south line of said SE1/4, 140 feet
thence northeasterly to the point
containing 2.2 acres of land, more
or less, property being in
said SE1/4, and thence east to
said Railroad right-of-way
provided in Section 21-27-C-3,
Chapter 21 of the Code of the City
of Wichita, Kansas, and the name
of the person interested in said
tract as shown on the map of said
tract as filed in said map and
if heard at this time concern
the views and wishes in the present
of any protest against any of
the provisions of the proposed
ordinance will be heard by the
Board as by law provided.
In witness my hand and seal on this
15th day of April, 1966.
LARRY CASADO.

#1-INSTRUCTIONS TO DELIVERING EMPLOYEE

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

RETURN RECEIPT
 Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)
X Ellen C Ott

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED *4-2-60* ADDRESS WHERE DELIVERED (only if requested in item #1)

CBS-18-71848-4 GPO

No 338638

RECEIPT FOR CERTIFIED MAIL—15¢

SENT TO MRS. ELLEN C. OTT	POSTMARK OR DATE
STREET AND NO. 1405 NORTH WEST STREET	
CITY AND STATE WICHITA, KANSAS	
<small>If you want a return receipt, check which:</small> <input type="checkbox"/> It shows to whom and when delivered <input checked="" type="checkbox"/> It shows to whom, when, and address where delivered	<small>If you want restricted delivery, check here</small> <input type="checkbox"/> 20¢ fee

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

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

APR 2
7--11 M
1960
KANS.

PERMANENT PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, 3300

POSTAGE OF
CERTIFIED MAIL

INSTRUCTIONS: Fill in items below and complete #1 on other side, when applicable. Moisten gummed ends and attach to back of article. Print on front of article RETURN RECEIPT REQUESTED.

RETURN TO

REGISTERED NO.	NAME OF SENDER
	CITY OF WICHITA BOARD OF ZONING APPEALS
CERTIFIED NO. 6386389	STREET AND NO. OR P. O. BOX 104 S. MAIN, ROOM 402
INSURED NO.	CITY, ZONE AND STATE WICHITA 2, KANSAS

POD Form 3811 Jan. 1958

CS-18-71868-4

RECEIPT FOR CERTIFIED MAIL—15¢

No. 6386389

SENT TO	MRS. ELLEN C. O'NEILL	POSTMARK OR DATE
STREET AND NO.	1405 NORTH WEST STREET	
CITY AND STATE	WICHITA, KANSAS	
If you want a return receipt, check which of the following you want:		
<input type="checkbox"/> It shows to whom and when delivered	<input checked="" type="checkbox"/> It shows to whom, when, and address where delivered	<input type="checkbox"/> If you want restricted delivery, check here 20¢ fee

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

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

NOTICE OF HEARING OF APPEAL

APRIL 1, 1960

Mrs. ELLEN C. OTT
1405 NORTH WEST STREET
WICHITA, KANSAS

DEAR Mrs. OTT _____ :

YOUR APPLICATION FOR A ~~///~~ VARIANCE _____ (APPEAL, VARIANCE,
~~//////////~~ UNDER PROVISIONS OF PARAGRAPH _____, SECTION 21-27, CODE OF
THE CITY OF WICHITA, AND RELATING TO PREMISES LOCATED AT: BETWEEN
13TH STREET AND 17TH STREET, EAST OF THE FLOOD CONTROL PROJECT AND
WEST OF THE WEST LYNN ADDITION .

HAS BEEN GIVEN BOARD OF ZONING APPEALS CASE No. 8-60 . (AMENDED)

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

FURTHER, YOU ARE NOTIFIED THAT YOU MAY APPEAR BEFORE THE BOARD OF
ZONING APPEALS EITHER IN PERSON, OR BY AGENT OR ATTORNEY, FOR A HEARING
OF YOUR CASE ON APRIL 18, 1960, AT 1:30 P.M. IN ROOM 401,
CITY BUILDING ANNEX, 104 SOUTH MAIN, WICHITA, KANSAS.

RESPECTFULLY,

LRE:BR

SECRETARY, BOARD OF ZONING APPEALS

cc: MR. DOLAN H. WELSH
1660 NORTH NEVADA
WICHITA, KANSAS

PAUL W. SMITH
BEACON BUILDING
WICHITA, KANSAS

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

NOTICE TO ADJOINING PROPERTY OWNERS

AN APPLICATION FOR A VARIANCE HAS BEEN FILED BY MRS. ELLEN C. OTT OF 1405 N. WEST STREET, WICHITA, KANSAS, AS PROVIDED BY SECTION 21-27 OF THE CODE OF THE CITY OF WICHITA. THE APPLICANT DESIRES TO OPERATE AND MAINTAIN A BORROW PIT ON PROPERTY LOCATED BETWEEN 13TH AND 17TH STREETS, EAST OF THE FLOOD CONTROL CHANNEL AND RAILROAD RIGHT-OF-WAY AND LEGALLY DESCRIBED AS:

A TRACT IN THE SE $\frac{1}{4}$ OF SECTION 11, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF 6TH P.M., DESCRIBED AS FOLLOWS: BEGINNING 1090.62 FEET WEST AND 290 FEET NORTH OF THE SE CORNER OF SAID SE $\frac{1}{4}$, THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SE $\frac{1}{4}$, 246.87 FEET TO THE P.C. OF A CURVE, THENCE ON A CURVE TO THE LEFT HAVING A DEFLECTION ANGLE OF 39° 24' AND A RADIUS OF 279.29 FEET A DISTANCE OF 192.06 FEET TO THE P.T. OF SAID CURVE, THENCE NORTHWESTERLY ON A TANGENT TO SAID CURVE, 1067.05 FEET TO THE P.C. OF A CURVE, THENCE ON A CURVE TO THE RIGHT HAVING A DEFLECTION ANGLE OF 90° AND A RADIUS OF 110 FEET A DISTANCE OF 172.79 FEET TO THE P.T. OF SAID CURVE, THENCE NORTHEASTERLY ON A TANGENT TO SAID CURVE, 80 FEET, THENCE NORTHWESTERLY AT RIGHT ANGLES TO A POINT 1920 FEET WEST OF THE EAST LINE OF SAID SE $\frac{1}{4}$, THENCE NORTH PARALLEL TO AND 1920 FEET FROM THE EAST LINE OF SAID SE $\frac{1}{4}$ TO THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY #235 AS CONDEMNED IN CASE A-77197, THENCE SOUTHWESTERLY ON SAID HIGHWAY RIGHT-OF-WAY LINE TO THE EAST RIGHT-OF-WAY LINE OF THE MISSOURI PACIFIC R.R., THENCE SOUTHEASTERLY ON SAID R.R. RIGHT-OF-WAY LINE TO A POINT 180 FEET NORTH OF THE SOUTH LINE OF SAID SE $\frac{1}{4}$, MEASURED AT RIGHT ANGLES TO SAID SOUTH LINE OF SAID SE $\frac{1}{4}$, THENCE EAST PARALLEL TO SAID SOUTH LINE OF SAID SE $\frac{1}{4}$, 140 FEET, THENCE NORTHEASTERLY TO THE POINT OF BEGINNING, CONTAINING 27.2 ACRES, MORE OR LESS.

THIS APPLICATION HAS BEEN ASSIGNED CASE No. 8-60 (AMENDED). A HEARING WILL BE HELD BY THE BOARD OF ZONING APPEALS ON MONDAY, APRIL 18, 1960, AT 1:30 P.M., IN ROOM 401, CITY BUILDING ANNEX, 104 SOUTH MAIN, WICHITA, KANSAS, AT WHICH TIME YOU MAY APPEAR, IF YOU SO DESIRE, EITHER IN PERSON OR BY AGENT OR ATTORNEY.



LELAND R. EDMONDS, SECRETARY
BOARD OF ZONING APPEALS

NOTICES MAILED APRIL 19 1960

R. J. KING
1613 SOUTH HILLSIDE

HAROLD J. ORINDGREFF
LOIS ORINDGREFF
L756 NORTH YOUNG

MAYNARD A. JONES
MARY E. JONES
L736 NORTH YOUNG

BYRON M. DICKEY
BLANCH E. DICKEY
L726 NORTH YOUNG

JOE H. YEAGER
ELIZABETH ANN YEAGER
L716 NORTH YOUNG

HOMER W. ERHARD
GLADYS E. ERHARD
L702 NORTH YOUNG

W. R. WHITEHEAD
FRANCES M. WHITEHEAD
L653 NORTH SABIN

C. W. BARNHART, JR.
G. HELEN BARNHART
4411 WEST 16TH

ROY R. WINTER
ALICE E. WINTER
L643 NORTH SABIN

PAUL J. WEBER
REBA M. WEBER
L635 NORTH SABIN

ARTHUR HOLTSCLAW
PAULINE HOLTSCLAW
L627 NORTH SABIN

CHARLES J. WHITE
HELEN I. WHITE
L619 NORTH SABIN

GERALD V. HARMAN
HELEN L. HARMON
4404 OTT

LOYD & PRESTON
BUILDERS, INC.
1717 COLORADO

VICTOR RIFFEL, JR.
VELMA L. RIFFEL
1512 NORTH SABIN

GLENN J. SWONGER
MARGARET K. SWONGER
1505 NORTH SABIN

LARUTAN FUEL COMPANY
C/O CONSOLIDATED GAS COMPANY
CENTRAL BUILDING

MARTIN P. STUMP
BERNADINE L. STUMP
1517 NORTH SABIN

KENT FRIZZELL, ATTORNEY
1027 $\frac{1}{2}$ WEST DOUGLAS

DOLAN H. WELSH
1660 NORTH NEVADA

PAUL W. SMITH, ATTORNEY
927 BEACON BUILDING

NEVILLE McLEMORE
1613 SOUTH HILLSIDE

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

NOTICE TO ADJOINING PROPERTY OWNERS

AN APPLICATION FOR A VARIANCE HAS BEEN FILED BY MRS. ELLEN C. OTT OF 1405 N. WEST STREET, WICHITA, KANSAS, AS PROVIDED BY SECTION 21-27 OF THE CODE OF THE CITY OF WICHITA. THE APPLICANT DESIRES TO OPERATE AND MAINTAIN A BORROW PIT ON PROPERTY LOCATED BETWEEN 13TH AND 17TH STREETS, EAST OF THE FLOOD CONTROL CHANNEL AND RAILROAD RIGHT-OF-WAY AND LEGALLY DESCRIBED AS:

