

ACTION

7:00pm Darby P.C. COMMITTEE **Special sub to** **DATE**
8:00pm. ~~Approved~~ **Approved conditions** **11-2-83**
P.C. **Approval set to additional conditions** **11-10-83**
M.A.P.C. Approval set to **11-12-83**
conditions

B.C.C.T.B. CO. C. C. Approved as **12-14-83**
recommnded **POSTED** **10-27-83**
closed

CU-265 - DeWitt Land Co., Inc. et al
request Conditional Use Permit to
establish an earth excavation
operation on property zoned "R"
Rural Residential. Generally
located at the southeast corner
of 63rd St. South and Broadway.

Map No. 5539D
Sec. _____
Twp. _____
Range _____

DATA SHEET
(ZONING & CONDITIONAL USE)

Z- _____
SCZ- _____
CU- 265
Filed 10-14-83

ASSOCIATED CASE: _____

- APPLICATION DATA: From _____ to _____
1. Applicant: De Witt Land Co., Inc. % Dean DeWitt
Address 505 S. Broadway, 67202 Phone 262-3365
 2. Agent: Baughman Co., P.A.
Address 330 Laura, 67211 Phone 262-7271
 3. General Location: Southeast corner of 63rd St. South & Broadway
 4. Proposed Use: to establish an earth excavation operation on property zoned "R" Rural Residential

- AREA DATA:
1. Acres: 42.3 (_____ ft. by _____ ft.)
 2. Adjoining Zoning: E "R" S Flood Control W "R-1"&"C" N "R"&"C"
 3. Land Use: East _____ South _____
West _____ North _____
 4. Sketch Plan Land Use is for: _____
 5. Present Land Use is for: _____
 6. Area (is) (is not) platted.

PROCEDURE DATA:

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

	Date	Action
7pm	<u>11-3-83</u>	<u>DERBY Approved sub to reworked conditions</u>
8pm	<u>11-10-83</u>	<u>HSVL Approved sub to additional conditions</u>
	<u>11-17-83</u>	<u>Approved sub to conditions</u>

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

Date	Action	Ordinance Resolution
<u>12-14-83</u>	<u>Approved as Recommended</u>	

NOTES: Derby also wanted assurances that prior to the development of the project for residents, that municipal water and sewer would be provided to the area. This was because of under ground salt water pollution

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION
CITY HALL, TENTH FLOOR, 455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1600

October 25, 1983

NOTICE TO ADJOINING PROPERTY OWNERS:

NOTICE IS HEREBY GIVEN that on November 3, 1983, at 7:00 p.m., the DERBY CITY PLANNING COMMISSION, City Hall, Derby, Kansas, will consider the following item for purposes of making a recommendation to the Metropolitan Area Planning Commission and Board of County Commissioners:

CASE NO. CU-265

Conditional Use Permit to Establish an Earth Excavation Operation
on Property Zoned "R" Rural Residential District

That part of the West half of the Northwest Quarter of Section 33, Township 23 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29,459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film 486, page 956, in the Office of the Register of Deeds of Sedgwick County, Kansas. Generally located at the southeast corner of 63rd Street South and Broadway.

This matter will also appear on the agenda for the regular meeting of the HAYSVILLE CITY PLANNING COMMISSION at 8:00 p.m., Thursday, November 10, 1983, City Hall, Haysville, Kansas, for purposes of making a recommendation to the Metropolitan Area Planning Commission and Board of County Commissioners.

If this matter is not deferred for further hearings by either the Derby City Planning Commission or the Haysville City Planning Commission, it will appear on the agenda for the regular meeting of the WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION, which begins at 1:30 p.m. Thursday, November 17, 1983, in the City Commission Meeting Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at which time you may appear either in person or by agent or attorney, if you so desire.

As provided in the County zoning Resolution, Section 14 - Administration, sub-paragraph C the same will there be discussed and considered by the said Wichita-Sedgwick County Metropolitan Area Planning Commission and all persons interested in said matter will be heard at this time concerning their views and wishes in the premises and any protest against any of the provisions of the proposed Conditional Use will be considered as by law provided.

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

Robert A. Lakin
Secretary

Map No. 5539D
Sec. _____
Twp. _____
Range _____

DATA SHEET
(ZONING & CONDITIONAL USE)

Z- _____
SCZ- _____
CU- 265
Filed 10-14-83

ASSOCIATED CASE: _____

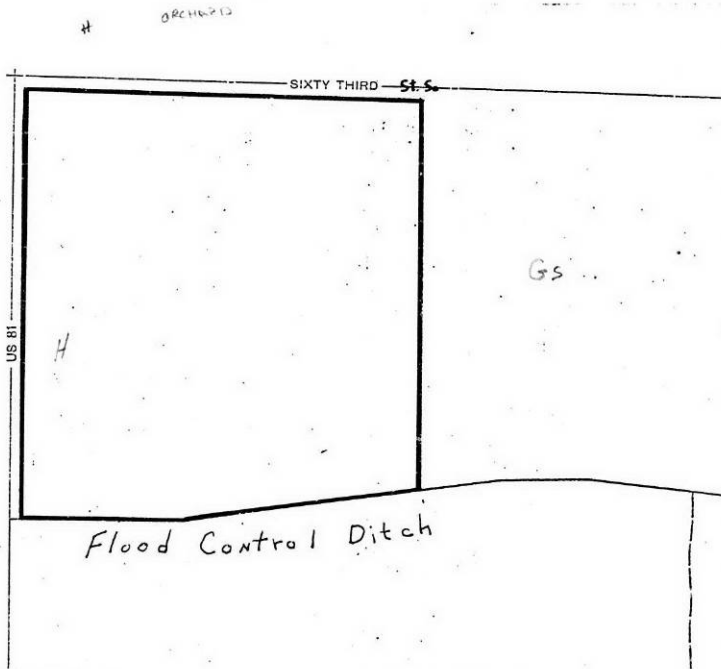
- APPLICATION DATA: From _____ to _____
1. Applicant: De Witt Land Co., Inc. & Dean DeWitt
Address 505 S. Broadway, 67202 Phone 62-3365
 2. Agent: Baughman Co., P.A.
Address 330 Laura, 67211 Phone 62-7271
 3. General Location: Southeast corner of 63rd St. South & Broadway.
 4. Proposed Use: to establish an earth excavation operation on property zoned "R" Rural Residential

AREA DATA:

1. Acres: 42.3 (1750 ft. by 1450 ft.)
2. Adjoining Zoning: E "R" S Flood Control W "R-1" N "R-1"
3. Land Use: East SHAW PIT South Flood control ditch
West ? North TRIPLE FAMILY, OPENED
4. Sketch Plan Land Use is for: _____
5. Present Land Use is for: _____
6. Area (is) (is not) platted. _____

PHOTO DATA:

Taken by _____ Date _____ Time _____



DEED—GENERAL WARRANTY

01-87 P 043-1 (24) Pt. I
L-TW C/A 1389

Hall Litho. Co., Inc., Toledo
FILM 488 PAGE 956

THIS DEED, Made this 30th day of June 19 81, between
Goldie Wheeler, a single person
of Sedgwick County, in the State of Kansas, of the first part, and

The Secretary of Transportation, State of Kansas,
of Shawnee County, in the State of Kansas, of the second part,

WITNESSETH, That part y of the first part, in consideration of the sum of 4 1.00

One Dollar and other valuable considerations----- and no DOLLARS,
100
the receipt of which is hereby acknowledged, does by these presents convey and warrant unto said part y of the
second part, its successors heirs and assigns, all the following-described REAL ESTATE situated in the County of
Sedgwick and State of Kansas, to wit:

(a) A tract of land in the North 94.28 acres of the Northwest Quarter of Section 33, Township 28 South, Range 1 East of the 6th P.M., described as follows: BEGINNING at the Northwest corner of said Quarter Section, the West line of said Quarter Section having an assumed bearing of North 00 degrees 11 minutes East; First COURSE, thence South 88 degrees 43 minutes East, 200.0 feet along the North line of said Quarter Section; Second COURSE, thence South 01 degree 17 minutes West, 40.0 feet; THIRD COURSE, thence South 85 degrees 02 minutes West, 137.8 feet; FOURTH COURSE, thence South 44 degrees 08 minutes West, 46.0 feet; FIFTH COURSE, thence South 00 degrees 11 minutes West, 729.4 feet; SIXTH COURSE, thence South 11 degrees 19 minutes East, 140.9 feet; SEVENTH COURSE, thence South 00 degrees 17 minutes West, 488.5 feet; EIGHTH COURSE, thence South 89 degrees 09 minutes East, 17.8 feet; NINTH COURSE, thence South 00 degrees 11 minutes West to a point on the South line of said North 94.28 acres, 75.0 feet East of the West line of said Quarter Section; Tenth COURSE, thence North 89 degrees 09 minutes West, 75.0 feet along said South line to the West line of said Quarter Section; Eleventh COURSE, thence North 00 degrees 11 minutes East along said West line to the place of beginning. The above contains 0.17 acre, more or less, exclusive of the existing highway. This conveyance is made for the purpose of a controlled access highway and the grantor hereby releases and relinquishes to the grantee any and all abutters' rights of access to said highway, appurtenant to grantors remaining property; except and reserving, however, to the grantor, his heirs and assigns, the right of access to the highway over and across the following described courses: BEGINNING at the beginning of said 'THIRD' course and extending South 85 degrees 02 minutes West, 124.5 feet; ALSO, beginning at a point 381.4 feet South 00 degrees 11 minutes West from the beginning of said 'FIFTH' course and extending South 00 degrees 11 minutes West, 60.0 feet; ALSO, beginning at a point 64.1 feet South 00 degrees 17 minutes West from the beginning of said 'SEVENTH' course and extending South 00 degrees 11 minutes West, 60.0 feet.

*of part to
and
2 parts to
Secretary*

*n.o.w. obtained
by KDOT for
U.S. 81 improvements*

R#370-1983

() Published in The Daily Reporter on January 4, 1983⁴

RESOLUTION

CASE NO. CU-265

A RESOLUTION PERMITTING AN EARTH EXCAVATION OPERATION IN THE "R" RURAL RESIDENTIAL DISTRICT ON CERTAIN LANDS LOCATED WITHIN THE UNINCORPORATED TERRITORY LYING WITHIN THREE MILES OF EITHER THE CITY OF WICHITA, THE CITY OF HAYSVILLE, THE CITY OF DERBY, THE CITY OF MULVANE, THE CITY OF VALLEY CENTER, THE CITY OF GODDARD, AND THAT PORTION OF THE AREA WITHIN THREE MILES OF THE CITY OF CHENEY AS ESTABLISHED BY THE BOARD OF COUNTY COMMISSIONERS ON OCTOBER 3, 1973, ALL IN SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY SECTION 3.A.8.f AND SECTION 11.E OF THE ZONING RESOLUTION ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, ON MARCH 3, 1958, AND SUBSEQUENT AMENDMENTS THERETO.

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

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section 3.A.8.f, and Section 11.E of the Zoning Resolution, a Conditional Use Permit to allow an earth excavation operation in the "R" Rural Residential District is hereby approved on the lands legally described as follows:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29,459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film "488", page 956, in the Office of the Register of Deeds of Sedgwick County, Kansas. Generally located at the southeast corner of 63rd Street South and Broadway.

SUBJECT TO THE FOLLOWING:

- A. The applicant shall obtain a permit from the County Engineer to comply with Section KSA 19-3309 prior to any excavation.
- B. The applicant dedicating by separate instrument the necessary half-street rights-of-way for the east half of Broadway and the south half of 63rd Street to bring them up to major street standards.
- C. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the City-County Flood Control Office and to form by the County Counselor. The covenant shall provide for the construction and/or maintenance of a loop levee on the premises at such a location as the Flood Control Office may direct in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the City-County Flood Control Office. Said Covenant shall run with the land and be binding on all owners, successors, or assigns.

