

Map No. Y-2-B
Sec. 13
Twp. 26S
Range 1W

DATA SHEET
(ZONING & CONDITIONAL USE)

Z- _____
SCZ- _____
CU- 155
Filed 10-17-73

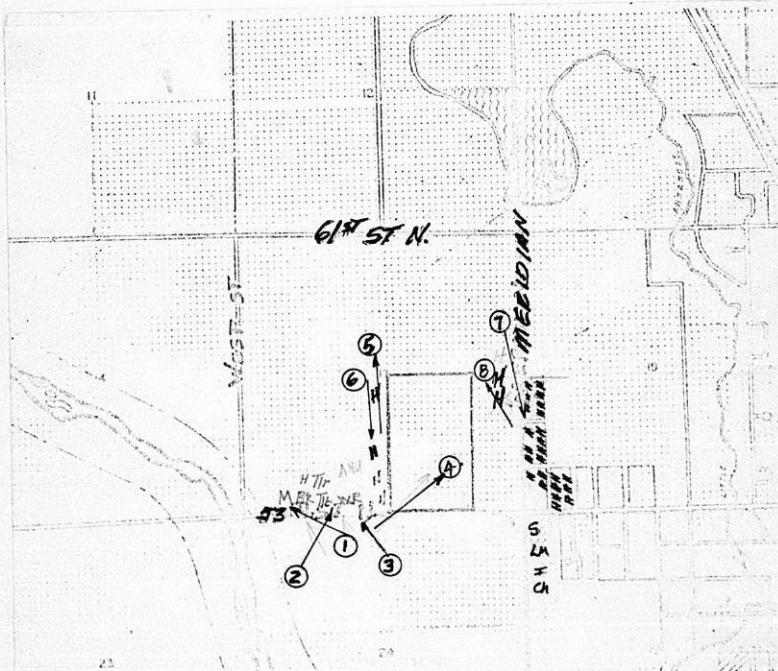
- APPLICATION DATA: From _____ to _____
1. Applicant: Carl Schnitzler & Associated Material & Supply Co., Inc.
Address 2328 S. Hillside, 67211 & 6015 N. Broadway, Phone 686-6595 & 744-0433
 2. Agent: Don Bottenberg & Justus Fugate 67219
Address 519 - 1st Nat'l Bk. Bldg. & Beacon Bldg., Phone 264-5031 & 263-0141
 3. General Location: On the NS of 53rd St. N 1/4 mi. W. of Meridian
Address _____
 4. Proposed Use: Sand excavation

AREA DATA:

1. Acres: _____ (_____ ft. by _____ ft.)
2. Adjoining Zoning: E "R-1" S "R-1" W "R-1" N "R-1"
3. Land Use: East _____ South _____
West _____ North _____
4. Sketch Plan Land Use is for: _____
5. Present Land Use is for: _____
6. Area (~~X~~) (is not) platted.

PHOTO DATA:

Taken by _____ Date _____ Time _____



Form T9-221A

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO
BOARD OF COUNTY COMMISSIONERS

REQUEST FOR CONDITIONAL USE

CASE NO.	CU-155	CONSIDERED BY VCPC:	11-5-73	Denied
		CONSIDERED BY MAPC:	11-8-73	Deferred
REQUEST FOR:	Conditional Use	RECONSIDERED BY MAPC:	11-26-73	Moot Vote
		CONSIDERED BY CO. COM:	12-12-73	Referred
REASON FOR REQUEST		back to VCPC and MAPC		
Sand and gravel extraction		RECONSIDERED BY VCPC:	2-4-74	Denied
operation.		RECONSIDERED BY MAPC:	3-28-74	

GENERAL LOCATION: North side of 53rd Street North
in an area west of Meridian

LEGAL DESCRIPTION:

The west 1630 feet of the southeast quarter of Section 13,
Township 26 South, Range 1 West of the 6th P.M.M., Sedgewick
County, Kansas

APPLICANT: Carl Schnitzler, 2328 S. Hillside and Associated Material
& Supply Co., Inc., 6015 N. Broadway

COUNSEL FOR APPLICANT: Robert H. Nelson and Justus Fugate, Attorneys

PROTESTORS (LIST COUNSEL) IF ANY: Margaret D. Perry; Robert Wentworth;
Grace Bishop; Rev. G. W. Washington; Mrs. Thomas Langford; Mildred Dunkens;
A. H. Montgomery; Harry Najin, attorney for Rev. Washington; Mrs. Hazel
Hubbard, all spoke in opposition.