A TRACT IN THE SE $\frac{1}{4}$ OF SECTION 11, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF 6TH P.M., DESCRIBED AS FOLLOWS: BEGINNING 1090.62 FEET WEST AND 290 FEET NORTH OF THE SE CORNER OF SAID SE $\frac{1}{4}$, THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SE $\frac{1}{4}$, 246.87 FEET TO THE P.C. OF A CURVE, THENCE ON A CURVE TO THE LEFT HAVING A DEFLECTION ANGLE OF 39° 24' AND A RADIUS OF 279.29 FEET A DISTANCE OF 192.06 FEET TO THE P.T. OF SAID CURVE, THENCE NORTHWESTERLY ON A TANGENT TO SAID CURVE, 1057.05 FEET TO THE P.C. OF A CURVE, THENCE ON A CURVE TO THE RIGHT HAVING A DEFLECTION ANGLE OF 90° AND A RADIUS OF 110 FEET A DISTANCE OF 172.79 FEET TO THE P.T. OF SAID CURVE, THENCE NORTHEASTERLY ON A TANGENT TO SAID CURVE, 80 FEET, THENCE NORTHWESTERLY AT RIGHT ANGLES TO A POINT 1920 FEET WEST OF THE EAST LINE OF SAID SE $\frac{1}{4}$, THENCE NORTH PARALLEL TO AND 1920 FEET FROM THE EAST LINE OF SAID SE $\frac{1}{4}$ TO THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY #235 AS CONDEMNED IN CASE A-77197, THENCE SOUTHWESTERLY ON SAID HIGHWAY RIGHT-OF-WAY LINE TO THE EAST RIGHT-OF-WAY LINE OF THE MISSOURI PACIFIC R.R., THENCE SOUTHEASTERLY ON SAID R.R. RIGHT-OF-WAY LINE TO A POINT 180 FEET NORTH OF THE SOUTH LINE OF SAID SE $\frac{1}{4}$, MEASURED AT RIGHT ANGLES TO SAID SOUTH LINE OF SAID SE $\frac{1}{4}$, THENCE EAST PARALLEL TO SAID SOUTH LINE OF SAID SE $\frac{1}{4}$, 140 FEET, THENCE NORTHEASTERLY TO THE POINT OF BEGINNING, CONTAINING 27.2 ACRES, MORE OR LESS.

THIS APPLICATION HAS BEEN ASSIGNED CASE No. 8-60 (AMENDED). A HEARING WILL BE HELD BY THE BOARD OF ZONING APPEALS ON MONDAY, APRIL 18, 1960, AT 1:30 P.M., IN ROOM 401, CITY BUILDING ANNEX, 104 SOUTH MAIN, WICHITA, KANSAS, AT WHICH TIME YOU MAY APPEAR, IF YOU SO DESIRE, EITHER IN PERSON OR BY AGENT OR ATTORNEY.


LELAND R. EDMONDS, SECRETARY
BOARD OF ZONING APPEALS

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

OFFICE OF BOARD OF ZONING APPEALS **DATE** APRIL 1, 1960

TO L. L. LITTLE, DIRECTOR OF PLANNING
FROM LELAND R. EDMONDS, SECRETARY
SUBJECT BZA 8-60 (AMENDED)

file
4-8-60
sh

Mrs. ELLEN C. OTT, BY HER AGENT DOLAN WELSH, HAS FILED AN APPLICATION FOR A VARIANCE TO ALLOW THE OPERATION AND MAINTENANCE OF A BORROW PIT ON PROPERTY LOCATED GENERALLY NORTH OF 13TH STREET; SOUTH OF 17TH STREET; EAST OF THE FLOOD CONTROL PROJECT AND THE RAILROAD; AND WEST OF THE WEST LYNN ADDITIONS. THIS REQUEST FOR A VARIANCE WILL BE HEARD BY THE BOARD OF ZONING APPEALS AT:

1:30 P.M., APRIL 18, 1960
ROOM 401, CITY BUILDING ANNEX
104 SOUTH MAIN
WICHITA, KANSAS

WE REQUEST THE COMMENTS OF YOUR DEPARTMENT OR DIVISION REGARDING THIS AMENDED PROPOSAL. WE WOULD ESPECIALLY REQUEST ANY SUGGESTIONS YOU MAY HAVE AS TO CONDITIONS WHICH YOU WOULD RECOMMEND BE IMPOSED ON THIS DEVELOPMENT IN THE EVENT THE BOARD OF ZONING APPEALS DETERMINES THAT THE APPLICATION SHOULD BE APPROVED. PLEASE SUBMIT YOUR COMMENTS AT YOUR EARLIEST CONVENIENCE AND PRIOR TO APRIL 13, 1960.

A SKETCH OF THE AREA IN WHICH THE BORROW PIT IS PROPOSED TO BE EXCAVATED IS ATTACHED FOR YOUR INFORMATION.

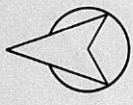
Leland R. Edmonds
LELAND R. EDMONDS
SECRETARY

c.c. E.N. SMITH, DIRECTOR OF PUBLIC WORKS
B.E. SMITH, CITY ENGINEER
S.B. MAPLE, BUILDING INSPECTION SUPERINTENDENT
GEORGE WILTON, SUP'T. OF PUBLIC WORKS MAINTENANCE
DR. M. LEON BAUMAN, DIRECTOR OF PUBLIC HEALTH
L. L. LITTLE, DIRECTOR OF PLANNING
FRED ALEY, CITY ATTORNEY
EUGENE PIRTLE, BOARD OF ZONING APPEALS, ASST. CITY ATTORNEY
EMORY COX, DIRECTOR OF PARK BOARD
ROBERT H. HESS, DIRECTOR OF WATER

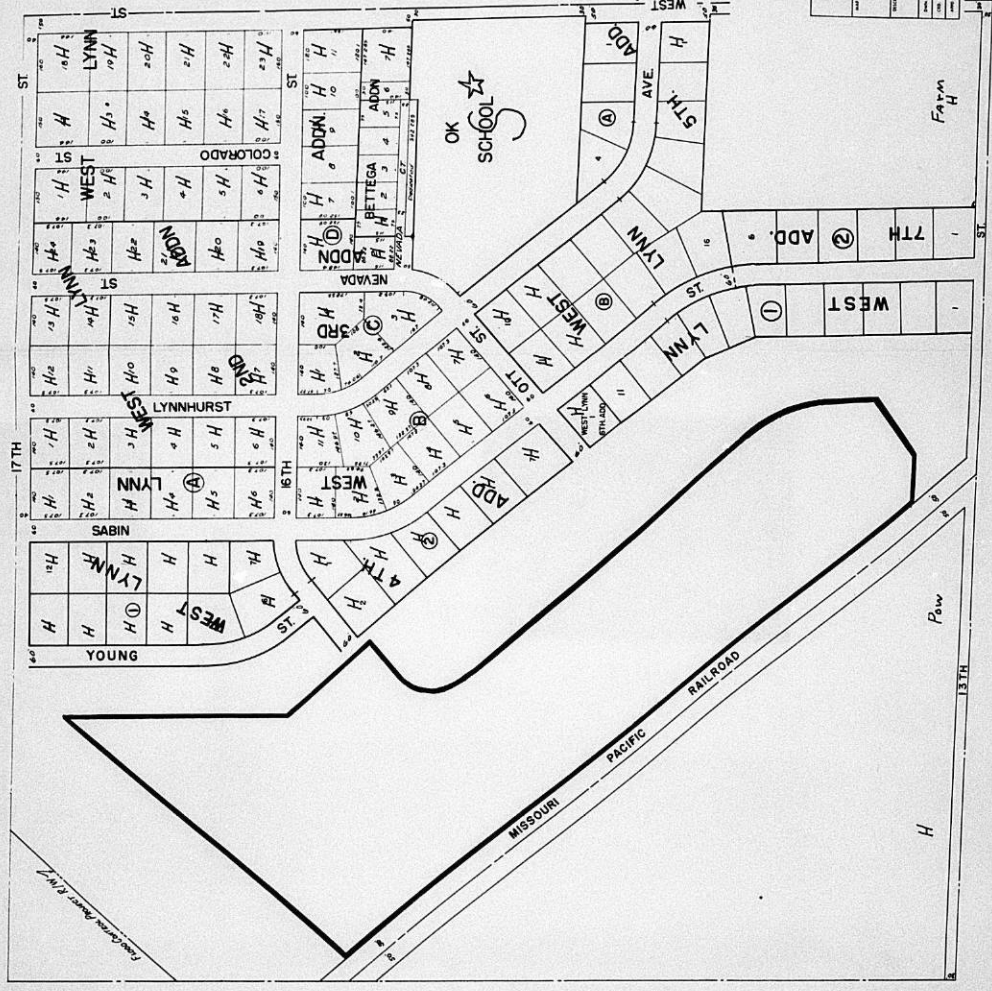
INFORMATION COPIES:

BOARD OF ZONING APPEALS MEMBERS
FRANK H. BACKSTROM, CITY MANAGER

S.E. QUARTER SEC. II, TWP. 27 S., R. 17 W.



SECTION DATA
 36° 00' 00" N
 96° 00' 00" W
 Section 27, 36° 00' 00" S



WICHITA SEDGWICK COUNTY
 METROPOLITAN AREA PLANNING COMMISSION
 WORTH, KANSAS

DATE	DATE	DATE

SMITH, SHAY, FARMER & WETTA

ATTORNEYS AT LAW
929 BEACON BUILDING
WICHITA 2, KANSAS

PAUL V. SMITH
DOUGLAS E. SHAY
WILLIAM C. FARMER
LEO R. WETTA
JAMES R. SCHAEFER

TELEPHONE
AMHERST 7-5293

April 1, 1960

Mr. Leland R. Edmonds, Secretary
Board of Zoning Appeals
Wichita, Kansas

Re: Case BZA 8-60

Dear Mr. Edmonds:

As attorneys for Mrs. Ott and Mr. Welsh, we request that, pursuant to the action taken by the Board yesterday, you reset this matter for hearing at the earliest possible date and publish notice to the effect that the variance is requested to permit the operation and maintenance of a borrow pit.

Very truly yours,



OF SMITH, SHAY, FARMER & WETTA

PVS:jn

*Rec'd 11:30 AM
4-1-60
WEL*

Two Commissioners Fail in Try To Force Third Member to Meet

City Manager Frank H. Backstrom rejected a mandate from a two-man City Commission Tuesday ordering him to send the chief of police after Commission President Herbert Lindsey in order to have a quorum at the meeting.

The mandate came from Commissioners John Madden and John Stevens who, calling themselves "a quorum of a quorum," appeared at the empty Commission room prepared to conduct city business. Three commissioners constitute a quorum.

Knowing that Mayor Levi Rymph and Commissioner Justus H. Fugate were in Washington to expedite the Cheney Reservoir project but that Lindsey was in the city and in his office, Commissioner Stevens said he felt the city manager should be instructed to send the police chief to Lindsey's office and have him brought to the meeting.

Voted to Not Meet

Backstrom said he understood the City Commission voted last Tuesday not to have a meeting this week. He was supported by Asst. City Atty. Tom Wood.

Stevens contended he knew nothing about dismissing the meeting this week and that the motion voted on last Tuesday merely was to authorize the mayor and Fugate to go to Washington.

To settle the question, the tape recording of last week's meeting was brought in and played back to the commissioners.