- D. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.
- E. The operation for dirt excavation shall only have ingress and egress to 63rd Street South.
- F. A minimum 58-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
1. A 48" or higher chainlink fence with three or more strands of barbed wire; or
 2. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
 3. A 48" or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire. The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.
- G. The earth shall be extracted to at least a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
- H. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
- I. Sufficient overburden material shall be retained in the area of excavation to grade and construct the banks so that they are formed with overburden material rather than sand.
- J. All of the area outside of the excavation shall be graded so as to drain into the lake.
- K. The owner of the property shall be responsible for:
1. Insuring that the loop levee elevation be maintained if constructed.
 2. Maintaining all operational roads in a graveled condition.
- L. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
- M. The applicant shall submit a covenant, satisfactory in form to the County Counselor and Sedgwick County Department of Public Works, which authorizes the use of the excavation area as a detention storage facility for public drainage purposes.

- N. Prior to the development of subject property for residential purposes, the applicant shall guarantee the extension of municipal sewer and water to serve the site.
- O. The property shall be platted prior to the issuance of any zoning or building permits except those necessary for the earth extraction operation.
- P. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
- Q. All slopes shall have vegetative covering consisting of a perennial drouth resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- R. The applicant shall comply with Conditions A, B, C, L, and M prior to the publication of the resolution establishing the conditional use.
- S. Any violation of conditions attached shall declare the conditional use permit null and void.

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

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

PASSED AND ADOPTED by the Board of County Commissioners at Wichita, Kansas, this 14th day of December, 1963.

Jack Spitzer . Chairman
 Jack Spitzer
Donald E. Gragg . Commissioner
 Donald E. Gragg
Tom Scott . Commissioner
 Tom Scott



Dorothy K. White
 Dorothy K. White, County Clerk

(SEAL)

Approved as to form by County Counselor
William D. Rustin
 William D. Rustin, County Counselor

RESTRICTIVE COVENANT
AND AGREEMENT

FILM 628 PAGE 974

WHEREAS, the undersigned, as owner of the following described tract of land:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, of the 6th P.M., Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. A-29459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film 488, page 956, in the office of the Register of Deeds of Sedgwick County, Kansas; (generally located at the southeast corner of 63rd Street South and Broadway);

has made application to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Sedgwick County Board of Commissioners for a conditional use permit (CU-265) to use said land for the excavation of fill dirt and creation of a lake together with such other uses as may be necessary to carry on an earth excavation operation on said land; and

WHEREAS, lands adjacent to subject tract are and will be developed for urban purposes and an earth excavation operation and lake at such location will endanger the health, welfare and property of residents who may live in such areas unless certain protective measures are taken; and

WHEREAS, the undersigned desires to obligate himself and his successors in title to protect the public welfare by constructing and maintaining a loop levee upon said property and to subject and burden the fee title thereto so that such obligation is a covenant running with the land;

NOW, THEREFORE, in consideration of the premises and as a condition of approval of CU-265, the undersigned hereby makes the following declaration of restrictions, limitations and use of said realty, and said declaration shall constitute covenants running with the land and shall be binding upon all owners and their heirs, successors and assigns:

If the construction of a loop levee is deemed necessary by City-County Flood Control Office, or their successors of office, in connection with conducting operations for the earth excavation and lake, the fee owners agree to construct and maintain a loop levee on the premises at such a location as the Flood Control Office may direct, in accordance with construction specifications, Sections 1 through 4 inclusive, and maintenance specifications, Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the City-County Flood Control Office, attached hereto as Exhibit A.

The above restrictions and agreements shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the City-County Flood Control Office, or their successors of office.

In the event of the failure by the undersigned or any successors of title to fulfill the obligation set forth above within sixty (60) days after receipt of written notice from the City-County Flood Control Office, or their successors of office, then the appropriate governing body may order such work done and maintained and charge the entire cost of such construction and maintenance as a first lien against said realty to be collected and foreclosed in the same manner as a mortgage is foreclosed.

Paughman Co.
338 Laura 67211

MICROFILMED
OF RECORD

STATE OF KANSAS } SS
SEDGWICK COUNTY }
FILED FOR RECORD AT
37 30 PM

DEC 16 1983

NO. 6 67261

BETTE F. McCART
REGISTER OF DEEDS

Pat Rittler
Register

11.00

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

Executed in triplicate this 23rd day of Nov, 1983.

DeWitt Land Co., Inc.
[Signature]
Dean DeWitt, President

ACKNOWLEDGEMENT

STATE OF KANSAS)
SEDGWICK COUNTY) SS

The foregoing instrument was acknowledged before me this 23rd day of November, 1983, by Dean DeWitt, President of DeWitt Land Co., Inc., a state corporation, on behalf of said corporation.

[Signature]
Notary Public

My Appointment Expires:

KAREN L. CUNNINGHAM
NOTARY PUBLIC
My Appl. Expires 12/31/84

SECTION I - CLEARING AND GRUBBING

1-01. ORDER OF WORK:

All clearing and grubbing as specified below will be done in advance of sub-grade preparation and levee embankment.

1-02. CLEARING: Operations shall consist of removal and disposal of trees, fallen timber, brush, logs, bushes, vines, stumps, drift wood, fences, heavy growth of crops, weeds and grass and other obstructions existing above ground level. Clearing will be done on the area beneath the levee embankment together with strips 10 feet wide beyond the embankment toe.

1-03. GRUBBING: Operations shall consist of thoroughly cleaning the area outlined in sub-paragraph 1-02. of all stumps, roots, buried logs and other matter which would be objectionable in the foundation of the levee.

SECTION II - EXCAVATION

An inspection trench 4 feet deep and 4 feet wide shall be excavated along the approximate center of the levee base.

SECTION III - EMBANKMENT

3-01. EMBANKMENT FOUNDATION PREPARATION: After clearing and grubbing of the embankment foundation and the excavation of the inspection trench has been completed, and immediately prior to the placement of embankment material, the entire earth surface on or against which fill is to be placed shall be thoroughly broken to a depth of six inches and the area to be occupied by the levee proper shall be compacted in accordance with the provisions of sub-paragraph 3-03. If for any cause this broken surface becomes compacted in such a manner that a plane of seepage or weakness might be induced, it shall again be thoroughly broken before the depositing of material thereon.

Drainage - The foundation receiving fill and the inspection ditch hereinbefore specified, and all partially completed fill shall be kept thoroughly drained.

Frozen Ground - No fill shall be placed upon frozen ground.

3-02. EMBANKMENT MATERIALS: The levee embankment shall be constructed of the most nearly impervious materials available from the construction site. Under no circumstances shall frozen earth, snow, or ice be placed in the levee. Embankment materials should be as homogeneous as possible and contain no foreign matter or pockets of soft unstable material.

3-03. EMBANKMENT CONSTRUCTION: Materials shall be placed or spread in layers not to exceed 12 inches in thickness prior to compaction. Layers shall be started full out to the toe of the embankment and shall be carried substantially horizontal with sufficient crown or slope to provide satisfactory drainage during construction. When the surface of any compacted layer is too smooth to bond properly with the succeeding layer, it shall be scarified before the succeeding layer is placed on it.

a. Moisture Control - It is the intent of these specifications to secure an embankment having the maximum density obtainable with natural moisture content of the embankment materials. However, if the material is too wet or too dry for proper compaction steps shall be taken to bring the moisture content back to near the optimum range. Wetting may be accomplished by wetting the borrow pit from which the embankment material is obtained or by distribution of sufficient moisture in each layer before rolling.

b. Rolling Operations - When moisture content and conditions of the spread layers are satisfactory, each layer shall be compacted by not less than four (4) complete passes of a tamper-type roller conforming to the requirements of sub-paragraph 3-03, c.1, or by not less than two complete passes of a rubber-tired roller conforming to the requirements of sub-paragraph 3-03, c.2. Portions of the embankment which the roller cannot reach for any reason must be compacted by other approved means to the density of the surrounding embankment.

c. Compaction Equipment -

1. Tamping Rollers - Tamping rollers shall consist of one or more units. Each unit shall consist of a cylindrical drum not less than 48 inches in length and not less than 48 inches in diameter. The drums shall be water or sand and water ballasted. Each drum shall have staggered feet uniformly spaced over the cylindrical surface such as to provide approximately three tamping feet for each two square feet of drum surface. The tamping feet shall be seven to nine inches in clear projection from the cylindrical surface of the roller and shall have a face area of not less than five nor more than seven square inches. The units shall be equipped with a suitable device for cleaning the feet. The rolling units of multiple-type tamping rollers shall be pivoted on the main frame in a manner which will permit the units to adapt themselves to uneven ground surfaces and to rotate independently. The weight of the roller shall be not less than 1,500 pounds per linear foot of drum length weighted, and shall be not more than 750 pounds per foot of drum length empty. The design and operation of the tamping roller shall be subject to the approval of the contracting officer who shall have the right at any time during the prosecution of the work to direct such repairs to the tamping feet, minor alterations in the roller, and variations in the weight as may be found necessary to secure optimum compaction of the earth-fill materials. The roller shall be pulled by a crawler-type tractor of sufficient power to operate the roller at a speed of approximately 3-1/2 miles per hour.

2. Rubber-Tired Rollers - Rubber-tired rollers shall have a minimum of four wheels equipped with pneumatic tires. The tires shall be of such size and ply as to be capable of being operated at tire pressures between 80 and 100 pounds per square inch at a 25,000 pound wheel load. The roller wheels shall be located abreast and so designed that each wheel will carry approximately equal load in traversing uneven ground. The spacing of the wheels will be such that the distance between the nearest edges of adjacent tires will not be greater than

5. percent of the rated tire width of a single tire at the operating pressure for a 25,000 pound wheel load. The roller shall have a rigid steel frame provided with a body suitable for ballast loading such that the load per wheel may be varied, as directed by the contracting officer, from 18,000 to 25,000 pounds. The entire assembly (roller plus motivating equipment) must be capable of executing a 180-degree turn on a 15-foot radius. The roller shall be towed at speeds not to exceed ten miles per hour by pneumatic-tired equipment. The character and efficiency of this equipment shall be subject to the approval of the contracting officer.

- d. Cross-Section of Levee Embankment - The levee embankment shall be constructed to conform with the requirements of typical standard levee section shown on Figure 1. Shrinkage and settlement allowances shall be allowed for by constructing the standard levee section plus a 5% addition in crest height.

SECTION IV - TURFING

4-01. SCOPE: It is the intent of these specifications to obtain a firm stand of native grass or grass which will ensure the stability of the levee embankment. Good vegetative cover is of prime importance to the maintenance and operation of the levee embankment. The top, slopes and a 5 foot wide strip at the base of the levee on each side shall be turfed.

4-02. MULCHING:

- a. Soil Preparation - If necessary the soil shall be loosened to a depth of 2 inches before application of the mulch material.
- b. Materials - Hay shall be native prairie hay and a minimum of 50 percent by weight shall be 10 inches or more in length.
- c. Application of Mulch - Mulch materials shall be spread uniformly in a continuous blanket over the area to be mulched at the rate of approximately 3½ tons per acre. Mulch may be spread by hand or by mechanical means which do not break up the hay. Immediately following the spreading of the mulch material, it shall be anchored to the soil by pressing into the ground a minimum depth of 1½ inches, leaving enough material sticking upright to accomplish its primary purpose of temporary dust and erosion control. Anchoring shall be accomplished by using a mulch anchoring machine equipped with straight rolling Coulter-type discs that are spaced not more than 10 inches or less than 7 inches apart. The rolling discs shall be sufficiently dull to prevent cutting the mulch material. If anchoring machinery is not used, the mulch material shall be anchored with a spade at 6 inch intervals.