SURROUNDING ZONING: To the north, east, south
and west is "R-1" zoning

LAND USE: Subject property and that to the north and south is un-
developed; east and west is single-family and undeveloped.

PLANNING COMMISSION RECOMMENDATION:

That this application be denied. Hennessy moved, Gragert seconded,
and resulted in a moot vote of four in favor (Hennessy, Gragert,
Gardenhire and Kamen) and four opposed (Taylor, Arnholz, Rising and
Hopper). (Blakey and Hill absent.)

NOTE: 47.89% of the property owners within the legal protest area have
filed valid protest petitions as provided by law. Therefore, a unani-
mous vote on the part of the County Commission will be required in order
to approve the application.

NOTE: Since the motion to deny the request resulted in a moot vote, or
a "failure to recommend," the Board of County Commissioners may take such
action as it deems appropriate.

ACTION: Take such action as the Commission deems appropriate.

EXCERPT FROM PLANNING COMMISSION MINUTES OF MARCH 28, 1974:

13. Case No. CU-155 - Carl Schnitzler and Associated Material and Supply Co., Inc. request approval of a Conditional Use for a sand and gravel extraction operation on property described as the west 1,630 feet of the southeast quarter of Section 13, Township 26 South, Range 1 West of the 6th P.M. Generally located on the north side of 53rd Street North in an area west of Meridian.

GALBRAITH pointed out the area on the map and reviewed the following staff report:

You have previously considered the above-captioned case on two occasions. In your last consideration on November 26, 1973 (see attached minutes), a motion to deny the request resulted in a moot vote of four in favor of the motion and four opposed. On consideration of this case by the Board of County Commissioners, their action was to return the case to the Valley Center Planning Commission and MAPC for reconsideration, at the request of the attorney for the applicant.

In reconsideration of this case by the Valley Center Planning Commission on February 4, 1974, the attorney for the applicant offered to increase the height of the fence to 82" (72" chainlink and three strands of barbed wire); offered to screen on the north, east, south and west, plus vegetative cover on the south 450 feet; provide oiled roads on the site; have only one access to 53rd near the east property line; provide no stockpiling of sand on the perimeter 150-foot setback; and stated that the phase of operation would begin on the south and be expanded to the north. M. S. Mitchell of the Flood Control Division also discussed drainage.

After considerable discussion by the opposition, which was counted at 49 being opposed, the Valley Center Planning Commission unanimously recommended that the application be denied.

GALBRAITH commented that the Valley Center Planning Commission still found the use unacceptable in this particular neighborhood, even though numerous other conditions were offered to protect the residents in the area.

GALBRAITH distributed to the Commissioners the following new list of suggested conditions if this application is recommended for approval, and said they have been developed after considering offers made in this particular case by the applicant, as well as after taking into consideration other conditions recently approved for another sandpit north of Wichita in the same general area.

He pointed out that all conditions have to be rewritten with a particular case in mind relative to landscaping and screening.

CU-155 - SUGGESTED CONDITIONS OF APPROVAL

1. The applicant shall dedicate by separate instrument the south 50 feet for 53rd Street, and the west 40 feet for Sheridan adjacent to the plat of Denton McWhorter Addition to the west. The fence along the west property shall be moved accordingly.
2. The applicant shall improve Sheridan (grade and sand) to meet County standards so that the street can be properly maintained by the Township.
3. A minimum 82-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the site, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 82 inches and shall be of the following type of construction:

- a. A 72" or higher chainlink fence with three or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 3 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.