It revealed Commissioner Fugate making a motion asking the Commission to authorize Mayor Rymph, Commissioner Fugate and the mayor's special representative, A. E. Howse, to spend this week in Washington and "that no meeting be held on April 19."

The motion received affirmative votes from the Commission majority, a "no" vote from Madden, and Stevens replied "it doesn't make any difference."

State Law Cited

Madden and Stevens then claimed the motion was improper because the state law requires that "regular meetings of the City Commission shall be held each Tuesday" except when the Tuesday falls on an official holiday or at least three commissioners are out of the city or ill. Contacted at his office, Lindsey said he did not appear at City Hall because of the decision of the Commission last week.

"If Commissioner Madden or Stevens thought the motion was improper, then they should have challenged it last week, when it was made. The fact that Madden voted 'no' seems to me to be a recognition of the validity of the motion," Lindsey stated.

No Majority Foreseen

The Commission president added that he saw little reason for having a meeting today because "most major issues of city government require three votes to be effective."

When the city manager refused to send the police chief after Lindsey, Commissioner Madden demanded that the manager provide himself and Stevens with an agenda and that they proceed with city business.

Backstrom informed the two that no agenda was prepared as no meeting had been scheduled.

His reply brought a tirade from Madden who concluded with the question, "Who are you working for; the city of Wichita or the City Commission?"

"I work for the City Commission. I do what a majority of the Commission instructs me to do. When a majority of the Commission tells me there will be no meeting, I understand there will be no meeting," said the manager.

The Wichita Eagle 5A

Tuesday Evening, April 19, 1960

Legal Support Sought

"You, Mr. Assistant City Attorney," Madden said turning to Wood, "can you give me a legal reason why this meeting should not be held?"

Wood said he could give no legal reason why the meeting should be held "in view of last week's action" and when Madden insisted on a reason, said he did not intend to argue the point.

Madden then said Mayor Rymph was to be back in the city Wednesday (to attend a meeting where his wife will be presented with the Kansas Mother of the Year award) and suggested that this "meeting" be adjourned until 9 a.m., Thursday.

Stevens agreed with the proposal and the so-called meeting stood adjourned.

Appeal for Private Lake To Return With New Name

BZA
8-60

The Board of Zoning Appeals which Thursday turned down an application for a private lake inside the city limits is scheduled to take the matter up later this month under the title of a "borrow pit."

Both the problem and the somewhat legal juggling result from the fact that the present city zoning ordinance makes no provision for either borrow pits or private lakes within the city limits. And, according to Senior Planner Leland Edmonds in charge of zoning matters, the state statutes relating to zoning likewise are silent on the matter of private lakes.

First Sought Lake

The matter came out in an open Thursday when D. C. Welsh, a Wichita developer, appealed to the board of zoning appeals for a variance to permit the construction of a private lake in an area roughly bounded by 13th and 17th streets between the Missouri Pacific Railroad and the Big Ditch.

Welsh proposes that the lake would be controlled and operated by a non-profit corporation made up of West Lynn neighborhood residents.

Dirt on Highway

Welsh further proposes excavation of the lake would be done by a contractor for grading of Interstate 235 and that the dirt excavated for the lake would be used as fill for the highway project.

Edmonds said talks have been going on for several weeks between Welsh and his attorney Paul Smith, and members of the planning department. Edmonds said Welsh had been advised that under current circumstances his only alternative would be to appeal to the Board of Zoning Appeals.

Lacked Jurisdiction When the matter came up Thursday, however, Assistant City Attorney Eugene Pirtle advised the Board of Zoning Appeals that it has no jurisdiction in the matter and the board refused to take the application.

Edmonds said, however, the board did leave Welsh an alternative—he could amend his application to specify a borrow pit instead of a lake.

Friday Welsh took this action by requesting to amend his application to provide for operating and maintaining a borrow pit.

Edmonds said the reason behind this move is that the Board of Zoning Appeals in the past has taken jurisdiction of applications for borrow pits inside the city altho no provision for such pits is included in the city's zoning ordinance.

No Real Solution

He admitted, however, that should the application for a borrow pit be granted the problem really will not be solved. Should Welsh be permitted to develop a borrow pit, he will in effect be given permission to build a lake, or at least to build a hole in the ground with water in it.

Edmonds said present plans call for the Board of Zoning Appeals to hear Welsh's application for a borrow pit instead of a lake on April 18.

Meanwhile the metropolitan area planning commission has taken steps to amend the city's zoning ordinance to include provisions for both borrow pits and private lakes as a conditional use.

The planning commission two weeks ago authorized the preparation of an amendment to the zoning ordinance and authorized the planning department to advertise a public hearing on the matter.

Edmonds said it is hoped this public hearing can be held on May 5 or as soon after that as possible.

Should such an amendment be passed, future applications for borrow pits or private lakes would go direct to the planning commission which could set certain conditions as prerequisites of approving either use. Under these circumstances the city would have full legal authority to enforce the ordinance.


THE CITY OF WICHITA

OFFICE OF **BOARD OF ZONING APPEALS** DATE **APRIL 1, 1960**

TO **C. H. FUNK, CITY CLERK**
FROM **LELAND R. EDMONDS, SECRETARY OF BOARD OF ZONING APPEALS**
SUBJECT **BZA 6-60, BZA 7-60, BZA 8-60**

ATTACHED TO THIS MEMORANDUM IS ONE COPY OF A RESOLUTION SETTING FORTH THE ACTION OF THE BOARD OF ZONING APPEALS IN EACH OF THE THREE SUBJECT BOARD OF ZONING APPEALS CASES. SECTION 21-27-F, VOLUME I OF THE CODE OF THE CITY OF WICHITA PROVIDES THAT THESE DECISIONS MAY BE APPEALED WITHIN A PERIOD OF TEN DAYS FOLLOWING THE DATE OF THE BOARD'S ACTION.

IT APPEARS THAT THE APPEAL PERIOD SHOULD END ON APRIL 11, 1960, AND THAT INDIVIDUALS WOULD HAVE A RIGHT TO APPEAL ON OR BEFORE THAT DATE.


LELAND R. EDMONDS
SECRETARY

LRE:BR

ATTACHMENT

COPY

APRIL 1, 1960

MR. DELAN H. WELSH
1660 NORTH NEVADA
WICHITA, KANSAS

DEAR MR. WELSH:

RE: BZA 8-60

THIS IS TO ADVISE YOU THAT AT A SPECIAL MEETING OF THE BOARD OF ZONING APPEALS HELD ON MARCH 31, 1960, SUBJECT BOARD OF ZONING APPEALS APPLICATION FOR A VARIANCE WAS CONSIDERED. AFTER DUE CONSIDERATION OF THE ADVICE OF COUNSEL AND THE STATEMENTS OF THE APPLICANT AND HIS COUNSEL REGARDING THE MATTER OF JURISDICTION IT WAS DETERMINED BY THE BOARD OF ZONING APPEALS THAT IT DID NOT HAVE THE JURISDICTION TO CONSIDER THIS APPLICATION FOR VARIANCE. THERE IS ATTACHED TO THIS LETTER ONE COPY OF THE RESOLUTION SETTING FORTH THE BOARD'S ACTION IN THIS CASE.

YOU ARE ADVISED THAT UNDER SECTION 21-27-F OF VOLUME I OF THE CODE OF THE CITY OF WICHITA DECISIONS OF THE BOARD OF ZONING APPEALS MAY BE APPEALED TO THE BOARD OF CITY COMMISSIONERS WITHIN A PERIOD OF TEN DAYS AFTER THE BOARD HAS TAKEN ITS ACTION. AN APPEAL WOULD, THEREFORE, HAVE TO BE FILED IN THIS CASE ON OR BEFORE APRIL 11, 1960. IN THE EVENT NO APPEAL IS FILED ON OR BEFORE THAT DATE THE DECISION OF THE BOARD WILL BECOME FINAL.

THE BOARD OF ZONING APPEALS HAS AUTHORIZED A SPECIAL MEETING TO CONSIDER AN AMENDED APPLICATION BY WHICH YOU MIGHT REQUEST A VARIANCE FOR THE OPERATION AND MAINTENANCE OF A BORROW PIT ON THIS TRACT OF LAND. IF YOU CHOOSE TO SUBMIT SUCH AN AMENDMENT TO YOUR APPLICATION, IT WILL BE PROCESSED AND DULY ADVERTISED AS RAPIDLY AS IS POSSIBLE UNDER EXISTING ORDINANCE LIMITATIONS.

VERY TRULY YOURS,

LRE:BR

LELAND R. EDWARDS
SECRETARY

ENCLOSURE

CC: MRS. WILLIAM C. OTT AND
MR. PAUL W. SMITH, ATTORNEY



THE CITY OF WICHITA, KANSAS

FRED W. ALEY
CITY ATTORNEY
LESTER W. CHESNEY
CHIEF ASSISTANT
LAWRENCE E. CURFMAN
DOUGLAS E. SHAY
EUGENE L. PIRTLE
ROBERT C. HELSEL
THOMAS A. WOOD
ERNEST MCRAE
CHARLES D. ANDERSON
ASSISTANT CITY ATTORNEYS

DEPARTMENT OF LAW

OFFICE OF CITY ATTORNEY
WICHITA 2, KANSAS

March 30, 1960

Leland R. Edmonds, Sec'y
Board of Zoning Appeals
104 So. Main
Wichita 2, Kansas

In re: BZA 8-60

Dear Mr. Edmonds:

In answer to your letter of March 17, 1960, and with further reference to our conference of March 24, 1960, this is to report as follows:

1. In our opinion the Board of Zoning Appeals has no jurisdiction to allow the application for variance to permit excavating and development of a lake.

The State statute authorizing the creation of a Board of Zoning Appeals gives no such authority and the ordinance creating the Board of Zoning Appeals under that statute gives no such authority. The zoning ordinances are silent as to the right to excavating for a lake within the City limits. In the absence of such legislation, the Board, as an administrative body, is not in a position to legislate authority for this type of land use.

2. Your items 1, 2, 3, 4 and 5 pertaining to liabilities of private parties, the City and the developer have not been answered inasmuch as we believe that the opinion on lack of jurisdiction makes unnecessary comment upon those items.

Very truly yours,

Eugene L. Pirtle
EUGENE L. PIRTLE
Assistant City Attorney

ELP/wcb

cc. F.W. Aley



THE CITY OF WICHITA

OFFICE OF BOARD OF ZONING APPEALS

DATE MARCH 30, 1960

TO FILES

FROM LELAND R. EDMONDS, SECRETARY

SUBJECT BZA 8-60

ON MARCH 29, 1960, MR. FRANK OLDFATHER OF THE CAUTHORN INSURANCE AGENCY CALLED AT THE REQUEST OF DOLAN WELSH. HE ADVISED THAT LIABILITY INSURANCE RATES PROTECTING THE OWNERS OF PRIVATE LAKES ARE MINIMUM RATES; AND THAT RATES ON VACANT LOTS ARE HIGHER.