4-03. FERTILIZING AND SEEDING:

- a. Materials -
 - 1. Fertilizer shall be dry, free-flowing materials which can

be distributed uniformly, and shall be commercial grade 15-10-10 or the equivalent.

- 2. Seed - Seed of mixed bluestem, switch grass, blue grama grass, side oats grama, sand dropseed grass, sand lovegrass, weeping lovegrass, or native bermuda grass, or a mixture of any or all of the above may be used.
- b. Application - Fertilizer shall be applied uniformly at the approximate rate of 400 lbs. per acre. Seed should be applied uniformly at the rate of approximately 30 lbs. per acre.

980
MAINTENANCE SPECIFICATIONS

SECTION I - GENERAL

In General, maintenance should provide for those things which will ensure the serviceability of the levee in time of high water. Measures should be taken to promote the growth of sod, exterminate burrowing animals, provide for routine mowing, removal of wild growth and repair the damage caused by erosion. Another important maintenance and responsibility is to ensure the integrity of the loop levee at all times.

SECTION II - INSPECTION

Periodic inspections should be made to ensure that the above measures are being effectively carried out and to be certain that:

- a. No unusual settlement, sloughing, or material loss of grade or levee cross section has taken place.
- b. No caving has occurred on either the land side or the water side of the levee which might affect the stability of the levee section.
- c. No seepage, saturated areas or sand boils are occurring.
- d. No action is being taken, such as burning grass and weeds during inappropriate seasons, which will retard or destroy the growth of sod.
- e. Access roads to and on the levee are being properly maintained.
- f. Cattle guards and gates are in good condition.
- g. Crown of levee is shaped so as to drain readily, and roadway thereon, if any, is well shaped and maintained.
- h. There is no damaging grazing or vehicular traffic on the levees.
- i. Encroachments are not being made on the levee right-of-way which might endanger the structure or hinder its proper and efficient functioning during times of emergency.

RESTRICTIVE COVENANT AND AGREEMENT
FOR DETENTION STORAGE

FILM 628 PAGE 981

WHEREAS, Sedgwick County and the City of Wichita, Kansas, have jointly commissioned a study to develop a plan for drainage improvements in the area generally bounded by Meridian Avenue on the west, the abandoned right-of-way of the Midland Valley Railroad on the east, MacArthur Road on the north and the Wichita-Valley Center Flood Control Project on the south, and

WHEREAS, the consultant for said County and City has prepared a Preliminary Plan for such drainage improvements, and

WHEREAS, one of the elements of said Preliminary Plan of improvements is a temporary detention storage pond at the site of the "Cumley" Sand Pit (being located in the E 1/2 of the NW 1/4 of Section 33, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, west of the Kansas Turnpike, north of the Wichita-Valley Center Flood Control Project and south of 63rd Street South) together with a new drainage structure connecting the "Cumley" pit to the Wichita-Valley Center Flood Control Project; and

WHEREAS, said "Cumley" pit does not contain sufficient temporary detention storage volume to satisfy the conditions of said Preliminary Plan; and

WHEREAS, the undersigned, as owner of the following described tract of land:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. A-29459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film 488, page 956, in the office of the Register of Deeds of Sedgwick County, Kansas; (generally located at the southeast corner of 63rd Street South and Broadway);

STATE OF KANSAS
SEDGWICK COUNTY } SS
FILED FOR RECORD AT
3:30 PM

DEC 16 1983

6 67282

NO. BETTE F. MCCART
REGISTER OF DEEDS

*Pat Kettler
Deputy*

has made application to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Sedgwick County Board of Commissioners for a conditional use permit (CU-265) to use said land for the excavation of fill dirt and creation of a lake together with such other uses as may be necessary to carry on earth excavation operation on said land;

NOW, THEREFORE, in consideration of the premises and as a condition of approval of CU-265, the undersigned hereby agrees to designate the water portion of said property as Auxiliary Temporary Detention Storage to be used in conjunction with the storage proposed for the "Cumley" Sand Pit subject to the following requisite conditions:

1. That the Primary Storage Volume be provided in the "Cumley" Sand Pit as proposed by the consultant's Preliminary Plan of drainage improvements.
2. That subject property be required to provide only Auxiliary Temporary Storage Volume to comply with the requirements of said Preliminary Plan of drainage improvements.
3. That the cost of conduits, structure and equipment necessary to connect the Primary Storage Volume to said Auxiliary Storage Volume will not be charged or assessed to subject property.
4. That if the Preliminary Plan of drainage improvements is not approved and adopted by the governing bodies of said County and City, then this Covenant and Agreement is null and void.

6.00

Baughman Co., 330 Laura

The above restrictions, agreements and conditions shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the engineering agency of the appropriate governing body.

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

Executed in triplicate this 23rd day of Nov., 1983.

DeWitt Land Co., Inc.

Dean DeWitt
Dean DeWitt, President

Acknowledgement

STATE OF KANSAS)
)
SEDGWICK COUNTY) ss

The foregoing instrument was acknowledged before me this 23rd day of November, 1983, by Dean DeWitt, President of DeWitt Land Co., Inc., a state corporation, on behalf of said corporation.

Karen L. Cunningham
Notary Public

My Appointment Expires:

KAREN L. CUNNINGHAM
NOTARY PUBLIC
My Appt. Expires 12-31-84

RESTRICTIVE COVENANTS

DeWitt Land Company Inc., does hereby make the following declaration as to restrictions, limitations and use of the following described real estate:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29,459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film "488", page 956, in the Office of the Register of Deeds of Sedgwick County, Kansas. Generally located at the southeast corner of 63rd Street South and Broadway.

which said Declaration shall constitute covenants running with said land and shall be binding upon all owners and their successors, assigns and heirs;

"No rubbish, trees, car bodies or any other foreign matter shall be deposited on the application area, or within the excavation made in the removal of fill dirt on the said premises at any time."

The above restriction and agreement shall be deemed a covenant running with the land and shall not be amended, deleted, or changed.

IN WITNESS WHEREOF, this Restriction has been executed on the

23rd day of November, 1983.

STATE OF KANSAS }
SEDGWICK COUNTY }
FILED FOR RECORD AS
3-3-D.P.

MICROFILMED
OF RECORD

DEC 16 1983
6 67283

NO. BETTE F. MCCOY
REGISTER OF DEEDS
Pat Kettler Deputy

DeWitt Land Company Inc.

Dean DeWitt
Dean DeWitt, President

STATE OF KANSAS)
SEDGWICK COUNTY) SS

The foregoing instrument was acknowledged before me this 23rd day of November, 1983, by Dean DeWitt, President of DeWitt Land Co., Inc. a state corporation, on behalf of said corporation.

Karen L. Cunningham
Notary Public

500
My Appointment Expires:
KAREN L. CUNNINGHAM
NOTARY PUBLIC
Sedgwick County, Kansas
My Appt. Expires 12/31/84

Braughman Co.
330 Laura

Handwritten text on a small white label, possibly a name or address, with a small number '9' in the bottom right corner.

December 16, 1983

Donald C. Gisick, City Clerk
Louise Olivarez, Senior Planner

Street dedication associated with CU-265

On December 14, 1983, the Board of County Commissioners approved a conditional use permit for an earth excavation operation at the southeast corner of Broadway and 63rd Street South. This approval was subject to the dedication of additional street right-of-way. The dedication has been submitted and is attached herewith. Please schedule this dedication for the Clerk's Agenda for acceptance by the City Commission on December 20, 1983. The recording fee should be billed to Mr. Dean DeWitt, DeWitt Land Co., Inc., 505 S. Broadway, 67202.

Louise Olivarez
Senior Planner

LO:bh

Attachment

*MAPS should have
been paid LO-1175*

D-1175

DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, DeWitt Land Company, Inc.

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

See Exhibit A for property description in NW 33-28S-1E

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

Executed this 14th day of December 19 83.

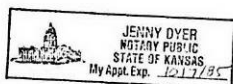
DeWitt Land Company, Inc. by *Dean DeWitt*
Dean DeWitt, President

STATE OF KANSAS)
SEDGWICK COUNTY) ss

BE IT REMEMBERED, that on this 14th day of December,
came Dean DeWitt, President of DeWitt Land Company, Inc.

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

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



Jenny Dyer
Notary Public

My Commission Expires: 12/17/85

December 8, 1983

EXHIBIT A

That part of the NW $\frac{1}{4}$ of Sec. 33, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, described as beginning at the N.W. Corner thereof; thence east along the north line of said NW $\frac{1}{4}$ to the N.E. Corner of the W $\frac{1}{2}$ of said NW $\frac{1}{4}$; thence south along the east line of the W $\frac{1}{2}$ of said NW $\frac{1}{4}$, 50 feet; thence west parallel with the north line of said NW $\frac{1}{4}$ to a point 336 feet east of the west line of said NW $\frac{1}{4}$; thence southwesterly 102.61 feet to a point 75 feet south and 236 feet east of the N.W. Corner of said NW $\frac{1}{4}$; thence west parallel with the north line of said NW $\frac{1}{4}$, 175 feet to a point 61 feet east of the west line of said NW $\frac{1}{4}$; thence south parallel with the west line of said NW $\frac{1}{4}$, 175 feet; thence southwesterly, 102.61 feet to a point 350 feet south and 36 feet east of the N.W. Corner of said NW $\frac{1}{4}$; thence south parallel with the west line of said NW $\frac{1}{4}$, 500 feet; thence west parallel with the north line of said NW $\frac{1}{4}$, 36 feet to the west line of said NW $\frac{1}{4}$; thence north along the west line of said NW $\frac{1}{4}$, 850 feet to the place of beginning, except therefrom the existing right-of-ways.

*Legal OK'd by Paul Dietrich
and Jack H. Miller (owner)
12-10-83*

Planning Agenda

Item #

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION
TO BOARD OF COUNTY COMMISSIONERS

REQUEST FOR CONDITIONAL USE PERMIT

CU-265 - CONDITIONAL USE PERMIT FOR EARTH EXCAVATION OPERATION.
GENERALLY LOCATED ON THE SOUTHEAST CORNER OF 63RD STREET SOUTH
AND BROADWAY.

The MAPC recommends that the application be approved.
(see minutes for full motion)

Gardner moved, Bayouth seconded and it carried unanimously.
Banzer and Chisholm were absent.

ACTION:

1. Approve the application as recommended by the Metropolitan Area Planning Commission subject to the recommended conditions of approval and adopt a resolution establishing the conditional use, and instruct the Planning Department to withhold publication until all conditions of approval have been complied with; or
2. Deny the application.

DATA AND MINUTES

DCPC Hearing Date: 11-03-83
HCPC Hearing Date: 11-10-83
MAPC Hearing Date: 11-17-83

BCoC Hearing Date: 12-14-83

AREA DATA:

Acres: 42.3

Size: 1350'x1450'

Reason: To extract dirt for fill off site. To permit construction of a lake for future development.

	<u>Land Use</u>	<u>Zoning</u>
Existing	Single-family & undeveloped	"R"
North	Single-family & orchard	"R" & "C"
East	Sand pit	"R"
South	Flood control ditch	"R"
West	General business, single-family & auto salvage	"R-1" & "C"

History: None

Applicant: DeWitt Land Co., Inc., 505 S. Broadway, Wichita 67202

Protestors: None.

EXCERPT FROM PLANNING COMMISSION MINUTES OF NOVEMBER 17, 1983

8. Case No. CU-265 - De Witt Land Co., inc., et al request Conditional Use Permit for Earth Excavation Operation for that part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29,459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film "488", page 956, in the Office of the Register of Deeds of Sedgwick County, Kansas. Generally located at the southeast corner of 63rd Street South and Broadway.