4. No part of the sand plant operation, including the stockpiling of sand or storage of equipment, shall occur in the west, east and north 150 feet or the south 450 feet except one point of ingress and egress to 53rd Street near the east property line. The applicant shall not have access to Sheridan.
5. The earth shall be extracted to a minimum depth of two feet below the normal water table as determined by the City-County Health Department.
6. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
7. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County Counselor, providing that no foreign matter, such as rubbish, car bodies, etc., shall be deposited within the excavation after approval of the Conditional Use by the Board of County Commissioners.
8. The natural drainage flow shall be maintained and protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Wichita-Sedgwick County Flood Control Office and the County Engineer, and shall be according to the specifications and standards of these authorities.
9. All drainage from subject property, as well as that portion of the area to the northwest which drains into the application area, shall be discharged into the excavated pit and impounded therein. The retaining or impounding of this drainage shall begin at the time the initial sand excavation is opened and shall be the responsibility of the sand plant operator.
10. Any structures or construction (culverts, diversion ditches, riprap, etc.) which may be required to implement the drainage plan described in Condition 9, shall be the responsibility of the sand plant operator.
11. The applicant shall contact M. S. Mitchell of the Flood Control Office and make satisfactory arrangements to resolve the drainage problem, and submit five copies of the revised operational plan to the Planning Department. Five copies of the revised redevelopment plan shall also be submitted.
12. The applicant shall be responsible for planting and maintaining a minimum 20-foot planting screen consisting of either deciduous and/or coniferous trees along the north property line and the east and west lines, except the south 450-foot and along the north line of the 450-foot setback area on the south. Said trees are to be planted in the first growing season after approval of this conditional use.
13. All slopes, excepting those slopes used for a beach or recreational purposes, shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion, plus vegetative cover on the south 450 feet.

14. The sand plant operation shall commence in the year 1974 and shall cease operation after 15 years, unless a permit is authorized by the appropriate governing body.
15. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County Counselor, providing that, upon the termination of the sand excavation operation, the property shall be redeveloped in accordance with the submitted redevelopment plan; or in accordance with the permitted uses in the zoning laws at that time. Said covenant shall run with the land and be binding upon the present owners, their successors and assigns.
16. The applicant shall proceed in accordance with the operational and development sketch plan approved by the Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.
17. All operational roads shall be maintained in an oiled condition and shall be the responsibility of the sand plant operator.
18. Concrete and asphalt mixing plants, and commercial recreational activities, such as boating, fishing, skiing, etc., shall not be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
19. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
20. The applicant shall comply with conditions 1, 7, 11, and 15 prior to the publication of the resolution effectuating the conditional use.
21. All conditions of approval shall be complied with within one year from the date of approval by the Board of County Commissioners; or the conditional use permit shall be null and void.

The fact that the County Commission had been asked to appoint a committee to develop standard conditions for approval of a sandpit operation was brought up, and LAKIN said it was thought this item would be placed on the County Commission agenda after approval of the Miles sandpit (CU-157), but that it has not been as of this date.

HENNESSY asked if the additional conditions submitted by the staff could be applied generally to approval of a sandpit in any area.

GALBRAITH said the conditions are what have been recommended by the staff for a number of years, and have been expanded where warranted, to protect the neighborhood, and he felt the conditions were generally acceptable to the Wichita State University group, except for their suggestion that there be some kind of guarantee for future development, which he stated was not in the conditions. He commented that if a Committee is appointed by the County Commission, this particular point could be considered at that time. He continued that a set of conditions cannot be established which would be acceptable in each instance, and that modifications would have to be made to fit a specific case or location.

HENNESSY suggested that if rules and regulations are to be established for operation of sandpits, then perhaps proper locations could be designated in the county, to avoid disturbing a residential neighborhood such as in this case.

GARDENHIRE suggested that presentations by the applicant or those in protest be limited to new information as this case has already been heard twice by the Commission.

JUSTUS FUGATE, attorney for the applicant, said it was their feeling that this application has been given full study by the staff and this Commission, and that they have answered many of the strong objections raised by those in opposition, such as statements by James Aiken, Director of Environmental Health; M. S. Mitchell of the Maintenance-Flood Control Division, and Mr. Withrow of the Water Department.

FUGATE also pointed out that most of the objectors at the Valley Center Planning Commission meeting were from beyond the 1,000 foot notification area for formal objection.

FUGATE submitted pictures taken recently only a week after snow had fallen in this area, which showed an accumulation of dust and dirt on the snow, as an indication that it is not only sand and gravel particles that blow in the wind. And as for the claim that 49% of the time the wind blows from the east in this area, he referred to the fact that the runways at Mid Continent Airport are constructed on an alignment southwest-northeast in line with the prevailing winds, which means such wind would not be blowing across subject property to the west where there are homes.