LELAND R. EDMONDS
SECRETARY

LRE:BER



**BOSTON-OLD COLONY INSURANCE COMPANIES
KANSAS CITY OFFICE**

3435 BROADWAY, KANSAS CITY 11, MISSOURI * TEL. LOgan 1-5676

March 24, 1966

Mr. J. J. O'Connell
Southern Insurance
3435 Broadway
Kansas City, Kansas

RE: 330 599571 - Dolan and Gladys Neier

In response to the answers to my letter of February 29, 1966, based on this information, I believe that I have a rating for this

policy in my opinion that it would be rated as "Lakes - Private - Club" if there were no swimming facilities, a flat charge of \$10 B.L. and \$100 B.L. will apply for basic limits of liability. If there are swimming facilities, then the flat charge of \$20.00 B.L. and \$200.00 B.L. will apply, subject to increased limits.

If you would like for us to issue the endorsement adding this coverage to your policy, please advise, and in view of the fact that it is not intended that there is a possibility of swimming by people who are not insured, it is my suggestion that we use the \$20 B.L. and \$200 B.L. flat charge for basic limits. If you do not want coverage for this endorsement, then we will have to specifically exclude it from the policy. This is a comprehensive form of policy.

Very truly yours,

Donald R. Honey
Casualty Underwriter

100/500
15.00
5.00
70.00

100/500
35.80



WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

OFFICE OF METROPOLITAN PLANNING

DATE MARCH 28, 1960

TO LELAND R. EDMONDS, SECRETARY, BOARD OF ZONING APPEALS
FROM L. L. LITTLE, DIRECTOR OF PLANNING
SUBJECT BZA 8-60

THIS WILL ACKNOWLEDGE RECEIPT OF YOUR MEMORANDUM REQUESTING COMMENTS RELATIVE TO THE SUBJECT VARIANCE APPLICATION.

THE PLANNING DEPARTMENT HAS LONG BELIEVED THAT THE COMMUNITY SHOULD MAKE EVERY EFFORT TO CAPITALIZE ON ANY NATURAL PHYSICAL FEATURES WHICH EXIST IN THE AREA. SIMILARLY, THE COMMUNITY SHOULD CONSIDER CAREFULLY ANY OPPORTUNITY TO CAPITALIZE ON POTENTIAL MAN-MADE PHYSICAL FEATURES. RECREATION AREAS, EITHER PRIVATE OR PUBLIC, CAN ADD MATERIALLY TO THE ASSETS OF A NEIGHBORHOOD AND TO THE WELFARE OF THE RESIDENTS OF THE NEIGHBORHOOD.

IN THE SUBJECT APPLICATION, THE BASIC PROBLEM IS ONE OF CONTROL OF THE DEVELOPMENT PROPOSED. RESTRICTIONS SHOULD BE CAREFULLY STATED TO PROVIDE FOR

- FULL PROTECTION OF THE PUBLIC HEALTH AND SAFETY;
- ATTRACTIVE AND COMPLETE DEVELOPMENT OF SURROUNDING AREA IN A MANNER HARMONIOUS WITH THE EXISTING DEVELOPMENT;
- ADEQUATE PROVISION FOR PERPETUAL MAINTENANCE;
- ADEQUATE PROVISION FOR LIABILITY FOR FUTURE DAMAGE TO ADJACENT OR NEARBY EXISTING PUBLIC OR PRIVATE IMPROVEMENTS;
- COMPLETE AND DETAILED DEVELOPMENT PLANS DESCRIBING THE TOTAL DEVELOPMENT PROPOSED; TOGETHER WITH TIME TABLE FOR DEVELOPMENT.


L. L. LITTLE
DIRECTOR OF PLANNING

LLL:LRE:BER

THE CITY OF WICHITA

OFFICE OF PARK BOARD

DATE March 28, 1960

TO Leland R. Edmonds, Secretary of Board of Zoning Appeals

FROM Emory L. Cox, Director of Park Board

SUBJECT BZA 8-60

File

Reference is made to your memorandum dated March 17, 1960, regarding BZA 8-60. If it is supposed to be a recreational lake, then, in our opinion, the depth of the water should be from six to eight feet.

If this is just a subterfuge to approve selling earth for land fill by excavating a borrow pit, then the borrow pit will have little, if any, recreational value. In our opinion, it will not be an asset to the community. We further believe that the lake, as a recreational area, will not stand on its own unless there is sufficient land around the lake to build houses or cottages for a rather nice residential development.

There seems to be no need for such a "recreational area," and certainly one could not afford to create such an area by excavating to form a lake. The only possibility would be the residual or by-product from sand pumping or borrow pitting.

Emory L. Cox
Emory L. Cox
Director

ELC:zs



THE CITY OF WICHITA

OFFICE OF Public Works Maintenance **DATE** March 25, 1960

TO Leland Edmonds, Secretary, Board of Zoning Appeals

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

SUBJECT : BZA 8-60

Reference is made to your memorandum of March 17, 1960, requesting this Division's comment on subject Zoning Variance.

We have reviewed the physical data which affect the operation and maintenance of Flood Control Works in the vicinity of subject tract and find the following:

1. This office is bound by policies established by the Metropolitan Planning Commission for the requiring of protective devices around borrow pits located in the vicinity of Floodway levees.
2. Subject location is not within the limits of the area where protective devices are required in accordance with the policies of the Metropolitan Planning Commission.
3. Therefore, this office makes no comment on subject variance except to state that this position is not to be construed as approval of it.



G. H. Wilton
Supt. of Public Works Maintenance

GHW:msm:fb
cc: M. S. Mitchell
Sand Pit Corresp. File
Metro. Plan. Corresp. File

THE CITY OF WICHITA

OFFICE OF Director of Public Works **DATE** March 25, 1960

TO Leland R. Edmonds, Secretary, Board of Zoning Appeals

FROM E.N. Smith, Director of Public Works

SUBJECT
BZA 8-60

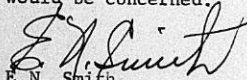
Please refer to your memorandum of March 17, 1960, relative to the above subject. You ask for comments from this department regarding the advisability of granting of an application for a variance to allow the excavation and development of a private lake within the city limits.

The interest of the Department of Public Works in the matter is confined to the Building Inspection Division which would be concerned with the enforcement of zoning regulations.

Public Works Maintenance is concerned with protecting the Flood Control works. Mr. Wilton has provided a memorandum in which he states that it appears the lake would be beyond the influence of the Flood Control project. Copy of his memorandum is attached.

The Engineering Division would be concerned with the locating of sewers and streets, or in other words, the platting. If this area is not platted, it seems to me that the first step should be a plat. The concern of this division would be in a plat and in landscape features such as a proposed lake. Our concern then would be as to the location of the lake in reference to streets and utilities.

Whether or not a lake should be a part of a subdivision is primarily a matter for the Planning Commission Subdivision Committee. Whether or not a lake is a nuisance or a hazard or a desired landscape feature, in which those living in the area are interested, seems to be beyond the scope of this department. It is my understanding that the lake is to be entirely on private property. Of course if it abounds city property or is to be dedicated to the public, then this department would be concerned.


E.N. Smith
Director of Public Works

cc: City Manager
Bldg. Inspn. Supt., City Engineer,
Supt. Public Works Maintenance

THE CITY OF WICHITA

OFFICE OF WATER DEPARTMENT

DATE March 25, 1960

TO Leland R. Edmonds, Secretary, Board of Zoning Appeals

FROM R. W. Johnston, Operations Chief Engineer

SUBJECT BAZ 8-60. Proposed Lake Adjacent to M.O.P. Right-of-Way, North of 13th Street.

Your memo of March 17 to R. H. Hess, Director of Water, this subject, has been circulated among staff employees of the Water Department who comment as follows:

G. J. Stramel, Hydrologist

"Contacted by Mr. Green of Flood Control relative to ground water gradient in area. Data from well profiles on side of flood control ditch and southwest of property in question collected in fall of 1959. This data available in Flood Control files and will be consulted by them for the necessary information. No further comments."

K. J. Svaty, Supt. of Design and Planning Division

"Sixty-six inch raw water main in Missouri Pacific right-of-way adjacent to lake and city water distribution mains in subdivision northeast of lake, located and shown on attached drawing. No further comment."

R. W. Johnston, Operations Chief Engineer

"Only question is relative to real purpose of desired lake. If lake is intended to enhance and improve value of real property adjacent to the lake and is intended for high value residential purposes, existing investment in distribution mains would appreciate. Construction of lake could therefore be of advantage to Water Department. If the request for the lake is an attempt to circumvent rulings which prohibit barrow or sand pits, present investment in distribution mains could be jeopardized by resulting decrease in value of adjacent real property. No further comment."

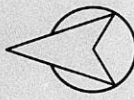
R. W. Johnston

R. W. Johnston
Operations Chief Engineer

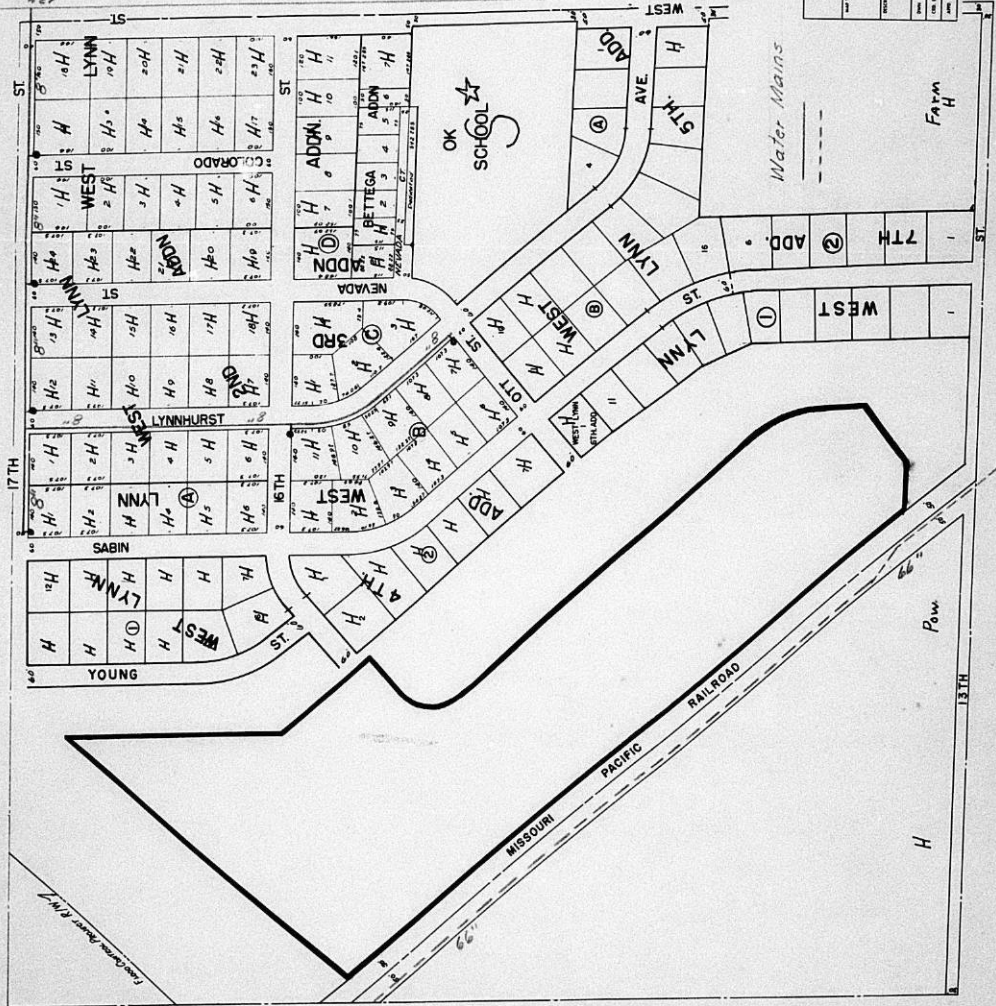
RWJ:lh
Attach.
cc: R. H. Hess, Director of Water



S.E. QUARTER SEC. II, TWP. 27 S., RI.W.