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

COMMENTS:

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

The applicant is requesting a Conditional Use permit for an earth excavation operation to form a lake on a tract of land containing approximately 42 acres located at the southeast corner of 63rd Street South and Broadway.

An operational and redevelopment sketch plan submitted with the application indicates the limits of the excavation to form the lake and future building sites.

The "sketch plan" proposes a total of 46 building sites, each of which contains approximately 9,600 square feet. The existing "R" zoning requires two acres per building site and will require a change of zoning to "AA" if developed as proposed.

2. It should be pointed out that subject property is adjacent to the Wichita-Valley Center Flood Control Ditch and prior to any excavation a permit authorizing same must be obtained from the County Engineer.
3. Should the Planning Commission recommend approval of this application, for fill dirt extraction only, the following conditions should be included in the recommendation:
 - A. The applicant shall obtain a permit from the County Engineer to comply with Section KSA 19-3309 prior to any excavation.
 - B. The applicant dedicating by separate instrument the necessary half-street rights-of-way for the east half of Broadway and the south half of 63rd Street to bring them up to major street standards.
 - C. The applicant shall submit a restrictive to the Planning Department, approved as to content by the City-County Flood Control Office and to form by the County Counselor. The covenant shall provide for the construction and/or maintenance of a loop levee on the premises at such a location as the Flood Control Office may direct in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance

Specifications as prepared by the City-County Flood Control Office. Said Covenant shall run with the land and be binding on all owners, successors, or assigns.

- D. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.
- E. A minimum 58-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
 - 1. A 48" or higher chainlink fence with three or more strands of barbed wire; or
 - 2. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
 - 3. A 48" or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire. The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.
- F. The earth shall be extracted to at least a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
- G. 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.
- H. All of the area outside of the excavation shall be graded so as to drain into the lake.
- I. The owner of the property shall be responsible for:
 - 1. Insuring that the loop levee elevation be maintained if constructed.
 - 2. Maintaining all operational roads in a graveled condition.
- J. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
- K. The natural drainage flow shall be protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Wichita-Sedgwick County Flood

Control Office and the County Engineer, and shall be according to the specifications and standards of these authorities.

- L. No commercial, recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
- M. All slopes shall have vegetative covering consisting of a perennial drouth resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- N. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the earth excavation operation.
- O. The applicant shall comply with Conditions A, B, C, and J, prior to the publication of the resolution establishing the conditional use.
- P. Any violation of conditions attached shall declare the conditional use permit null and void.

GALBRAITH presented a memorandum to the Planning Commission with an additional four conditions recommended by the Derby and Haysville Planning Commissions. He stated that this applicant began to extract some dirt on the easternmost part of this site, unaware that he needed to file a conditional use application. He said that the night that the Derby Planning Commission considered this request, there was no one present in opposition. He said that the Derby Planning Commissioners had a number of questions about the operation, but their eventual action was to recommend unanimously that the request be approved. Their only additional condition they wanted to add, to the staff's recommended conditions, was to be assured that there would be no development of houses on the site until municipal sewer and water had been extended. GALBRAITH stated that in previous discussions with the Haysville City Administrator, since this is adjacent to the city limits of Haysville, he felt that when this applicant was eventually ready to develop houses that those type of utilities will be extended.

GALBRAITH said that when the Haysville Planning Commission considered this request, there were a number of people present in opposition. He said that the Haysville Planning Commission debated this for about an hour and fifteen minutes. A motion was made finally to deny the request. GALBRAITH said that most of the discussion was about a concern of why this applicant had started excavation without the appropriate permits. Several Planning Commissioners indicated that when they came to the meeting, they felt that they would vote against the application. After the discussion they felt that the applicant had answered all the questions that they had, so the motion to deny was defeated, 2-3. A motion was then made to approve the request subject to the conditions on the staff report, and they added three additional conditions. They wanted to be sure that this applicant would have access only to 63rd Street during the excavation operation. They also wanted to be assured that there would be sufficient over burden material retained in the area of excavation, and that the applicant would guarantee the extension of municipal sewer and water to serve the site.

GALBRAITH stated that staff recommended approval of the request subject to the listed conditions in the staff report and those requested by Haysville.

CROCKETT said that the staff report refers to a loop levee. He asked what was a loop levee.

GALBRAITH said that it is a levee that is required on sandpits or dirt extraction operations near the "Big Ditch". A loop levee is not required to be constructed at this time. He said that if water remains high in the Big Ditch, that that might force water underground and up and out through the excavation area that might get out of its banks and spread out onto adjacent land.

DEAN DeWITT, applicant, stated that he agreed with all of the staff comments.

There was no one present in opposition to the application.

GARDNER commented that the second condition that was recommended by the Haysville Planning Commission of requiring sufficient top soil being retained in the area of the excavation to construct the banks with top soil rather than sand is an expression of good intention but not a overly knowledgeable position in terms of the soils that are present there or what is necessary to securely affix that kind of soil to the soil that is there as a base. He said that he recognized M. S. Mitchell in the audience, and since he has had several years of experience with this kind of facility, he wanted to ask him if that constitutes a practical requirement.

M. S. MITCHELL, appearing on behalf of the applicant, stated that unless someone really got strung up on the definition of top soil, he did not see a problem in this area because what is commonly call "over burden" is rather deep in this area. It will be more of that material rather than what is sometimes referred to top soil.

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the mixed residential and commercial character of the general area; the residential zoning on nearby property; the residential uses to the north; the commercial zoning to the north and west; the commercial uses to the west; the suitability of the subject site for an excavation operation; the comments and recommendations of the Haysville and Derby Planning Commissions; and the recommendation of approval by staff; I move that we recommend to the governing body that this application be approved subject to the following conditions:

- A. The applicant shall obtain a permit from the County Engineer to comply with Section KSA 19-3309 prior to any excavation.
- B. The applicant dedicating by separate instrument the necessary half-street rights-of-way for the east half of Broadway and the south half of 63rd Street to bring them up to major street standards.
- C. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the City-County Flood Control Office and to form by the County Counselor. The covenant shall provide for the construction and/or maintenance of a loop levee on the premises at such a location as the Flood Control Office may direct in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the City-County Flood Control Office. Said Covenant shall run with the land and be binding on all owners, successors, or assigns.

- D. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.
- E. The operation for dirt excavation shall only have ingress and egress to 63rd Street South.
- F. A minimum 58-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
1. A 48" or higher chainlink fence with three or more strands of barbed wire; or
 2. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
 3. A 48" or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire. The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.
- G. The earth shall be extracted to at least a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
- H. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
- I. Sufficient overburden material shall be retained in the area of excavation to grade and construct the banks so that they are formed with overburden material rather than sand.
- J. All of the area outside of the excavation shall be graded so as to drain into the lake.
- K. The owner of the property shall be responsible for:
1. Insuring that the loop levee elevation be maintained if constructed.
 2. Maintaining all operational roads in a graveled condition.
- L. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
- M. The applicant shall submit a covenant, satisfactory in form to the County Counselor and Sedgwick County Department of Public Works, which authorizes the use of the excavation area as a detention storage facility for public drainage purposes.

- N. Prior to the development of subject property for residential purposes, the applicant shall guarantee the extension of municipal sewer and water to serve the site.
- O. The property shall be platted prior to the issuance of any zoning or building permits except those necessary for the earth extraction operation.
- P. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
- Q. All slopes shall have vegetative covering consisting of a perennial drowth resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- R. The applicant shall comply with Conditions A, B, C, L, and M prior to the publication of the resolution establishing the conditional use.
- S. Any violation of conditions attached shall declare the conditional use permit null and void.

Gardner moved, Bayouth seconded and
it carried unanimously. Banzer and
Chisholm were absent.

SEDGWICK COUNTY DEPARTMENT OF PUBLIC WORKS

PERMIT FOR EXCAVATION ADJACENT
TO FLOOD PROTECTION WORKS



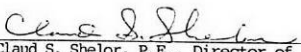
Whereas, Dewitt Land Co., Inc., has requested a Conditional Use Permit to operate a raw materials extraction operation on the following described property:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. A-29459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to the Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film 488, page 956, in the office of the Register of Deeds of Sedgwick County, Kansas,; (generally located at the Southeast corner of 63rd Street South and Broadway); and

Whereas, the above referenced raw materials extraction operation will be located within 1,000 feet of the centerline of a flood control works constructed under the provisions of Chapter 19, Article 33 of the Kansas Statutes Annotated; and

Whereas, the County Engineer of Sedgwick County, Kansas, concurs with the findings of the City-County Flood Control Office that under the conditions set forth in the applicants' Conditional Use Permit (CU-265), the proposed excavation will not be detrimental to nor will it impair or endanger the function of the Wichita/Valley Center Flood Control Project;

Now, Therefore, under authority of K.S.A. 19-3309, I hereby issue a permit for said extraction operation subject to the conditions of CU 265.


Claud S. Shelor, P.E., Director of
Public Works/County Engineer

Date December 7, 1983

cc: Applicant
M.A.P.D.
Project File CU-265



SEDGWICK COUNTY, KANSAS
DEPARTMENT OF PUBLIC WORKS

1250 S. SENeca
WICHITA, KANSAS 67213-4498
(316) 266-7931

Claud S. Shelor, P.E.
Director of Public Works/County Engineer

TO: Jack Galbraith, Chief Planner
FROM: Phillip Dietrich *PD*
DATE: November 28, 1983
SUBJ: CU 265- Proposed Covenants

As per your request, this office has reviewed the revised "loop levee" and "auxiliary temporary detention storage" covenants for CU 265 and have no objections to these documents.

If we may be of further assistance, please do not hesitate to call.

PD/yls

RECEIVED

DEC 5 1983

METRO. URBAN PLANNING
ROUTE _____

December 1, 1983

Mr. Dean DeWitt
505 S. Broadway, Suite 200
Wichita, Ks. 67202

Re: CU-265 - Conditional use permit for earth excavation
at 63rd Street South and Broadway

Dear Mr. DeWitt:

This past Monday we received the three signed covenants for the above referenced case which you mailed to us. Prior to scheduling your conditional use permit request on the County Commission agenda, we need a copy of the excavation permit, as outlined in Item A of our November 18th letter. Prior to publication of the resolution, we will also need the dedications of street right-of-way as outlined in item B of that same letter. Bill Korber can assist you in preparing the legal descriptions for the street dedications.

If you have any additional questions, please call.

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:LO:bh

cc: Bill Korber, 330 Laura, 67211

DeWITT DEVELOPMENT

505 SOUTH BROADWAY SUITE 200 WICHITA, KANSAS 67202
(316) 262-3365



COMMERCIAL - INDUSTRIAL

November 23, 1983

Mr. Jack H. Galbraith
Chief Planner
Metropolitan Area Planning
Commission
455 N. Main - 10th Floor
Wichita, KS 67202

RE: DeWitt Land Co., Inc.

Dear Mr. Galbraith:

Per your letter of November 18, I am returning the following
executed documents:

Restrictive Covenants
Restrictive Covenant and Agreement
Restrictive Covenant and Agreement
For Detention Storage

Please let me know if you need any additional information or
items signed for this project.

Thank you.