FUGATE also called attention to the fact that the County Commission unanimously approved a conditional use request for sand excavation for Mr. Miles in this general area, and that now Mr. Miles has two such operations in the north end of the County; there are three or four centrally located in the County; and two in the southern part. He stated that the Associated Material and Supply (one of the applicants), presently has one in the north part of the County, but that it is exhausted and if this application is denied it will result in Mr. Miles having a monopoly in the north end. He considered that in all fairness, this application should be approved in order to prevent such monopoly. FUGATE pointed out that sand is a bulky heavy product and the cost of transporting it from point to point limits the operation location. He felt it would be doing a disservice to the public interest north of Wichita to deny this application.

GRAGERT asked why a deferral was requested when this case went before the County Commission, and FUGATE answered it was because they thought the modification of conditions would appeal to the Valley Center Planning Commission. He stated that the suggested conditions of approval, to his knowledge, were the most strict of any ever associated with a sandpit operation, and his client is agreeable to them as stated.

DAN BEARTH, student at Wichita State University, thanked the Planning Department staff for including in the suggested conditions several recommendations made by the University class and hoped that they had been helpful in determining what needs to be done. He said they have developed guidelines for sandpits (this one and others), and that their purpose is to provide analysis and recommendations, as they are not speaking against or in favor of this or any other sandpit, and felt they could operate best as a part of a committee, should the County Commission make such appointments.

GRAGERT said he appreciated the efforts of the class and agreed that work with the Committee would be advisable, but asked that discussion be limited to this particular application at this time if there is new information to be presented.

CHAIRMAN TAYLOR agreed that the Commission does appreciate the efforts of the class and conceded that guidelines should be developed, and since the Planning Commission has referred such a request to the County Commission, any further action along that line will be a prerogative of the County Commission.

ROBERT WENTWORTH, 5310 North Meridian, presented 21 more protest petitions making a total of 74, and asked that this Commission vote with the people as did the Valley Center Planning Commission when for the second time it was denied. WENTWORTH said he was at the Valley Center meeting and that the majority of those there in protest were from the immediate area, altho there were some from the area beyond since this application is of great interest to all persons in the general area.

WENTWORTH submitted a letter in opposition from Vernon Weber, 5700 North Meridian, which stated that he has worked for a sandpit company for 15 years and understands the danger of blowing sand which would pit their house with sand and dust. WENTWORTH referred to the Miles sandpit which was approved by the County Commission recently and said that trees were to be planted to safeguard homes in the area. He submitted pictures showing trees only 6" high which he inferred afforded very little protection.

CHAIRMAN TAYLOR stated that, concerning the comment of the Valley Center Planning Commission voting with the people, she could not speak for the Valley Center Planning Commission, but the Metropolitan Area Planning Commission attempts to weigh all presentations and support the best utilization of land, and does not necessarily respond to poll taking.

BEN CHESTNUT, 5759 North Meridian, spoke in opposition and said they have a peony farm to the northeast which would be greatly damaged by blowing sand from the sandpit operation.

HARRY NAJIN, attorney for Rev. Washington, a resident of the area, pointed out that the conditions suggested by the University have not all been incorporated in those submitted by the staff. He stated that this Commission should not become involved as to the economic affect, but only those determinations which would be beneficial to the County and in allowing appropriate land use and best utilization of the area. NAJIN said a new item to consider is the fact that there have been extensive efforts in this community for beautification and general cleaning up, such being carried out with the assistance of Girl Scouts and Boy Scout groups. In view of these efforts, NAJIN felt to approve this application would severely retard any further progress by the residents, who feel strongly about their area and want it maintained without industrial uses or a sandpit.

MRS. THOMAS LANGFORD, 1736 West 53rd Street, spoke in opposition, and discussed the impending pollution of water in the area from drainage of agricultural and pasture land into the lake and eventually on downward underground to the southeast. She showed two drawings to illustrate her remarks and the fact that in view of the lowering water table in the State, all areas would eventually be affected. She said it was suggested that controls be placed on the amount of solid material that could be removed so that the water table would not be reduced in spots where it would drop. It was her opinion that all surface water passed into the lake should be filtered, as water that will be drained into the sandpit will certainly not be clean and sand cannot filter out all objectionable materials.

LANGFORD also suggested that in the operation of a sandpit, the operator should provide sufficient room on his own property that trucks entering and leaving would not have to utilize both lanes of the public road for turning movements.