SECTION DATA
 1/21/1914 by Chas. W. ...
 Corrected 3-17-1962 FS



WICHITA, SEDGWICK COUNTY
 METROPOLITAN COMMISSION
 WORTH, KANSAS

DATE	FILE

THE CITY OF WICHITA

OFFICE OF BUILDING INSPECTION DIVISION DATE March 23, 1960

TO Leland R. Edmonds, Secretary, Board of Zoning Appeals

FROM S. B. Maple, Supt. of Building Inspection

SUBJECT : EZA 8-60


You have requested that I give you my comments relative to this appeal which appeal is for a variance to allow an excavation which the appellant says will be used for a private lake. As I have stated before and am on record, I can see no place in the Zoning Ordinance wherein provision is made for the development of a borrow pit, sand pit, or other permanent excavation in the "AA" residential district. It is my opinion that even though the proposed development is to be called a lake, from all practical purposes as far as zoning is concerned, it would be no different than an ordinary borrow pit. I have stated verbally when there were appeals placed before the Board for borrow pits, that I seriously doubt if the Board of Zoning Appeals have the right to take jurisdiction in this matter and to grant a variance that would permit the use of land in "AA" zone for these type of excavations. However, it is not up to me to make a decision in the matter of jurisdiction but these are only my comments and can be taken for what they are worth.

As to this particular appeal, it seems that the principal difficulty that will be encountered is that of control of the lake in the future. It is understood that the appellant is considering the forming of a closed corporation by property owners in the West Lynn Addition and further that there will be restrictive covenants placed upon the property and thus the control would all be of a private nature.

Along this line since this lake is to be privately owned and the control is to be of a private nature, I am wondering what department of the City will be in a position to follow through and to provide an answer to the public when complaints are registered with the City relative to events that might happen on this private property. In other words, I seriously doubt if any department of the City would have too much control over the operation of this project, especially as pertains to traffic and police control.

I have no particular comments to make relative to the construction of the pit since the Building Code does not cover such matters.

SBM:fb


S. B. Maple
Supt. of Building Inspection



THE WICHITA-SEDGWICK COUNTY DEPARTMENT OF PUBLIC HEALTH

OFFICE OF PUBLIC HEALTH ENGINEERING

DATE March 22, 1960

TO Leland R. Edmonds, Secretary, Board of Zoning Appeals
THROUGH: M. Leon Bauman, M.D., M.P.H.
FROM James F. Aiken, Jr.

SUBJECT BZA 8-60

This is in reply to your memorandum of March 17, 1960 concerning the development of a private lake on property located generally North of 13th, South of 17th, East of the Flood Control Project and the Railroad and West of the West Lynn Addition.

In making my preliminary evaluation of this proposal, I have the following comments and suggestions to offer:

1. That the minimum water depth of the lake be 3 feet as a means of controlling aquatic plant growth and mosquito breeding.
2. That no swimming be permitted in this lake.
3. That the maximum bank slope be four horizontally to one vertically and preferably five horizontally to one vertically.
4. That the lake and adjacent area be fenced with a five-foot chain link fence or equivalent as a means of controlling accessibility. Other means of controlling accessibility which would affect the same control as the five-foot chain link fence might be reviewed and considered.
5. That the adjacent area to the lake outside of the platted area be restricted to no development unless any proposed development would be reviewed through the normal channels of the Planning Commission and that the development take place in such a manner so as to provide adequate control of the lake.
6. That the area adjacent to the lake be sodded and landscaped.
7. That the responsibility for continuous maintenance and upkeep be provided in a very definitive way.
8. That a means of financing the continuous maintenance and upkeep of the lake and adjacent area be provided in a very definitive way.
9. That the drainage be controlled to prevent any contaminating material from entering the lake.

James F. Aiken, Jr.
James F. Aiken, Jr.
Public Health Engineering Director

JFA:rc

THE CITY OF WICHITA
OFFICE OF City Attorney

DATE March 21, 1960

TO Eugene L. Pirtle, Assistant City Attorney
FROM Fred W. Aley

SUBJECT EZA 8-60

I enclose herewith request from Leland R. Edmonds, on the subject matter. Also enclosed is sketch of the area in which the lake is proposed to be excavated. Please send copy of your comments to this office.

Very truly yours,

Fred W. Aley
City Attorney

FWA/t
cc Leland R. Edmonds

MARCH 17, 1960

MR. EUGENE PIRTLE
ASSISTANT CITY ATTORNEY
1008 BROWN BUILDING
WICHITA, KANSAS

DEAR MR. PIRTLE:

SUBJECT: BZA 8-60

ATTACHED IS A COPY OF A REQUEST FOR INFORMATION AND COMMENTS FROM DEPARTMENT AND DIVISION HEADS WITH RESPECT TO SUBJECT APPLICATION. ALSO ATTACHED IS A COPY OF THE LETTER CALLING A SPECIAL MEETING FOR MARCH 31 TO CONSIDER THIS AND ONE OTHER CASE.

I AM SPECIFICALLY REQUESTING THAT YOU CONSIDER THE QUESTION OF JURISDICTION IN THIS MATTER. CITIZEN REACTION SUGGESTS THAT THIS CASE MAY WELL BE HEADED FOR LITIGATION. BECAUSE OF THIS PROBABLE OPPOSITION, THE BOARD WILL CERTAINLY CONSIDER VERY CAREFULLY WHAT ITS POSITION SHOULD BE.

I WILL BE GLAD TO FILL YOU IN ON EVENTS WHICH HAVE OCCURRED UP TO NOW AT YOUR CONVENIENCE.

VERY TRULY YOURS,

LELAND R. EDMONDS
SECRETARY

LRE:DBR
ATTACHMENT

MARCH 17, 1960

MR. EUGENE PIRTLE
ASSISTANT CITY ATTORNEY
1008 BROWN BUILDING
WICHITA, KANSAS

DEAR MR. PIRTLE:

SUBJECT: BZA 8-60

A BASIC QUESTION HAS BEEN RAISED RELATIVE TO SUBJECT APPLICATION FOR VARIANCE TO PERMIT EXCAVATION AND DEVELOPMENT OF A LAKE. THIS CONCERNS LIABILITY FOR POSSIBLE FUTURE DAMAGE TO THE FLOOD CONTROL PROJECT RESULTING FROM THE LAKE DEVELOPMENT.

THE SKETCH PREVIOUSLY PROVIDED YOU INDICATED THE LOCATION OF SUBJECT PROPERTY WITH RESPECT TO THE FLOOD CONTROL PROJECT. MAINTENANCE DIVISION PERSONNEL HAVE SUGGESTED IN PREVIOUS SIMILAR SITUATIONS THAT THERE IS ALWAYS A POSSIBILITY OF "BAND SOILS" AND RESULTING LEVEE FAILURE WHEN THERE IS SUCH EXCAVATION AS IS PROPOSED HERE. THE HORIZONTAL DISTANCE FROM THE LEVEE BEYOND WHICH THIS DANGER CEASES TO EXIST APPARENTLY CANNOT BE DETERMINED BY ENGINEERS BECAUSE OF A VARIETY OF CIRCUMSTANCES.

IF IT CAN BE ASSUMED THAT THERE IS DANGER OF A LEVEE FAILURE ON THE PROJECT DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO THE EXCAVATION PROPOSED IN BZA 8-60:

1. WHAT WOULD BE THE LIABILITY OF THE CITY IN THE EVENT OF FAILURE AND SUBSEQUENT FLOODING?
2. WOULD BOARD OF ZONING APPEALS APPROVAL OF THE EXCAVATION IN ANY WAY ALTER THE LIABILITY OF THE CITY?
3. WHAT WOULD BE THE LIABILITY OF THE PRIVATE, NON-PROFIT CORPORATION WHICH IS PROPOSED TO BE ESTABLISHED TO OWN AND CONTROL THE PRIVATE LAKE REQUESTED?
4. WHAT WOULD BE THE LIABILITY OF THE DEVELOPER RESPONSIBLE FOR ORIGINAL EXCAVATION OF THE LAKE?
5. IF THE CORPORATION OR DEVELOPER WOULD NOT BE LIABLE; COULD THEY BE FORCED TO ACCEPT LIABILITY THROUGH A SPECIFIC CONDITION TO APPROVAL OF THE VARIANCE?

PAGE 2 - EUGENE PIRTLE
MARCH 17, 1960

WE WILL APPRECIATE YOUR COMMENTS AT YOUR EARLIEST CONVENIENCE.

VERY TRULY YOURS,

LELAND R. EDMONDS
SECRETARY

LRES:BN

CC: FRED ALEY

THE CITY OF WICHITA

OFFICE OF BOARD OF ZONING APPEALS **DATE** MARCH 17, 1960

TO

FROM LELAND R. EDMONDS, SECRETARY

SUBJECT BZA 8-60

MRS. ELLEN C. OTT, BY HER AGENT DOLAN WELSH, HAS FILED AN APPLICATION FOR A VARIANCE TO ALLOW THE EXCAVATION AND DEVELOPMENT OF A PRIVATE LAKE ON PROPERTY LOCATED GENERALLY NORTH OF 13TH STREET; SOUTH OF 17TH STREET; EAST OF THE FLOOD CONTROL PROJECT AND THE RAILROAD; AND WEST OF THE WEST LYNN ADDITIONS. THIS REQUEST FOR A VARIANCE WILL BE HEARD BY THE BOARD OF ZONING APPEALS AT:

1:30 P.M., MARCH 31, 1960
ROOM 201, CITY BUILDING
204 SOUTH MAIN
WICHITA, KANSAS

THIS APPLICATION APPEARS TO BE UNIQUE IN THE HISTORY OF THE BOARD OF ZONING APPEALS. WE THEREFORE REQUEST THE COMMENTS OF YOUR DEPARTMENT OR DIVISION REGARDING THIS PROPOSAL. WE WOULD ESPECIALLY REQUEST ANY SUGGESTIONS YOU MAY HAVE AS TO CONDITIONS WHICH YOU WOULD RECOMMEND BE IMPOSED ON THIS DEVELOPMENT IN THE EVENT THE BOARD OF ZONING APPEALS DETERMINES THAT THE APPLICATION SHOULD BE APPROVED. PLEASE SUBMIT YOUR COMMENTS AT YOUR EARLIEST CONVENIENCE AND PRIOR TO MARCH 25, 1960.