Yours truly,

Dean DeWitt
Dean DeWitt *kc*

DD:kc
Enclosures

RECEIVED

NOV 28 1983

METROPOLITAN PLANNING

ROUTE

RESTRICTIVE COVENANT
AND AGREEMENT

WHEREAS, the undersigned, as owner of the following described tract of land:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, of the 6th P.M., Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. A-29459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film 488, page 956, in the office of the Register of Deeds of Sedgwick County, Kansas; (generally located at the southeast corner of 63rd Street South and Broadway);

has made application to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Sedgwick County Board of Commissioners for a conditional use permit (CU-265) to use said land for the excavation of fill dirt and creation of a lake together with such other uses as may be necessary to carry on an earth excavation operation on said land; and

WHEREAS, lands adjacent to subject tract are and will be developed for urban purposes and an earth excavation operation and lake at such location will endanger the health, welfare and property of residents who may live in such areas unless certain protective measures are taken; and

WHEREAS, the undersigned desires to obligate himself and his successors in title to protect the public welfare by constructing and maintaining a loop levee upon said property and to subject and burden the fee title thereto so that such obligation is a covenant running with the land;

NOW, THEREFORE, in consideration of the premises and as a condition of approval of CU-265, the undersigned hereby makes the following declaration of restrictions, limitations and use of said realty, and said declaration shall constitute covenants running with the land and shall be binding upon all owners and their heirs, successors and assigns:

If the construction of a loop levee is deemed necessary by City-County Flood Control Office, or their successors of office, in connection with conducting operations for the earth excavation and lake, the fee owners agree to construct and maintain a loop levee on the premises at such a location as the Flood Control Office may direct, in accordance with construction specifications, Sections 1 through 4 inclusive, and maintenance specifications, Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the City-County Flood Control Office, attached hereto as Exhibit A.

The above restrictions and agreements shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the City-County Flood Control Office, or their successors of office.

In the event of the failure by the undersigned or any successors of title to fulfill the obligation set forth above within sixty (60) days after receipt of written notice from the City-County Flood Control Office, or their successors of office, then the appropriate governing body may order such work done and maintained and charge the entire cost of such construction and maintenance as a first lien against said realty to be collected and foreclosed in the same manner as a mortgage is foreclosed.

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

Executed in triplicate this 23rd day of NOV, 1983.

DeWitt Land Co., Inc.
DeWitt
Dean DeWitt, President

ACKNOWLEDGEMENT

STATE OF KANSAS)
)
SEDGWICK COUNTY) SS

The foregoing instrument was acknowledged before me this 23rd day of November, 1983, by Dean DeWitt, President of DeWitt Land Co., Inc., a state corporation, on behalf of said corporation.

David Cunningham
Notary Public

My Appointment Expires:

KAREN L. CUNNINGHAM NOTARY PUBLIC My App. Expires <u>12/31/84</u>

CONSTRUCTION SPECIFICATIONS

Exhibit A

SECTION I - CLEARING AND GRUBBING

1-01. ORDER OF WORK:

All clearing and grubbing as specified below will be done in advance of sub-grade preparation and levee embankment.

1-02. CLEARING: Operations shall consist of removal and disposal of trees, fallen timber, brush, logs, bushes, vines, stumps, drift wood, fences, heavy growth of crops, weeds and grass and other obstructions existing above ground level. Clearing will be done on the area beneath the levee embankment together with strips 10 feet wide beyond the embankment toe.

1-03. GRUBBING: Operations shall consist of thoroughly cleaning the area outlined in sub-paragraph 1-02. of all stumps, roots, buried logs and other matter which would be objectionable in the foundation of the levee.

SECTION II - EXCAVATION

An inspection trench 4 feet deep and 4 feet wide shall be excavated along the approximate center of the levee base.

SECTION III - EMBANKMENT

3-01. EMBANKMENT FOUNDATION PREPARATION: After clearing and grubbing of the embankment foundation and the excavation of the inspection trench has been completed, and immediately prior to the placement of embankment material, the entire earth surface on or against which fill is to be placed shall be thoroughly broken to a depth of six inches and the area to be occupied by the levee proper shall be compacted in accordance with the provisions of sub-paragraph 3-03. If for any cause this broken surface becomes compacted in such a manner that a plane of seepage or weakness might be induced, it shall again be thoroughly broken before the depositing of material thereon.

Drainage - The foundation receiving fill and the inspection ditch hereinbefore specified, and all partially completed fill shall be kept thoroughly drained.

Frozen Ground - No fill shall be placed upon frozen ground.

3-02. EMBANKMENT MATERIALS: The levee embankment shall be constructed of the most nearly impervious materials available from the construction site. Under no circumstances shall frozen earth, snow, or ice be placed in the levee. Embankment materials should be as homogeneous as possible and contain no foreign matter or pockets of soft unstable material.

3-03. EMBANKMENT CONSTRUCTION: Materials shall be placed or spread in layers not to exceed 12 inches in thickness prior to compaction. Layers shall be started full out to the toe of the embankment and shall be carried substantially horizontal with sufficient crown or slope to provide satisfactory drainage during construction. When the surface of any compacted layer is too smooth to bond properly with the succeeding layer, it shall be scarified before the succeeding layer is placed on it.

- a. Moisture Control - It is the intent of these specifications to secure an embankment having the maximum density obtainable with natural moisture content of the embankment materials. However, if the material is too wet or too dry for proper compaction steps shall be taken to bring the moisture content back to near the optimum range. Wetting may be accomplished by wetting the borrow pit from which the embankment material is obtained or by distribution of sufficient moisture in each layer before rolling.
- b. Rolling Operations - When moisture content and conditions of the spread layers are satisfactory, each layer shall be compacted by not less than four (4) complete passes of a tamper-type roller conforming to the requirements of sub-paragraph 3-03, c.1, or by not less than two complete passes of a rubber-tired roller conforming to the requirements of sub-paragraph 3-03, c.2. Portions of the embankment which the roller cannot reach for any reason must be compacted by other approved means to the density of the surrounding embankment.
- c. Compaction Equipment -
 1. Tamping Rollers - Tamping rollers shall consist of one or more units. Each unit shall consist of a cylindrical drum not less than 48 inches in length and not less than 48 inches in diameter. The drums shall be water or sand and water ballasted. Each drum shall have staggered feet uniformly spaced over the cylindrical surface such as to provide approximately three tamping feet for each two square feet of drum surface. The tamping feet shall be seven to nine inches in clear projection from the cylindrical surface of the roller and shall have a face area of not less than five nor more than seven square inches. The units shall be equipped with a suitable device for cleaning the feet. The rolling units of multiple-type tamping rollers shall be pivoted on the main frame in a manner which will permit the units to adapt themselves to uneven ground surfaces and to rotate independently. The weight of the roller shall be not less than 1,500 pounds per linear foot of drum length weighted, and shall be not more than 750 pounds per foot of drum length empty. The design and operation of the tamping roller shall be subject to the approval of the contracting officer who shall have the right at any time during the prosecution of the work to direct such repairs to the tamping feet, minor alterations in the roller, and variations in the weight as may be found necessary to secure optimum compaction of the earth-fill materials. The roller shall be pulled by a crawler-type tractor of sufficient power to operate the roller at a speed of approximately 3- $\frac{1}{2}$ miles per hour..
 2. Rubber-Tired Rollers - Rubber-tired rollers shall have a minimum of four wheels equipped with pneumatic tires. The tires shall be of such size and ply as to be capable of being operated at tire pressures between 80 and 100 pounds per square inch at a 25,000 pound wheel load. The roller wheels shall be located abreast and so designed that each wheel will carry approximately equal load in traversing uneven ground. The spacing of the wheels will be such that the distance between the nearest edges of adjacent tires will not be greater than

50 percent of the rated tire width of a single tire at the operating pressure for a 25,000 pound wheel load. The roller shall have a rigid steel frame provided with a body suitable for ballast loading such that the load per wheel may be varied, as directed by the contracting officer, from 18,000 to 25,000 pounds. The entire assembly (roller plus motivating equipment) must be capable of executing a 180-degree turn on a 15-foot radius. The roller shall be towed at speeds not to exceed ten miles per hour by pneumatic-tired equipment. The character and efficiency of this equipment shall be subject to the approval of the contracting officer.

- d. Cross-Section of Levee Embankment - The levee embankment shall be constructed to conform with the requirements of typical standard levee section shown on Figure 1. Shrinkage and settlement allowances shall be allowed for by constructing the standard levee section plus a 5% addition in crest height.

SECTION IV - TURFING

4-01. SCOPE: It is the intent of these specifications to obtain a firm stand of native grass or grass which will ensure the stability of the levee embankment. Good vegetative cover is of prime importance to the maintenance and operation of the levee embankment. The top, slopes and a 5 foot wide strip at the base of the levee on each side shall be turfed.

4-02. MULCHING:

- a. Soil Preparation - If necessary the soil shall be loosened to a depth of 2 inches before application of the mulch material.
- b. Materials - Hay shall be native prairie hay and a minimum of 50 percent by weight shall be 10 inches or more in length.
- c. Application of Mulch - Mulch materials shall be spread uniformly in a continuous blanket over the area to be mulched at the rate of approximately 3½ tons per acre. Mulch may be spread by hand or by mechanical means which do not break up the hay. Immediately following the spreading of the mulch material, it shall be anchored to the soil by pressing into the ground a minimum depth of 1½ inches, leaving enough material sticking upright to accomplish its primary purpose of temporary dust and erosion control. Anchoring shall be accomplished by using a mulch anchoring machine equipped with straight rolling Coulter-type discs that are spaced not more than 10 inches or less than 7 inches apart. The rolling discs shall be sufficiently dull to prevent cutting the mulch material. If anchoring machinery is not used, the mulch material shall be anchored with a spade at 6 inch intervals.

4-03. FERTILIZING AND SEEDING:

- a. Materials -
 - 1. Fertilizer shall be dry, free-flowing materials which can

be distributed uniformly, and shall be commercial grade 15-10-10 or the equivalent.

2. Seed - Seed of mixed bluestem, switch grass, blue grama grass, side oats grama, sand dropseed grass, sand lovegrass, weeping lovegrass, or native bermuda grass, or a mixture of any or all of the above may be used.
- b. Application - Fertilizer shall be applied uniformly at the approximate rate of 400 lbs. per acre. Seed should be applied uniformly at the rate of approximately 30 lbs. per acre.

MAINTENANCE SPECIFICATIONS

SECTION I - GENERAL

In General, maintenance should provide for those things which will ensure the serviceability of the levee in time of high water. Measures should be taken to promote the growth of sod, exterminate burrowing animals, provide for routine mowing, removal of wild growth and repair the damage caused by erosion. Another important maintenance and responsibility is to ensure the integrity of the loop levee at all times.

SECTION II - INSPECTION

Periodic inspections should be made to ensure that the above measures are being effectively carried out and to be certain that:

- a. No unusual settlement, sloughing, or material loss of grade or levee cross section has taken place.
- b. No caving has occurred on either the land side or the water side of the levee which might affect the stability of the levee section.
- c. No seepage, saturated areas or sand boils are occurring.
- d. No action is being taken, such as burning grass and weeds during inappropriate seasons, which will retard or destroy the growth of sod.
- e. Access roads to and on the levee are being properly maintained.
- f. Cattle guards and gates are in good condition.
- g. Crown of levee is shaped so as to drain readily, and roadway thereon, if any, is well shaped and maintained.
- h. There is no damaging grazing or vehicular traffic on the levees.
- i. Encroachments are not being made on the levee right-of-way which might endanger the structure or hinder its proper and efficient functioning during times of emergency.