MRS. HAZEL HUBBARD, speaking for Bud Phillips, 5715 North Sedgwick (a resident there 18 years), said they have contacted all but one resident on Sedgwick between 53rd and 59th Streets, and all disapprove of the sandpit as they feel it would be a detriment to the community, result in loss of value of their property, possibly loss of good water supply, a hazard to children through truck traffic, and a nuisance from continual blowing of sand. She pointed out that within the last 1 1/2 years homes have been developed on Sedgwick and Meridian and they are still developing, some \$20 to \$25 thousand dollars in value. She said there are many protests from the residential area to the east. She said they take offense to Mr. Arnholz's statement that the neighborhood of 53rd and Meridian is trash. She commented that while it has been a blighted area, through the best efforts of the neighborhood, it is being rehabilitated, and she asked the Commissioners to put themselves in the position of the homeowners to the west, north and east of subject site.

GARDENHIRE commented that she agreed with others that it is time for a definite decision in view of the several times this has been considered by several different Commissions, and it was her understanding that while the applicant has agreed to numerous conditions, the Valley Center Planning Commission and those in opposition still found the application unsatisfactory to the neighborhood. She stated that when the formal discussion is finished, she would be prepared to make a motion that the case be recommended for denial.

ARNHOLZ said he did not feel the use proposed would be damaging to the area, and he felt certain that there is a violation of the health code on property at the corner of Sheridan and 53rd Street.

ARNHOLZ commented further that apparently his statement that the area was trashy has caused the residents to clean up the area, which he felt was desirable, including the grading of roads which he stated was in relatively good shape when the Zoning Committee visited the site.

About 10 people stood to indicate their opposition to this request.

WENTWORTH said the owner at 53rd and Sheridan had not signed in protest to this application, and that he has been informed by the County Commission that his fence will have to be moved from the road right-of-way, which he has agreed to do.

CHAIRMAN TAYLOR stated that it is regrettable that no action has been taken by the County Commission so far as appointing a Committee to develop guidelines.

GRAGERT asked how much other available land there is for sand extraction, referring back to Hennessy's suggestion that certain areas should be designated for sandpits.

LAKIN said a definite answer could not be given at this time - that one would need to confer with the Soil Conservation Service, but generally there will be sand deposits all the way up and down the River, but to be definite would require core drilling.

FUGATE said since the filing of this application, there have been extensive locations investigated, some even core-drilled, and found there was not commercial sand beneath. He referred again to the economic necessity of a reasonable location close-in because of the cost of delivery, and that it is not economical to develop a site if it cannot be operated in competition with other such operations.

ARNHOLZ brought out the fact that the County presently is operating sandpits in the floodway, which he felt nobody had the opportunity to approve or disapprove, and it was his opinion that private operation of a sandpit would be limited, and it would become completely government operated, if the Commission does not change its present attitude.

MOTION: That the Planning Commission recommend to the County Commission the approval of this application, subject to the conditions presented by the staff at this meeting. Hopper moved and Arnholz seconded.

SUBSTITUTE MOTION: That the Planning Commission recommend to the County Commission that this application be denied. Hennessy moved and Gragert seconded.

GRAGERT said he seconded the motion for denial very reluctantly as he felt the applicant has been much more willing to respond to conditions to protect the residents, but that a line must be drawn and the best interest of the public considered. He commented further that it is a shame the County Commission allowed Mr. Miles conditional use.