A SKETCH OF THE AREA IN WHICH THE LAKE IS PROPOSED TO BE EXCAVATED IS ATTACHED FOR YOUR INFORMATION.

Leland R. Edmonds
LELAND R. EDMONDS,
SECRETARY

c. c. E. N. SMITH, DIRECTOR OF PUBLIC WORKS
B. E. SMITH, CITY ENGINEER
S. B. MAPLE, BUILDING INSPECTION SUPERINTENDENT
GEORGE WILTON, SUP'T OF PUBLIC WORKS MAINTENANCE
DR. M. LEON BAUMAN, DIRECTOR OF PUBLIC HEALTH
L. L. LITTLE, DIRECTOR OF PLANNING
FRED ALEY, CITY ATTORNEY
EUGENE PIRTLE, BOARD OF ZONING APPEALS, ASST. CITY ATTORNEY
EMORY COX, DIRECTOR OF PARK BOARD
ROBERT H. HESS, DIRECTOR OF WATER

INFORMATION COPIES:

BOARD OF ZONING APPEALS MEMBERS
FRANK H. BACKSTROM, CITY MANAGER

MARCH 17, 1960

MR. KENNETH F. BECK
PETROLEUM BUILDING
WICHITA, KANSAS

DEAR MR. BECK:

AS PROVIDED BY THE ADOPTED RULES OF PROCEDURE OF THE BOARD
OF ZONING APPEALS, I HAVE CALLED A SPECIAL MEETING OF THE
BOARD. THE SPECIAL MEETING WILL BE HELD:

1:30 P.M., MARCH 31, 1960
ROOM 201, CITY BUILDING
204 SOUTH MAIN
WICHITA, KANSAS

TWO CASES WILL APPEAR ON THE AGENDA AT THAT MEETING. THESE
ARE DESIGNATED AS BZA 7-60 AND BZA 8-60. PLEASE PLAN TO
ATTEND SO THAT THESE CASES MAY BE DISPOSED OF.

SINCERELY,

LUIS A. CASADO
CHAIRMAN

LAC:LR:SDH

MARCH 16, 1960

MRS. ELLEN C. OTT
1405 NORTH WEST STREET
WICHITA, KANSAS

DEAR MRS. OTT:

YOUR APPLICATION FOR A VARIANCE UNDER PROVISIONS OF SECTION 21-27, CODE OF THE CITY OF WICHITA, AND RELATING TO PREMISES LOCATED AT: BETWEEN 13TH AND 17TH STREETS, EAST OF THE FLOOD CONTROL AND RAILROAD RIGHT-OF-WAY HAS BEEN GIVEN BOARD OF ZONING APPEALS CASE No. 8-60.

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

FURTHER, YOU ARE NOTIFIED THAT YOU MAY APPEAR BEFORE THE BOARD OF ZONING APPEALS EITHER IN PERSON, OR BY AGENT OR ATTORNEY, FOR A HEARING OF YOUR CASE ON THURSDAY, MARCH 31, 1960, AT 1:30 P.M. IN ROOM 201, CITY BUILDING, 204 SOUTH MAIN, WICHITA, KANSAS.

RESPECTFULLY,

LELAND R. EDMONDS,
SECRETARY
BOARD OF ZONING APPEALS

LRE:SDH

c. c. MR. DOLAN H. WELSH

NOTICES MAILED 3/16/60

R. J. KING
1613 SOUTH HILLSIDE

HAROLD J. ORINDGREFF
LOIS ORINDGREFF
1756 NORTH YOUNG

MAYNARD A. JONES
MARY E. JONES
1736 NORTH YOUNG

BYRON M. DICKEY
BLANCH E. DICKEY
1726 NORTH YOUNG

JOE H. YEAGER
ELIZABETH ANN YEAGER
1716 NORTH YOUNG

HOMER W. ERHARD
GLADYS E. ERHARD
1702 N. YOUNG

W. R. WHITEHEAD
FRANCES M. WHITEHEAD
1653 NORTH SABIN

C. W. BARNHART, JR.
G. HELEN BARNHART
4411 WEST 16TH

ROY R. WINTER
ALICE E. WINTER
1643 N. SABIN

PAUL J. WEBER
REBA M. WEBER
1635 N. SABIN

ARTHUR HOLTSCLAW
PAULINE HOLTSCLAW
1627 N. SABIN

CHARLES J. WHITE
HELEN I. WHITE
1619 NORTH SABIN

GERALD V. HARMAN
HELEN L. HARMAN
4404 OTT

LOYD & PRESTON
BUILDERS, INC.
1717 COLORADO

VICTOR RIFFEL, JR.
VELMA L. RIFFEL
1512 NORTH SABIN

GLENN J. SWONGER
MARGARET K. SWONGER
1505 N. SABIN

LARUTAN FUEL COMPANY
c/o CONSOLIDATED GAS COMPANY
CENTRAL BUILDING

MARTIN P. STUMP
BERNADINE L. STUMP
1517 NORTH SABIN

*Kent Frizzell, attorney 1027 1/2
1613 S. Hillside West Douglas
Salem St. Toledo
1660 N. Nevada
Paul H. Smith, ltr.
921 Beacon Bldg.*

THE CITY OF WICHITA

OFFICE OF BOARD OF ZONING APPEALS DATE MARCH 16, 1960

TO FRANK H. BACKSTROM, CITY MANAGER

FROM LELAND R. EDMONDS, SECRETARY

SUBJECT BZA 8-60 - REQUEST OF DOLAN
WELSH FOR A PERMIT TO CON-
STRUCT A PRIVATE LAKE

IN ACCORDANCE WITH YOUR TELEPHONE REQUEST OF MARCH 16, 1960, I AM SUBMITTING THIS REPORT ON THE PROPOSAL BY MR. DOLAN WELSH TO EXCAVATE AND DEVELOP A PRIVATE LAKE WEST OF THE WEST LYNN DEVELOPMENT. AT THE OUTSET I SHOULD STATE THAT A BOARD OF ZONING APPEALS APPLICATION HAS BEEN FILED AS OF MARCH 15, 1960, REQUESTING A VARIANCE WHICH WOULD PERMIT THE EXCAVATION OF THE LAKE DESIRED.

MR. DOLAN WELSH FIRST CONTACTED THIS OFFICE INFORMALLY WITH RESPECT TO THIS PROPOSAL SEVERAL WEEKS AGO. AT THAT TIME WE DISCUSSED THE ZONING REGULATIONS WHICH WOULD BE APPLICABLE TO THIS PROPOSED USE AND TO A SUGGESTION THAT THE DIRT EXCAVATED COULD BE USED AS FILL MATERIAL FOR INTERSTATE 235. AT THAT TIME, AFTER BRIEF CONSULTATION WITH MR. LAWRENCE CURFMAN, ASSISTANT CITY ATTORNEY, MR. WELSH WAS TENTATIVELY ADVISED THAT THERE APPEARS TO BE NO PROVISION IN THE ZONING ORDINANCE WHICH WOULD PROHIBIT THE EXCAVATION OF A PRIVATE LAKE. MR. WELSH WAS FURTHER ADVISED AT THIS TIME THAT ANY SALE OF THE EARTH EXCAVATED WOULD LIKELY RESULT IN A CLASSIFICATION OF THE ENTIRE OPERATION AS A "BORROW PIT".

SUBSEQUENT TO OUR INITIAL CONVERSATION, I DISCUSSED THIS PROBLEM WITH OTHER DEPARTMENT AND DIVISION HEADS, INCLUDING SPECIFICALLY MR. MITCHELL, MR. MAPLE, AND MR. AIKEN. IN EACH INSTANCE THE QUESTION OF POSSIBLE ZONING CONTROL WAS DISCUSSED AND IT REMAINED APPARENT THAT NO PROVISION OF THE ZONING ORDINANCE, AS IT NOW STANDS, WOULD PROHIBIT THE CONSTRUCTION OF A PRIVATE LAKE.

OVER THE PAST SEVERAL WEEKS, WE HAVE DISCUSSED MR. WELSH'S PROPOSAL WITH SEVERAL INDIVIDUAL CITIZENS FROM THE GENERAL VICINITY OF WEST LYNN. WE HAVE HAD FURTHER DISCUSSIONS WITH MR. WELSH, REVIEWING THE FACTS OF THE CASE AND HIS PROPOSAL.

ABOUT TEN DAYS AGO, MR. LITTLE AND I MET WITH MR. CURFMAN TO DISCUSS THIS MATTER FURTHER FROM A LEGAL POINT OF VIEW. AS A RESULT OF THIS CONFERENCE, IT WAS POINTED OUT THAT THE ZONING ORDINANCE IS SILENT WITH RESPECT TO EXCAVATION OF LAKES AND SIMILAR USES; THAT THERE IS A QUESTION AS TO WHETHER A "LAKE" CAN BE TERMED A "USE OF LAND" AS THESE TERMS ARE GENERALLY UNDERSTOOD, AND THAT WHILE THE ORDINANCE DOES NOT PROHIBIT SUCH EXCAVATION AS IS PROPOSED BY MR. WELSH, IT SIMILARLY DOES NOT PERMIT SUCH EXCAVATION.

COPY

PAGE 2 - FRANK H. BACKSTROM
MARCH 16, 1960

WITHIN THE LAST TWO MONTHS, THE BOARD OF ZONING APPEALS HAS BEEN FACED WITH APPLICATIONS FOR A "VARIANCE TO THE STRICT ENFORCEMENT PROVISIONS OF THE ZONING ORDINANCE" TO ALLOW THE OPERATION AND MAINTENANCE OF A BORROW PIT IN THE SAME GENERAL VICINITY. THESE, SPECIFICALLY, ARE LOCATED BETWEEN 9TH AND 13TH STREETS WEST OF HOOVER. IN BOTH INSTANCES, THE BOARD TOOK OFFICIAL ACTION TO ACCEPT JURISDICTION OF THESE MATTERS ALTHOUGH THE ZONING ORDINANCE DID NOT SPECIFICALLY PROVIDE THAT IT HAD THE RIGHT OF SUCH JURISDICTION. IN BOTH INSTANCES, THE BOARD OF ZONING APPEALS APPROVED THE APPLICATIONS FOR VARIANCE AND THE BOARD'S APPROVAL WAS NOT APPEALED TO THE CITY COMMISSION WITHIN THE PRESCRIBED TEN DAY APPEAL PERIOD.