RESTRICTIVE COVENANT AND AGREEMENT
FOR DETENTION STORAGE

WHEREAS, Sedgwick County and the City of Wichita, Kansas, have jointly commissioned a study to develop a plan for drainage improvements in the area generally bounded by Meridian Avenue on the west, the abandoned right-of-way of the Midland Valley Railroad on the east, MacArthur Road on the north and the Wichita-Valley Center Flood Control Project on the south, and

WHEREAS, the consultant for said County and City has prepared a Preliminary Plan for such drainage improvements, and

WHEREAS, one of the elements of said Preliminary Plan of improvements is a temporary detention storage pond at the site of the "Cumley" Sand Pit (being located in the E 1/2 of the NW 1/4 of Section 33, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, west of the Kansas Turnpike, north of the Wichita-Valley Center Flood Control Project and south of 63rd Street South) together with a new drainage structure connecting the "Cumley" pit to the Wichita-Valley Center Flood Control Project; and

WHEREAS, said "Cumley" pit does not contain sufficient temporary detention storage volume to satisfy the conditions of said Preliminary Plan; and

WHEREAS, the undersigned, as owner of the following described tract of land:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. A-29459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film 488, page 956, in the office of the Register of Deeds of Sedgwick County, Kansas; (generally located at the southeast corner of 63rd Street South and Broadway);

has made application to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Sedgwick County Board of Commissioners for a conditional use permit (CU-265) to use said land for the excavation of fill dirt and creation of a lake together with such other uses as may be necessary to carry on earth excavation operation on said land;

NOW, THEREFORE, in consideration of the premises and as a condition of approval of CU-265, the undersigned hereby agrees to designate the water portion of said property as Auxiliary Temporary Detention Storage to be used in conjunction with the storage proposed for the "Cumley" Sand Pit subject to the following requisite conditions:

1. That the Primary Storage Volume be provided in the "Cumley" Sand Pit as proposed by the consultant's Preliminary Plan of drainage improvements.
2. That subject property be required to provide only Auxiliary Temporary Storage Volume to comply with the requirements of said Preliminary Plan of drainage improvements.
3. That the cost of conduits, structure and equipment necessary to connect the Primary Storage Volume to said Auxiliary Storage Volume will not be charged or assessed to subject property.
4. That if the Preliminary Plan of drainage improvements is not approved and adopted by the governing bodies of said County and City, then this Covenant and Agreement is null and void.

The above restrictions, agreements and conditions shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the engineering agency of the appropriate governing body.

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

Executed in triplicate this 23rd day of Nov., 1983.

DeWitt Land Co., Inc.

DeWitt
Dean DeWitt, President

Acknowledgement

STATE OF KANSAS)
)
SEDGWICK COUNTY) ss

The foregoing instrument was acknowledged before me this 23rd day of NOVEMBER, 1983, by Dean DeWitt, President of DeWitt Land Co., Inc., a state corporation, on behalf of said corporation.

Karen Cunningham
Notary Public

My Appointment Expires:

KAREN L. CUNNINGHAM
NOTARY PUBLIC
My App. Expires 3-31-84

RESTRICTIVE COVENANTS

DeWitt Land Company Inc., does hereby make the following declaration as to restrictions, limitations and use of the following described real estate:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29,459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film "488", page 956, in the Office of the Register of Deeds of Sedgwick County, Kansas. Generally located at the southeast corner of 63rd Street South and Broadway.


which said Declaration shall constitute covenants running with said land and shall be binding upon all owners and their successors, assigns and heirs;

"No rubbish, trees, car bodies or any other foreign matter shall be deposited on the application area, or within the excavation made in the removal of fill dirt on the said premises at any time."

The above restriction and agreement shall be deemed a covenant running with the land and shall not be amended, deleted, or changed.

IN WITNESS WHEREOF, this Restriction has been executed on the 23rd day of November, 1983.

DeWitt Land Company Inc.


Dean DeWitt, President

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

The foregoing instrument was acknowledged before me this 23rd day of November, 1983, by Dean DeWitt, President of DeWitt Land Co., Inc. a state corporation, on behalf of said corporation.


Notary Public

My Appointment Expires:
KAREN L. CUNNINGHAM
NOTARY PUBLIC
Sedgwick County, Kansas
My Appt. Expires 11/23/84

November 21, 1983

Phil Dietrich, County Public Works

Jack H. Galbraith, Chief Planner

CU-265 - Proposed Covenants

Attached are copies of two proposed covenants dealing with the use of property at the southeast corner of 63rd and Broadway for earth excavation and a lake. One covenant obligates the owner to construct a loop levee if ever it is determined necessary. The other covenant allows for use of the lake for auxiliary temporary detention storage. These covenants are slightly revised from the ones submitted to us by M. S. Mitchell. Our revisions do not affect the intent of the covenants or the specifics with regard to drainage but are mainly revisions in format.

Would you please review these covenants and provide me with your thoughts on them?

Jack H. Galbraith
Chief Planner

JHG:LO:bh

Attachments

RESTRICTIVE COVENANTS

DeWitt Land Company Inc., does hereby make the following declaration as to restrictions, limitations and use of the following described real estate:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29,459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film "488", page 956, in the Office of the Register of Deeds of Sedgwick County, Kansas. Generally located at the southeast corner of 63rd Street South and Broadway.

which said Declaration shall constitute covenants running with said land and shall be binding upon all owners and their successors, assigns and heirs;

"No rubbish, trees, car bodies or any other foreign matter shall be deposited on the application area, or within the excavation made in the removal of fill dirt on the said premises at any time."

The above restriction and agreement shall be deemed a covenant running with the land and shall not be amended, deleted, or changed.

IN WITNESS WHEREOF, this Restriction has been executed on the _____ day of November, 1983.

DeWitt Land Company Inc.

Dean DeWitt, President

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

The foregoing instrument was acknowledged before me this _____ day of November, 1983, by Dean DeWitt, President of DeWitt Land Co., Inc. a state corporation, on behalf of said corporation.

Notary Public

My Appointment Expires:

revised copy
CU-265
file

RESTRICTIVE COVENANT AND AGREEMENT
FOR DETENTION STORAGE

WHEREAS, Sedgwick County and the City of Wichita, Kansas, have jointly commissioned a study to develop a plan for drainage improvements in the area generally bounded by Meridian Avenue on the west, the abandoned right-of-way of the Midland Valley Railroad on the east, MacArthur Road on the north and the Wichita-Valley Center Flood Control Project on the south, and

WHEREAS, the consultant for said County and City has prepared a Preliminary Plan for such drainage improvements, and

WHEREAS, one of the elements of said Preliminary Plan of improvements is a temporary detention storage pond at the site of the "Cumley" Sand Pit (being located in the E 1/2 of the NW 1/4 of Section 33, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, west of the Kansas Turnpike, north of the Wichita-Valley Center Flood Control Project and south of 63rd Street South) together with a new drainage structure connecting the "Cumley" pit to the Wichita-Valley Center Flood Control Project; and

WHEREAS, said "Cumley" pit does not contain sufficient temporary detention storage volume to satisfy the conditions of said Preliminary Plan; and

WHEREAS, the undersigned, as owner of the following described tract of land:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. A-29459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film 488, page 956, in the office of the Register of Deeds of Sedgwick County, Kansas; (generally located at the southeast corner of 63rd Street South and Broadway);

has made application to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Sedgwick County Board of Commissioners for a conditional use permit (CU-265) to use said land for the excavation of fill dirt and creation of a lake together with such other uses as may be necessary to carry on earth excavation operation on said land;

NOW, THEREFORE, in consideration of the premises and as a condition of approval of CU-265, the undersigned hereby agrees to designate the water portion of said property as Auxiliary Temporary Detention Storage to be used in conjunction with the storage proposed for the "Cumley" Sand Pit subject to the following requisite conditions:

1. That the Primary Storage Volume be provided in the "Cumley" Sand Pit as proposed by the consultant's Preliminary Plan of drainage improvements.
2. That subject property be required to provide only Auxiliary Temporary Storage Volume to comply with the requirements of said Preliminary Plan of drainage improvements.
3. That the cost of conduits, structure and equipment necessary to connect the Primary Storage Volume to said Auxiliary Storage Volume will not be charged or assessed to subject property.
4. That if the Preliminary Plan of drainage improvements is not approved and adopted by the governing bodies of said County and City, then this Covenant and Agreement is null and void.

The above restrictions, agreements and conditions shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the engineering agency of the appropriate governing body.

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

Executed in triplicate this _____ day of _____, 1983.

DeWitt Land Co., Inc.

Dean DeWitt, President

Acknowledgement

STATE OF KANSAS)
)
SEDGWICK COUNTY) ss

The foregoing instrument was acknowledged before me this _____ day of _____, 1983, by Dean DeWitt, President of DeWitt Land Co., Inc., a state corporation, on behalf of said corporation.

Notary Public

My Appointment Expires:

*revised copy
CU-265
file*

RESTRICTIVE COVENANT
AND AGREEMENT

WHEREAS, the undersigned, as owner of the following described tract of land:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, of the 6th P.M., Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. A-29459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film 488, page 956, in the office of the Register of Deeds of Sedgwick County, Kansas; (generally located at the southeast corner of 63rd Street South and Broadway); :

has made application to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Sedgwick County Board of Commissioners for a conditional use permit (CU-265) to use said land for the excavation of fill dirt and creation of a lake together with such other uses as may be necessary to carry on an earth excavation operation on said land; and

WHEREAS, lands adjacent to subject tract are and will be developed for urban purposes and an earth excavation operation and lake at such location will endanger the health, welfare and property of residents who may live in such areas unless certain protective measures are taken; and

WHEREAS, the undersigned desires to obligate himself and his successors in title to protect the public welfare by constructing and maintaining a loop levee upon said property and to subject and burden the fee title thereto so that such obligation is a covenant running with the land;

NOW, THEREFORE, in consideration of the premises and as a condition of approval of CU-265, the undersigned hereby makes the following declaration of restrictions, limitations and use of said realty, and said declaration shall constitute covenants running with the land and shall be binding upon all owners and their heirs, successors and assigns:

If the construction of a loop levee is deemed necessary by City-County Flood Control Office, or their successors of office, in connection with conducting operations for the earth excavation and lake, the fee owners agree to construct and maintain a loop levee on the premises at such a location as the Flood Control Office may direct, in accordance with construction specifications, Sections 1 through 4 inclusive, and maintenance specifications, Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the City-County Flood Control Office, attached hereto as Exhibit A.

The above restrictions and agreements shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the City-County Flood Control Office, or their successors of office.

In the event of the failure by the undersigned or any successors of title to fulfill the obligation set forth above within sixty (60) days after receipt of written notice from the City-County Flood Control Office, or their successors of office, then the appropriate governing body may order such work done and maintained and charge the entire cost of such construction and maintenance as a first lien against said realty to be collected and foreclosed in the same manner as a mortgage is foreclosed.

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

Executed in triplicate this _____ day of _____, 1983.

DeWitt Land Co., Inc.

Dean DeWitt, President

ACKNOWLEDGEMENT

STATE OF KANSAS)
)
SEDGWICK COUNTY) SS

The foregoing instrument was acknowledged before me this _____ day of _____, 1983, by Dean DeWitt, President of DeWitt Land Co., Inc., a state corporation, on behalf of said corporation.

Notary Public

My Appointment Expires:

RESTRICTIVE COVENANT AND AGREEMENT
FOR DETENTION STORAGE

*Copy as
originally
submitted*

WHEREAS, Sedgwick County and the City of Wichita, Kansas have jointly commissioned a study to develop a plan for drainage improvements in the area bounded by Meridian Avenue on the west, the abandoned rights-of-way of the Midland Valley Railroad on the east, MacArthur Road on the north and the Big Slough-Cowskin Floodway on the south, and

WHEREAS, the consultant for said County and City has prepared a Preliminary Plan for such drainage improvements, and

WHEREAS, one of the elements of said Preliminary Plan of improvements is a temporary detention storage pond at the site of the "Cumley" Sand Pit together with a new drainage structure connecting the "Cumley" pit to said Wichita-Valley Center Floodway, and

WHEREAS, said "Cumley" pit does not contain sufficient temporary detention storage volume to satisfy the conditions of said Preliminary Plan,

NOW, THEREFORE, in consideration of the premises and the zoning by the Metropolitan Planning Commission of land described so as to permit the use thereof for earth excavation operations on the following described property, to-wit:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29, 459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film 488, page 956, in the Office of the Register of Deeds of Sedgwick County, Kansas. Generally located at the southeast corner of 63rd Street South and Broadway.