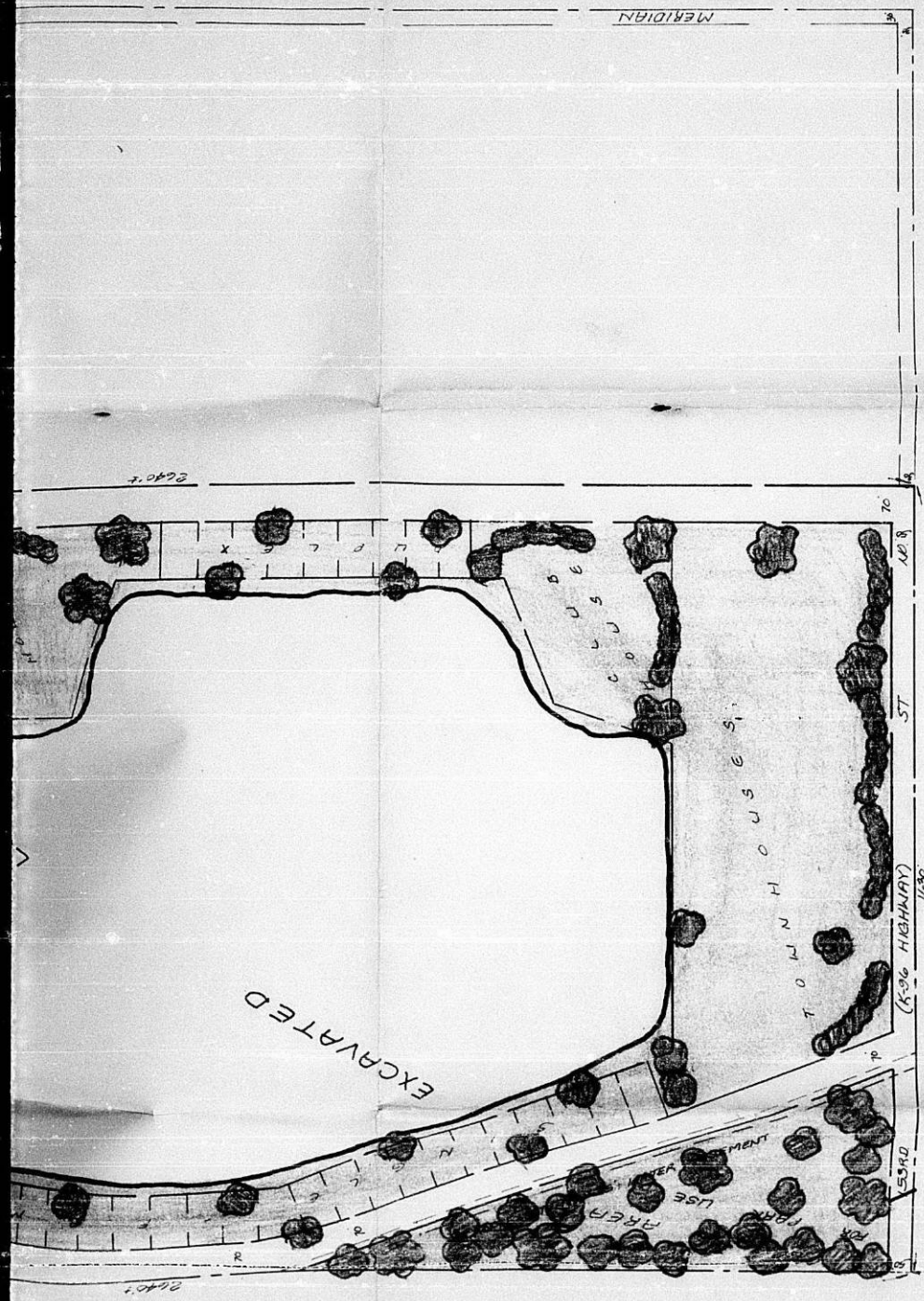
A question was raised as to whether another motion in complete opposition to the original motion should or can be considered as a substitute motion, and several Commissioners thought it might be out of order. CHAIRMAN TAYLOR said she had raised that question some time ago and had been advised it was in order and in that case had proceeded on that basis.

GARDENHIRE said the substitute motion above is what she had intended to make as indicated earlier in this discussion.

RISING said he found it difficult to recommend denial of this case after the County Commission has approved a request that the Planning Commission previously did not recommend. He said, of course, the County Commission has the responsibility, but he questioned the fairness of approving one case and denying another in the same general area. GRAGERT reminded the Commissioners that the Planning Commission recommended the denial of the Miles application, and that the Planning Commission's job is to vote as they see fit at this particular level.

VOTE ON SUBSTITUTE MOTION FOR DENIAL: Vote was moot - four in favor (Gragert, Hennessy, Gardenhire and Kamen) and four opposed (Taylor, Arnholz, Rising and Hopper). (Elakey and Hill absent.)