ON THURSDAY, MARCH 10, MR. DOLAN WELSH AND HIS ATTORNEY, MR. PAUL SMITH, AND I, CONFERRED WITH RESPECT TO THIS PROBLEM. AT THIS TIME, IT WAS DEVELOPED THAT AN AGREEMENT WAS BEING CONSIDERED WHICH WOULD HAVE THE EFFECT OF ALLOWING THE CONTRACTING FIRM TO EXCAVATE THE LAKE ACCORDING TO ENGINEERING SPECIFICATIONS PREPARED FOR MR. WELSH, AND IN RETURN FOR THIS WORK THE CONTRACTOR WOULD RECEIVE THE DIRT EXCAVATED. IT WAS NOTED THAT THE DIRT WHICH HE RECEIVED IN PAYMENT FOR THE EXCAVATION WORK WOULD BE USED AS FILL MATERIAL FOR INTERSTATE 235. AT THIS SAME TIME, MR. SMITH, MR. WELSH AND I CONSULTED MR. CURFMAN BY TELEPHONE, INASMUCH AS MR. WELSH HAD THEN REQUESTED A WRITTEN OPINION FROM THE DEPARTMENT OF LAW STATING, IN EFFECT, THAT SUCH A PROPOSAL WOULD BE PERMISSIBLE UNDER THE TERMS OF THE EXISTING ZONING ORDINANCE.

ON MARCH 11, 1960, MR. PAUL SMITH, MR. CURFMAN, MR. MAPLE AND I DISCUSSED THE MANY ASPECTS OF THIS PROBLEM AT CONSIDERABLE LENGTH, PARTICULARLY WITH RESPECT TO THE REQUEST FOR A FORMAL WRITTEN OPINION. THAT CONFERENCE RAISED MANY NEW QUESTIONS, BASICALLY CONCERNED WITH ORDINANCE CONTROL, THE MEANING OF THE TERM "LAND USE", AND THE QUESTION OF "WHEN DOES A PRIVATE LAKE EXCAVATION BECOME A BORROW PIT". AS A RESULT OF THAT CONFERENCE, IT WAS DETERMINED THAT THE BEST SOLUTION FOR ANSWERING THIS PROBLEM WOULD BE TO APPLY TO THE BOARD OF ZONING APPEALS FOR THE PERMISSION TO PROCEED WITH THE LAKE DEVELOPMENT. AS NOTED ABOVE, THIS APPLICATION HAS BEEN FILED.

I HAVE BEEN ADVISED BY A DR. SCHULTZ IN THIS AREA, AND BY HIS ATTORNEY, MR. KENT FRIZZELL, AS WELL AS BY OTHER PEOPLE IN THE AREA, THAT THERE IS CONSIDERABLE OPPOSITION TO THE PROPOSAL. THIS OPPOSITION APPEARS TO COME FROM WEST LYNN RESIDENTS, AS WELL AS THOSE RESIDING NEAR, BUT OUTSIDE, THE LIMITS OF THE WEST LYNN DEVELOPMENT. I HAVE BEEN ADVISED BY MR. WELSH THAT VIRTUALLY ALL OF THE OPPOSITION DISAPPEARS AFTER THE PLAN IS COMPLETELY EXPLAINED.

PAGE 3 - FRANK H. BACKSTROM
MARCH 16, 1960

WE HAVE NOT BEEN GIVEN DETAILS OF THE PLAN IN OUR OFFICE. GENERAL CHARACTERISTICS OF THE PLAN AS IT HAS BEEN EXPLAINED TO US, HOWEVER, ARE AS FOLLOWS:

1. A PRIVATE LAKE WOULD BE DEVELOPED UNDER A NON-PROFIT CORPORATION ESTABLISHED UNDER STATE CORPORATION LAWS.
2. STOCKHOLDERS IN THIS CORPORATION WOULD BE THOSE PEOPLE WHO WOULD PURCHASE LOTS ADJOINING THE LAKE (SUCH LOTS YET TO BE PLATTED) AND OTHER LOT HOLDERS IN THE SEVERAL WEST LYNN ADDITIONS.
3. THE RETENTION OF MORE THAN NORMAL STOCKHOLDER RIGHTS BY THE DEVELOPER.
4. THE PROVISION THAT THE BOARD OF DIRECTORS OF THE NON-PROFIT CORPORATION WOULD HAVE A MAJORITY OF ITS MEMBERS FROM THOSE LOTS ADJOINING THE LAKE, WITH A MINORITY OF ITS MEMBERSHIP BEING SELECTED FROM THE OTHER WEST LYNN ADDITIONS.
5. THE LAKE WILL BE EXCAVATED WITH SLOPES, DEPTH, AND SHAPE AS DETERMINED PROPER BY THE CONSULTING ENGINEER EMPLOYED TO DESIGN THE LAKE.
6. SHORE LINE AND IMMEDIATELY ADJACENT AREA WILL BE LAND-SCAPED IN A MANNER PRESCRIBED BY THE CONSULTING ENGINEER.

THE CHAIRMAN OF THE BOARD OF ZONING APPEALS HAS AUTHORIZED A SPECIAL MEETING OF THE BOARD OF ZONING APPEALS TO CONSIDER THIS AND ONE OTHER MATTER. THIS SPECIAL MEETING WILL BE HELD AT 1:30 P.M. IN THE CITY COMMISSION ROOM, CITY BUILDING, 204 SOUTH MAIN, ON MARCH 31, 1960. OFFICIAL NOTICE OF THIS MEETING WILL BE BY LEGAL PUBLICATION AND BY INDIVIDUAL LETTER MAILED TO THE PROPERTY OWNERS WITHIN 200 FEET OF THE TRACT OF LAND OUTLINED ON THE ATTACHED SKETCH.

IF THERE ARE OTHER QUESTIONS CONCERNING THIS PROPOSAL, I SHALL BE HAPPY TO ATTEMPT TO ANSWER THEM.

LRE:BER
ATTACHMENT

LELAND R. EDMONDS
SECRETARY

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

NOTICE TO ADJOINING PROPERTY OWNERS

AN APPLICATION FOR A VARIANCE HAS BEEN FILED BY Mrs. Ellen C. Ott OF 1405 N. WEST STREET, WICHITA, KANSAS, AS PROVIDED BY SECTION 21-27 OF THE CODE OF THE CITY OF WICHITA. THE APPLICANT DESIRES TO DEVELOP A PRIVATE LAKE ON PROPERTY LOCATED BETWEEN 13TH AND 17TH STREETS, EAST OF THE FLOOD CONTROL AND RAILROAD RIGHT-OF-WAY AND LEGALLY DESCRIBED AS:

A TRACT IN THE SE $\frac{1}{4}$ OF SECTION 11, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF 6TH P.M., DESCRIBED AS FOLLOWS: BEGINNING 1090.62 FEET WEST AND 290 FEET NORTH OF THE SE CORNER OF SAID SE $\frac{1}{4}$, THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SE $\frac{1}{4}$, 246.87 FEET TO THE P.C. OF A CURVE, THENCE ON A CURVE TO THE LEFT HAVING A DEFLECTION ANGLE OF 39°24' AND A RADIUS OF 279.29 FEET A DISTANCE OF 192.06 FEET TO THE P.T. OF SAID CURVE, THENCE NORTHWESTERLY ON A TANGENT TO SAID CURVE, 1067.05 FEET TO THE P.C. OF A CURVE, THENCE ON A CURVE TO THE RIGHT HAVING A DEFLECTION ANGLE OF 90° AND A RADIUS OF 110 FEET A DISTANCE OF 172.79 FEET TO THE P.T. OF SAID CURVE, THENCE NORTHEASTERLY ON A TANGENT TO SAID CURVE, 80 FEET, THENCE NORTHWESTERLY AT RIGHT ANGLES TO A POINT 1920 FEET WEST OF THE EAST LINE OF SAID SE $\frac{1}{4}$, THENCE NORTH PARALLEL TO AND 1920 FEET FROM THE EAST LINE OF SAID SE $\frac{1}{4}$ TO THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY #295 AS CONDEMNED IN CASE A-77197, THENCE SOUTHWESTERLY ON SAID HIGHWAY RIGHT-OF-WAY LINE TO THE EAST RIGHT-OF-WAY LINE OF THE MISSOURI PACIFIC R.R., THENCE SOUTHEASTERLY ON SAID R.R. RIGHT-OF-WAY LINE TO A POINT 180 FEET NORTH OF THE SOUTH LINE OF SAID SE $\frac{1}{4}$, MEASURED AT RIGHT ANGLES TO SAID SOUTH LINE OF SAID SE $\frac{1}{4}$, THENCE EAST PARALLEL TO SAID SOUTH LINE OF SAID SE $\frac{1}{4}$, 140 FEET, THENCE NORTHEASTERLY TO THE POINT OF BEGINNING, CONTAINING 27.2 ACRES, MORE OR LESS.

THIS APPLICATION HAS BEEN ASSIGNED CASE No. 8-60. A HEARING WILL BE HELD BY THE BOARD OF ZONING APPEALS ON THURSDAY, MARCH 31, 1960, AT 1:30 P.M., IN ROOM 201, CITY BUILDING, 204 SOUTH MAIN, WICHITA, KANSAS, AT WHICH TIME YOU MAY APPEAR, IF YOU SO DESIRE, EITHER IN PERSON OR BY AGENT OR ATTORNEY.

Leland R. Edmonds
LELAND R. EDMONDS, SECRETARY
BOARD OF ZONING APPEALS



STATEMENT FOR BOARD OF ZONING APPEALS
TO ACCOMPANY APPLICATION FOR VARIANCE
OF MRS. ELLEN C. OTT BY DOLAN H. WELSH, OPTIONEE

Dolan H. Welsh has planned, platted and developed West Lynn, a number of additions in the area West of West Street and North of Thirteenth Street on land all originally owned by Mrs. Ott. Development was commenced on the East side of this area in 1953 and has proceeded steadily ever since. West Lynn is now one of the better residential areas in Wichita, with approximately 140 high-class homes. Mr. Welsh and his family reside in West Lynn and are proud of it and their contribution to their local community.

Changes in the Missouri-Pacific Railroad Right-of-Way and in the new Interstate Route #235 Right-of-Way, both of which adjoin West Lynn on the West, have made the undeveloped area immediately adjacent to those right-of-ways undesirable and unsuitable for high-class residences of the type heretofore built, and Mr. Welsh has been concerned for some time as to how to utilize this undeveloped area in such a way as not to detract from the fine existing neighborhood. He now believes he has an unusual opportunity to complete West Lynn in a manner which will enhance and improve rather than detract from existing values. Because of the construction of Interstate Route #235, Mr. Welsh has an opportunity at this particular time to have a lake excavated and developed in this undeveloped area, at no cost to the city or to the other property owners. He is able to do this because he can sell the dirt from the excavation to contractors for use as fill on the new highway. Except for this unique situation, which will never again occur, the cost of excavating and developing such a lake would be prohibitive.