The undersigned hereby agrees to designate the water portion of said property as Auxiliary Temporary Detention Storage to be used in conjunction with the storage proposed for the "Cumley" Sand Pit subject to the following requisite conditions:

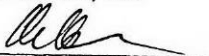
1. That the Primary Storage Volume be provided in the "Cumley" Sand Pit as proposed by the consultant's Preliminary Plan of drainage improvements.
2. That subject property be required to provide only Auxiliary Temporary Storage Volume to comply with the requirements of said Preliminary Plan of drainage improvements.
3. That the cost of conduits, structures and equipment necessary to connect the Primary Storage Volume to said Auxiliary Storage Volume will not be charged or assessed to subject property.
4. That if the Preliminary Plan of drainage improvements is not approved and adopted by the governing bodies of said County and City, then this Covenant and Agreement is null and void.

The above restrictions, agreements and conditions shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the engineering agency of the appropriate governing body.

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

Executed in triplicate this 15th day of November, 1983.

DeWitt Land Co., Inc.



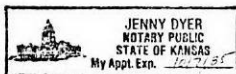
Dean DeWitt, President

Acknowledgement

STATE OF KANSAS)
SEDGWICK COUNTY) ss:

Be it remembered, that on this 15th day of November, 1983 before me, the undersigned, a notary public, in and for the County and State aforesaid, came Dean DeWitt who is personally known to me to be the same person who executed the within instrument of writing, and such persons duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed my notarial seal, the day and and year last above written.




Notary Public

My Commission Expires:

October 7, 1985

RESTRICTIVE COVENANT
AND AGREEMENT

Copy as originally submitted

WHEREAS, the undersigned as owner of the property hereinafter described has made application to the Metropolitan Planning Commission of the City of Wichita and County of Sedgwick for permission to use said property as a sand pit together with such other uses as may be necessary to carry on a sand pit operation on said land; and

WHEREAS, the lands adjacent to the above described tract are and will be developed for urban purposes and the operation of a sand pit at such location will endanger the health, welfare and property of residents who may live in such areas unless certain protective measures are taken; and

WHEREAS, the undersigned desires to obligate himself and his successors in title to protect the public welfare by construction and maintaining a loop levee upon said property and to subject and burden the fee title thereto so that such obligation is a covenant running with the land.

NOW, THEREFORE, in consideration of the premises and the zoning by the Metropolitan Planning Commission of land hereinafter described so as to permit the use thereof for sand pit operations on the following described property, to-wit:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29, 459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film 488, page 956, in the office of the Register of Deeds of Sedgwick County, Kansas. Centrally located at the southeast corner of 63rd Street South and Broadway.

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

If the construction of a loop levee is deemed necessary by the City-County Flood Control Office, or their successors of office, in connection with conducting operations for the removal of sand and gravel from the premises, the fee owners agree to construct and maintain a loop levee on the premises at such a location as the Flood Control Office may direct, in accordance with construction specifications, Sections 1, through 4, inclusive, and maintenance specifications, Section 1, and 2, of Construction and Maintenance Specifications as prepared by the City-County Flood Control Office, attached hereto as Exhibit A.


The above restrictions and agreements shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the City-County Flood Control Office, or their successors of office.

In the event of the failure by the undersigned or any successors of title to fulfill the obligation set forth above within sixty (60) days after receipt of written notice from the City-County Flood Control Office, or their successors of Office, then the appropriate governing body may order such work done and maintained and charge the entire cost of such construction and maintenance as a first lien against said realty to be collected and foreclosed in the same manner as a mortgage is foreclosed.

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

Executed in triplicate this 15th day of November 1983.

DeWitt Land Co., Inc.



Dean DeWitt, President

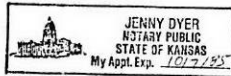
ACKNOWLEDGMENT

STATE OF KANSAS)
)
SEDGWICK COUNTY) SS:

Be it remembered, that on this 15th day of November, 1983.
before me, the undersigned, a notary public, in and for the County and State
aforesaid, came Dean DeWitt

who are personally known to me to be the same persons who executed the within
instrument of writing, and such persons duly acknowledged the execution of
the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial
seal, the day and year last above written.





NOTARY PUBLIC

My Commission Expires:

October 7, 1985

CONSTRUCTION SPECIFICATIONS

EXHIBIT A

SECTION I - CLEARING AND GRUBBING

1-01. ORDER OF WORK:

All clearing and grubbing as specified below will be done in advance of sub-grade preparation and levee embankment.

1-02. CLEARING: Operations shall consist of removal and disposal of trees, fallen timber, brush, logs, bushes, vines, stumps, drift wood, fences, heavy growth of crops, weeds and grass and other obstructions existing above ground level. Clearing will be done on the area beneath the levee embankment together with strips 10 feet wide beyond the embankment toe.

1-03. GRUBBING: Operations shall consist of thoroughly cleaning the area outlined in sub-paragraph 1-02. of all stumps, roots, buried logs and other matter which would be objectionable in the foundation of the levee.

SECTION II - EXCAVATION

An inspection trench 4 feet deep and 4 feet wide shall be excavated along the approximate center of the levee base.

SECTION III - EMBANKMENT

3-01. EMBANKMENT FOUNDATION PREPARATION: After clearing and grubbing of the embankment foundation and the excavation of the inspection trench has been completed, and immediately prior to the placement of embankment material, the entire earth surface on or against which fill is to be placed shall be thoroughly broken to a depth of six inches and the area to be occupied by the levee proper shall be compacted in accordance with the provisions of sub-paragraph 3-03. If for any cause this broken surface becomes compacted in such a manner that a plane of seepage or weakness might be induced, it shall again be thoroughly broken before the depositing of material thereon.

Drainage - The foundation receiving fill and the inspection ditch hereinbefore specified, and all partially completed fill shall be kept thoroughly drained.

Frozen Ground - No fill shall be placed upon frozen ground.

3-02. EMBANKMENT MATERIALS: The levee embankment shall be constructed of the most nearly impervious materials available from the construction site. Under no circumstances shall frozen earth, snow, or ice be placed in the levee. Embankment materials should be as homogeneous as possible and contain no foreign matter or pockets of soft unstable material.

3-03. EMBANKMENT CONSTRUCTION: Materials shall be placed or spread in layers not to exceed 12 inches in thickness prior to compaction. Layers shall be started full out to the toe of the embankment and shall be carried substantially horizontal with sufficient crown or slope to provide satisfactory drainage during construction. When the surface of any compacted layer is too smooth to bond properly with the succeeding layer, it shall be scarified before the succeeding layer is placed on it.

- a. **Moisture Control** - It is the intent of these specifications to secure an embankment having the maximum density obtainable with natural moisture content of the embankment materials. However, if the material is too wet or too dry for proper compaction steps shall be taken to bring the moisture content back to near the optimum range. Wetting may be accomplished by wetting the borrow pit from which the embankment material is obtained or by distribution of sufficient moisture in each layer before rolling.
- b. **Rolling Operations** - When moisture content and conditions of the spread layers are satisfactory, each layer shall be compacted by not less than four (4) complete passes of a tamper-type roller conforming to the requirements of sub-paragraph 3-03, c.1, or by not less than two complete passes of a rubber-tired roller conforming to the requirements of sub-paragraph 3-03, c.2. Portions of the embankment which the roller cannot reach for any reason must be compacted by other approved means to the density of the surrounding embankment.
- c. **Compaction Equipment** -
 1. **Tamping Rollers** - Tamping rollers shall consist of one or more units. Each unit shall consist of a cylindrical drum not less than 48 inches in length and not less than 48 inches in diameter. The drums shall be water or sand and water ballasted. Each drum shall have staggered feet uniformly spaced over the cylindrical surface such as to provide approximately three tamping feet for each two square feet of drum surface. The tamping feet shall be seven to nine inches in clear projection from the cylindrical surface of the roller and shall have a face area of not less than five nor more than seven square inches. The units shall be equipped with a suitable device for cleaning the feet. The rolling units of multiple-type tamping rollers shall be pivoted on the main frame in a manner which will permit the units to adapt themselves to uneven ground surfaces and to rotate independently. The weight of the roller shall be not less than 1,500 pounds per linear foot of drum length weighted, and shall be not more than 750 pounds per foot of drum length empty. The design and operation of the tamping roller shall be subject to the approval of the contracting officer who shall have the right at any time during the prosecution of the work to direct such repairs to the tamping feet, minor alterations in the roller, and variations in the weight as may be found necessary to secure optimum compaction of the earth-fill materials. The roller shall be pulled by a crawler-type tractor of sufficient power to operate the roller at a speed of approximately $3\frac{1}{2}$ miles per hour..
 2. **Rubber-Tired Rollers** - Rubber-tired rollers shall have a minimum of four wheels equipped with pneumatic tires. The tires shall be of such size and ply as to be capable of being operated at tire pressures between 80 and 100 pounds per square inch at a 25,000 pound wheel load. The roller wheels shall be located abreast and so designed that each wheel will carry approximately equal load in traversing uneven ground. The spacing of the wheels will be such that the distance between the nearest edges of adjacent tires will not be greater than

50 percent of the rated tire width of a single tire at the operating pressure for a 25,000 pound wheel load. The roller shall have a rigid steel frame provided with a body suitable for ballast loading such that the load per wheel may be varied, as directed by the contracting officer, from 18,000 to 25,000 pounds. The entire assembly (roller plus motivating equipment) must be capable of executing a 180-degree turn on a 15-foot radius. The roller shall be towed at speeds not to exceed ten miles per hour by pneumatic-tired equipment. The character and efficiency of this equipment shall be subject to the approval of the contracting officer.

- 4. Cross-section of Levee Embankment - The levee embankment shall be constructed to conform with the cross-sections of typical standard levee sections shown on Figure 1. Settlement and settlement allowances shall be allowed for by construction of the standard levee section plus a 2% settlement in cross-section.

SECTION IV - SPECIAL

5. SOILS: It is the intent of these specifications to provide a clear and concise set of criteria which will ensure the stability of the levee embankment. Soil resistance cross-sections shall be provided for the maintenance and stability of the levee embankment. The soil shall have a strength which will be the same as the soil in the embankment.

6. MATERIALS:

- a. Soil Resistance - It is intended that the soil in the embankment shall be of a type which will ensure the stability of the levee embankment.
- b. Materials - The soil in the embankment shall be of a type which will ensure the stability of the levee embankment.
- c. Maintenance of embankment - It is intended that the soil in the embankment shall be of a type which will ensure the stability of the levee embankment.

7. CONSTRUCTION METHODS:

- a. Construction - It is intended that the soil in the embankment shall be of a type which will ensure the stability of the levee embankment.
- b. Construction - It is intended that the soil in the embankment shall be of a type which will ensure the stability of the levee embankment.

50 percent of the rated tire width of a single tire at the operating pressure for a 25,000 pound wheel load. The roller shall have a rigid steel frame provided with a body suitable for ballast loading such that the load per wheel may be varied, as directed by the contracting officer, from 18,000 to 25,000 pounds. The entire assembly (roller plus motivating equipment) must be capable of executing a 180-degree turn on a 15-foot radius. The roller shall be towed at speeds not to exceed ten miles per hour by pneumatic-tired equipment. The character and efficiency of this equipment shall be subject to the approval of the contracting officer.

- d. Cross-Section of Levee Embankment - The levee embankment shall be constructed to conform with the requirements of typical standard levee section shown on Figure 1. Shrinkage and settlement allowances shall be allowed for by constructing the standard levee section plus a 5% addition in crest height.