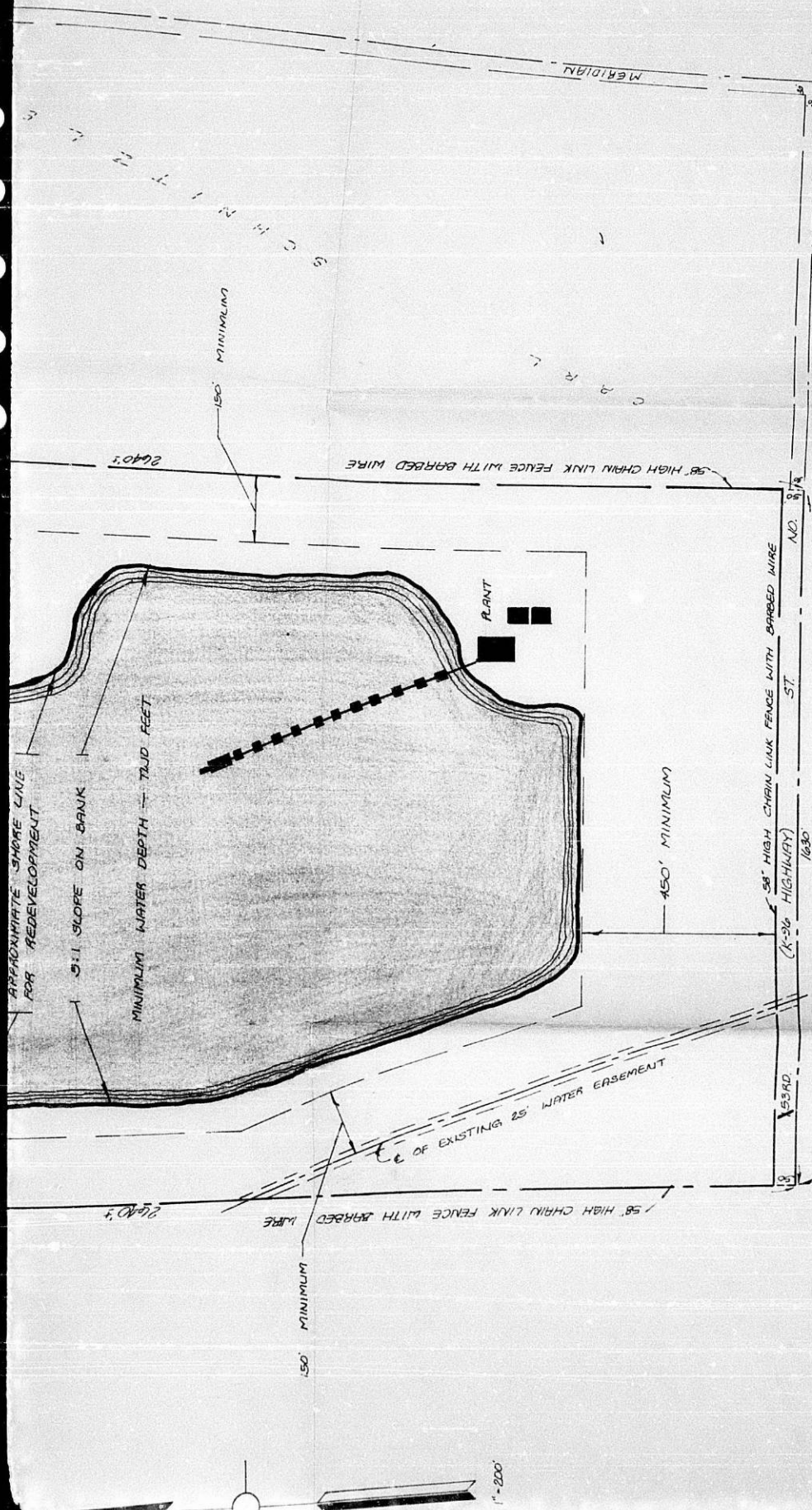
CHAIRMAN TAYLOR announced that this application would be referred to the County Commission as a "failure to recommend" in view of the moot vote.



SKETCH PLAN FOR:
ASSOCIATED MATERIAL & SUPPLY
 DAVE STANNARD: DEVELOPER
 CARL SCHNITZLER: OWNER

SW COR. SEC.
 13-26-1N

CUI55



OPERATIONAL SKETCH PLAN FOR:
ASSOCIATED MATERIAL & SUPPLY
 DAVE STANNARD : DEVELOPER
 CARL SCHNITZLER : OWNER