Mr. Welsh has thoroughly discussed his proposal with interested city officials and all appear to be favorable to it. The Building Inspector has indicated, however, that the excavation and development of a private lake in a District zoned "AA" might constitute a violation of Section 21-10 of the Zoning Ordinance of the City of Wichita and has stated that, although no building permit is required to construct a lake, if excavation were begun without applying to this Board for a variance, he might be required to invoke the penalty provision of Section 21-30. To eliminate doubt on this point, a variance from the strict application of the enforcement provisions of the Zoning Ordinance has been requested. It is submitted that all of the following conditions, required by Section 21-27-D, are present:

(a) The variance desired arises from a condition which is unique and which is not ordinarily found in the same zoning district. The proposed lake area is bounded on the West, Southwest and Northwest by the railroad right-of-way and the right-of-way for Interstate Route #235, and access to it is completely cut off in those directions. Since the development of West Lynn was started, the bridge across the "Big Ditch" was

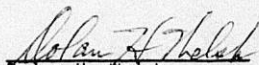
built and the railroad right-of-way had to be raised in elevation to go over the flood control levies. The right-of-way of Interstate Route #235 has to be elevated still higher, so that the highway clears the railroad. The result of elevating both right-of-ways is to render this area undesirable and unsuitable for high-class residences.

(b) The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. No existing residences or privately owned lots will be adjacent to the proposed lake area. They will all be separated by an additional tier of lots, which have not yet been platted, and which will be sold to persons buying with full knowledge of the lake. The lake area will be further separated from all residential lots by a private service road. Competent appraisers have advised Mr. Welsh that the value of the new lots nearest to the lake will be substantially greater because of their proximity to the lake. Some of the better additions in Sedgwick County which were developed outside the City have private lakes, and experience in other cities has demonstrated their aesthetic value, and that water in the form of rivers or lakes is most desirable in residential areas. A large majority of the present property owners in West Lynn are in favor of this proposal because they believe it will add to the value of their properties and the attractiveness of their community.

(c) The strict application of the enforcement provisions of the zoning ordinance will constitute unnecessary hardship upon the property owner represented in the appeal. Because the proposed lake area is now unsuited for high-class residences, if this request is denied, Mrs. Ott will have to sell it for cheap housing. This will detract from the value and beauty of the rest of West Lynn including that still owned by Mrs. Ott and Mr. Welsh. A denial of this request would eliminate the possibility of constructing this major improvement, because the cost of doing so would be prohibitive except as the excavated dirt can be used for fill on the new highway.

(d) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. In fact, it will prove of great benefit to the immediate vicinity and to the city as a whole. Mr. Welsh will at his own cost develop the lake area in a manner to conform with the existing community which he has developed. He will plant grass on all slopes of the lake and trees next to the railroad and highway right-of-ways, and will comply with any other reasonable conditions or restrictions which the Board may see fit to impose. If the request is granted, he will impose voluntarily restrictions on the lake area and the unplatted adjacent property, in a form satisfactory to the City's Legal Department, to insure the continued maintenance of the lake area. He proposes to do this through the medium of a non-profit corporation in which the resident owners in West Lynn will be permitted to participate. He believes that this variation from stereotype, run-of-the-mill platting will help make West Lynn more attractive and an even more desirable area in which to live.

Respectfully submitted,


Dolan H. Welsh

#1-INSTRUCTIONS TO DELIVERING EMPLOYEE

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

RETURN RECEIPT
 Received the numbered article described on other side.

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

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED *3-17-60* ADDRESS WHERE DELIVERED (only if requested in item #1)

CS-18-7184-4 GPO

RECEIPT FOR CERTIFIED MAIL—15¢

No. 386387

SENT TO <i>Ellen C Ott</i>	POSTMARK OR DATE
STREET AND NO. <i>1405 7th West Street</i>	
CITY AND STATE <i>Topeka, Kansas</i>	
If you want a return receipt, check which: <input type="checkbox"/> It shows to whom and when delivered	If you want restricted delivery, check here: <input type="checkbox"/> 20¢ fee

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

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

REMARKS FOR ADDRESSEE (VOID)
PATENTED BY U.S. PATENT OFFICE

APR 11 8 PM 1980
KANS.

WEST WICHITA

INSTRUCTIONS: Fill in items below and complete #1 on other side, when applicable. Moisten gummed ends and attach to back of article. Print on front of article RETURN RECEIPT REQUESTED.

REGISTERED NO. NAME OF SENDER *City of Wichita*

CERTIFIED NO. *6386387* STREET AND NO. OR P. O. BOX *Board of zoning appeal*

INSURED NO. CITY, ZONE AND STATE *104 S. Main*
Wichita, Kansas

POD Form 3811 Jan. 1958
12-H-8-60 CB-16-7194-4

RECEIPT FOR CERTIFIED MAIL—15¢

SENT TO *Allen C. Ott* POSTMARK OR DATE

STREET AND NO. *1405 7th West Street*

CITY AND STATE *Wichita, Kansas*

If you want a return receipt, check which It shows to whom, when, and address where delivered 2¢ fee

If you want restricted delivery, check here 20¢ fee

No. **3886387**

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

OWNERSHIP LIST

LOT	BLOCK	ADDITION	OWNER
20	6	Westdale	R. J. King
21	"	"	"
22	"	"	"
23	"	"	" 1613 South Hillside
1	1	West Lynn Fourth	Harold J. Orindgreff Lois Orindgreff
2	"	"	1756 N. Young Dolan H. Welsh Gladys A. Welsh
3	"	"	1660 N. Nevada Maynard A. Jones Mary E. Jones
4	"	"	1736 N. Young Byron M. Dickey Blanch E. Dickey
5	"	"	1726 N. Young Joe H. Yeager Elizabeth Ann Yeager
6	"	"	1716 N. Young Homer W. Erhard Gladys E. Erhard
1	2	"	1702 N. Young W. R. Whitehead Frances M. Whitehead
2	"	"	1653 N. Sabin C. W. Barnhart Jr. G. Helen Barnhart
Beg front cor. common to lots 3&4 Blk 2, th SW to rear cor. common to lots 3&4 th NWly alg rear line lots 3&5, th NE to beg. being part of lot 3	"	"	" 4411 West 16th
3 exc beg front " cor common to lots 3&4, Blk 2 th SW to rear cor common to lots 3&4, th NWly alg rear line lots 3&5, th NE to beg.	"	"	Roy R. Winter Alice E. Winter 1643 N. Sabin
4	"	"	Paul J. Weber Reba M. Weber 1635 N. Sabin
5	"	"	Arthur Holtsclaw Pauline Holtsclaw 1627 N. Sabin

Lot	Block	Addition	Owner
6	2	West Lynn Fourth	Charles J. White Helen I. White 1619 N. Sabin
7	"	" "	Gerald V. Harman Helen L. Harman 4404 Ott
1		West Lynn 6th	Loyd & Preston, Builders Inc. 1717 Colorado
10	1	West Lynn 7th	Victor Riffel Jr. Velma L. Riffel 1512 N. Sabin
9	"	" "	Dolan H. Welsh Gladys A. Welsh 1660 N. Nevada
8	"	" "	Glenn J. Swonger Margaret K. Swonger 1505 N. Sabin
7	"	" "	Dolan H. Welsh Gladys A. Welsh 1660 N. Nevada
6	"	" "	" "
5	"	" "	" "
4	"	" "	" "
3	"	" "	" "
2	"	" "	" "
1	"	" "	" "

Beg at a pt 1185' W & 30 feet N of SE cor sec 11-27-1W. Larutan Fuel Co.
 N 50 feet W 117.35 feet to Right of Way of Missouri Pacific Railroad, th Seasterly along said Right of Way 66.3 feet to a point 30 feet N of S line of Sec 11 thence E 75 feet to beginning c/o Consolidated Gas Company, Central Building

11	"	"	"	Martin P. Stump Bernadine L. Stump 1517 N. Sabin
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PAGE-3

OWNERSHIP LIST

LEGAL

OWNER

SE $\frac{1}{4}$ Sec 11-27-1W exc part West of Mo. Pac. R-O-W Ellen C. Ott
and exc part for floodway and exc beg. at a point 1405 N. West Street
1185.8 ft. West and 30 ft. North of SE corner, N
50 ft., West 117.35 ft to R-O-W Mo. Pac. RR, th
SEly along said R-O-W 66.3 ft. to point 30 ft. N
of S line Sec 11, th E 75 ft to beg. and exc
West Lynn Addition and 2nd, 3rd, 4th, 5th, 6th,
and 7th Additions, and Bettega Addition and exc
part deeded to O. K. School and exc part for
Interstate Route # 235.

We hereby certify the foregoing to be a true and correct List
of Property Owners within a 200 ft. radius of description
described in schedule "A" hereto attached, as shown by the
records in the office of the Register of Deeds of Sedgwick
County, Kansas, on this the 14 day of March A. D. 1960 at
7:00 A. M.

THE SECURITY ABSTRACT AND TITLE CO INC

By *Guileen Schwardt, Asst Treas*

~~Vice President~~

Order No. 71388
NF

Schedule "A"

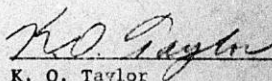
Certificate No.
71388

DESCRIPTION OF LAKE IN
SE $\frac{1}{4}$ of 11-27-1W

February 29, 1960

A tract in the SE $\frac{1}{4}$ of Sec 11, T 27 S, R 1 W, of the 6th P.M.,
Described as follows:

Beginning 1090.62 feet west and 290 feet north of the SE corner of said SE $\frac{1}{4}$, thence north parallel to the east line of said SE $\frac{1}{4}$, 246.87 feet to the P. C. of a curve, thence on a curve to the left having a deflection angle of 39° 24' and a radius of 279.29 feet a distance of 192.06 feet to the P. T. of said curve, thence northwesterly on a tangent to said curve, 1067.05 feet to the P. C. of a curve, thence on a curve to the right having a deflection angle of 90° and a radius of 110 feet a distance of 172.79 feet to the P. T. of said curve, thence northeasterly on a tangent to said curve, 80 feet, thence northwesterly at right angles, to a point 1920 feet west of the east line of said SE $\frac{1}{4}$, thence north parallel to and 1920 feet from the east line of said SE $\frac{1}{4}$ to the easterly right of way line of Interstate Highway #235 as condemned in Case A-77197, thence southwesterly on said Highway right of way line to the east right of way line of the Missouri Pacific R. R., thence southeasterly on said R. R. Right of way line to a point 180 feet north of the south line of said SE $\frac{1}{4}$, measured at right angles to said south line of said SE $\frac{1}{4}$, thence east parallel to said south line of said SE $\frac{1}{4}$, 140 feet, thence northeasterly to the point of beginning, containing 27.2 acres, more or less.



K. O. Taylor
Consulting Engineer

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This BZA. Case
Has a Large Drawing
On 35mm Microfilm
Roll # 1