SECTION IV - TURFING

4-01. SCOPE: It is the intent of these specifications to obtain a firm stand of native grass or grass which will ensure the stability of the levee embankment. Good vegetative cover is of prime importance to the maintenance and operation of the levee embankment. The top, slopes and a 5 foot wide strip at the base of the levee on each side shall be turfed.

4-02. MULCHING:

- a. Soil Preparation - If necessary the soil shall be loosened to a depth of 2 inches before application of the mulch material.
- b. Materials - Hay shall be native prairie hay and a minimum of 50 percent by weight shall be 10 inches or more in length.
- c. Application of Mulch - Mulch materials shall be spread uniformly in a continuous blanket over the area to be mulched at the rate of approximately $3\frac{1}{2}$ tons per acre. Mulch may be spread by hand or by mechanical means which do not break up the hay. Immediately following the spreading of the mulch material, it shall be anchored to the soil by pressing into the ground a minimum depth of $1\frac{1}{2}$ inches, leaving enough material sticking upright to accomplish its primary purpose of temporary dust and erosion control. Anchoring shall be accomplished by using a mulch anchoring machine equipped with straight rolling Coulter-type discs that are spaced not more than 10 inches or less than 7 inches apart. The rolling discs shall be sufficiently dull to prevent cutting the mulch material. If anchoring machinery is not used, the mulch material shall be anchored with a spade at 6 inch intervals.

4-03. FERTILIZING AND SEEDING:

- a. Materials -
 1. Fertilizer shall be dry, free-flowing materials which can

be distributed uniformly, and shall be commercial grade 15-10-10 or the equivalent.

2. Seed - Seed of mixed bluestem, switch grass, blue grama grass, side oats grama, sand dropseed grass, sand lovegrass, weeping lovegrass, or native bermuda grass, or a mixture of any or all of the above may be used.
- b. Application - Fertilizer shall be applied uniformly at the approximate rate of 400 lbs. per acre. Seed should be applied uniformly at the rate of approximately 30 lbs. per acre.

MAINTENANCE SPECIFICATIONS

SECTION I - GENERAL

In General, maintenance should provide for those things which will ensure the serviceability of the levee in time of high water. Measures should be taken to promote the growth of sod, exterminate burrowing animals, provide for routine mowing, removal of wild growth and repair the damage caused by erosion. Another important maintenance and responsibility is to ensure the integrity of the loop levee at all times.

SECTION II - INSPECTION

Periodic inspections should be made to ensure that the above measures are being effectively carried out and to be certain that:

- a. No unusual settlement, sloughing, or material loss of grade or levee cross section has taken place.
- b. No caving has occurred on either the land side or the water side of the levee which might affect the stability of the levee section.
- c. No seepage, saturated areas or sand boils are occurring.
- d. No action is being taken, such as burning grass and weeds during inappropriate seasons, which will retard or destroy the growth of sod.
- e. Access roads to and on the levee are being properly maintained.
- f. Cattle guards and gates are in good condition.
- g. Crown of levee is shaped so as to drain readily, and roadway thereon, if any, is well shaped and maintained.
- h. There is no damaging grazing or vehicular traffic on the levees.
- i. Encroachments are not being made on the levee right-of-way which might endanger the structure or hinder its proper and efficient functioning during times of emergency.

November 18, 1983

Dean DeWitt
DeWitt Land Co. Inc.
505 South Broadway
Wichita, Kansas 67202

Re: CU-265 - Conditional Use Permit
for an Earth Excavation Operation

Dear Mr. DeWitt:

At its regular meeting of November 17, 1983, the Metropolitan Area Planning Commission considered the above-captioned case. The action of the Commission was to recommend that the application be approved subject to the following conditions:

- 12-7-83
- A. The applicant shall obtain a permit from the County Engineer to comply with Section KSA 19-3309 prior to any excavation.
 - B. The applicant dedicating by separate instrument the necessary half-street rights-of-way for the east half of Broadway and the south half of 63rd Street to bring them up to major street standards.
 - 11-28-83 C. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the City-County Flood Control Office and to form by the County Counselor. The covenant shall provide for the construction and/or maintenance of a loop levee on the premises at such a location as the Flood Control Office may direct in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the City-County Flood Control Office. Said Covenant shall run with the land and be binding on all owners, successors, or assigns.
 - D. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.

- E. The operation for dirt excavation shall only have ingress and egress to 63rd Street South.
- F. A minimum 58-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
1. A 48" or higher chainlink fence with three or more strands of barbed wire; or
 2. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
 3. A 48" or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire. The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.
- G. The earth shall be extracted to at least a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
- H. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
- I. Sufficient overburden material shall be retained in the area of excavation to grade and construct the banks so that they are formed with overburden material rather than sand.
- J. All of the area outside of the excavation shall be graded so as to drain into the lake.
- K. The owner of the property shall be responsible for:
1. Insuring that the loop levee elevation be maintained if constructed.
 2. Maintaining all operational roads in a graveled condition.

- 11-28-83
- ✓ L. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
 - 11-29-83 ✓ M. The applicant shall submit a covenant, satisfactory in form to the County Counselor and Sedgwick County Department of Public Works, which authorizes the use of the excavation area as a detention storage facility for public drainage purposes.
 - N. Prior to the development of subject property for residential purposes, the applicant shall guarantee the extension of municipal sewer and water to serve the site.
 - O. The property shall be platted prior to the issuance of any zoning or building permits except those necessary for the earth extraction operation.
 - P. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
 - Q. All slopes shall have vegetative covering consisting of a perennial drowth resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
 - R. The applicant shall comply with Conditions A, B, C, L, and M prior to the publication of the resolution establishing the conditional use.
 - S. Any violation of conditions attached shall declare the conditional use permit null and void.

Regarding the conditions that must be complied with prior to the forwarding of this case onto the Board of County Commission, we need a copy of the permit required in Condition A.

As for Condition B please have Mr. Korber furnish us the necessary dedications and if adequate right-of-way already exists for Broadway please have him provide a description of the amount of right-of-way already acquired by the State.

As to Conditions C and M, attached are the covenants prepared by M. S. Mitchell with our suggested corrections. If you agree with these suggested changes, please have them retyped, signed and returned to our office.

Regarding the covenant required in Condition L, attached is a sample covenant for your use in preparing a covenant for your property.

These above items should be submitted to our office by December 1, 1983 so that subject case can be scheduled for consideration by the Board of County Commissioners on Wednesday, December 14, 1983 at 9:00 a.m., in Room 320, Sedgwick County Courthouse.

If you have any questions, please contact our office.

Sincerely yours,

Jack H. Galbraith
Chief Planner

JHG:sad

cc: M. S. Mitchell, 1215 Forrest, Wichita 67203
William L. Korber, 330 Laura, Wichita 67211
Ron Worley, County Zoning Officer

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

November 17, 1983

TO Metropolitan Area Planning Commission
FROM Jack H. Galbraith, Chief Planner
SUBJECT CU-265

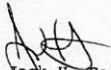
In the consideration of the above captioned case by the Derby and Haysville Planning Commissioners, the following additional conditions of approval have been recommended:

1. The operation for dirt excavation shall only have ingress and egress to 63rd Street South.
2. Sufficient ~~top soil~~ ^{over burden material} shall be retained in the area of excavation to grade and construct the banks so that they are formed with ~~top soil~~ ^{over burden material} rather than sand.
3. Prior to the development of subject property for residential purposes, the applicant shall guarantee the extension of municipal sewer and water to serve the site.

In addition to the above conditions, the County Department of Public Works recommends the following:

4. The applicant shall submit a covenant, satisfactory in form to the County Counselor and Sedgwick County Department of Public Works, which authorizes the use of the excavation area as a detention storage facility for public drainage purposes.
5. That condition "K" in the staff report be deleted.

The above conditions as well as those in the staff report have been discussed with the applicant and his agent and they are agreeable.


Jack H. Galbraith
Chief Planner

JHG:jps

RESTRICTIVE COVENANTS

DeWitt Land Company Inc., does hereby make the following declaration as to restrictions, limitations and use of the following described real estate:

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29,459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film "488", page 956, in the Office of the Register of Deeds of Sedgwick County, Kansas. Generally located at the southeast corner of 63rd Street South and Broadway.

which said Declaration shall constitute covenants running with said land and shall be binding upon all owners and their successors, assigns and heirs;

"No rubbish, trees, car bodies or any other foreign matter shall be deposited on the application area, or within the excavation made in the removal of fill dirt on the said premises at any time."

The above restriction and agreement shall be deemed a covenant running with the land and shall not be amended, deleted, or changed.

IN WITNESS WHEREOF, this Restriction has been executed on the _____ day of November, 1983.

DeWitt Land Company Inc.

Dean DeWitt, President

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

The foregoing instrument was acknowledged before me this _____ day of November, 1983, by Dean DeWitt.

Notary Public

My Appointment Expires:

November 17, 1983

Metropolitan Area Planning Commission

Jack H. Galbraith, Chief Planner

CU-265

In the consideration of the above captioned case by the Derby and Haysville Planning Commissioners, the following additional conditions of approval have been recommended:

1. The operation for dirt excavation shall only have ingress and egress to 63rd Street South.
2. Sufficient top soil shall be retained in the area of excavation to grade and construct the banks so that they are formed with top soil rather than sand.
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4. The applicant shall submit a covenant, satisfactory in form to the County Counselor and Sedgwick County Department of Public Works, which authorizes the use of the excavation area as a detention storage facility for public drainage purposes.
5. That condition "K" in the staff report be deleted.

The above conditions as well as those in the staff report have been discussed with the applicant and his agent and they are agreeable.

Jack H. Galbraith
Chief Planner

JHG:jps

City of Derby

*to
City*



229 N. BALTIMORE • DERBY, KANSAS 67037 • 316/785-1519

PLANNING COMMISSION AGENDA November 17, 1983

Roll Call: Tate Butler
Dottie Janssens
Dick Loosen
Larry Lusk
Luther "Okie" Payne

Red Rehburg
Richard Schaffer
Larry Sims
Bill Smith
Hank Stelljes

Next representative to the City Council: Larry Lusk.....November 15, 1983
Luther "Okie" Payae.....December 6, 1983
Red Rehburg.....December 20, 1983
Richard Schaffer.....January 3, 1984

C.T.O. _____ pm

Business: Minutes of November 3, 1983

Sam Alexander- request easement vacation-1228 N. Buckner

Ray Warren- final plat-Rainbow Valley

Committee Reports:

Miscellaneous:

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NOV 14 1983

Adjournment:
Second:

METROPOLITAN PLANNING
ROUTE _____

Time: _____ pm

City of Derby



229 N. BALTIMORE • DERBY, KANSAS 67037 • 316-786-1519

PLANNING COMMISSION MEETING November 3, 1983

Members Present: Dick Loosen
Larry Lusk
Red Rehburg
Richard Schaffer
Larry Sims
Bill Smith
Hank Stelljes

Members Absent: Tate Butler
Dottie Janssens
Luther "Okie" Payne

Next representative to the City Council: Larry Lusk November 15, 1983
Luther "Okie" Payne December 6, 1983
Red Rehburg December 20, 1983

Public Hearing: Sheldon Mohr: Request for alley vacation, 210 Sunnyside.

The Public Hearing opened at 7:17 P.M. Sheldon Mohr presented his request to have the alley vacated and made into a utility easement so that he could exercise more control over the use of that area.

Russell Grant, Attorney, appeared on behalf of Ed Hamilton in opposition the alley vacation as this is the only access Mr. Hamilton has to his garage.

Bob Plappmann, 931 Marguerite, property owner of a lot directly north of the lot in question appeared in opposition to the alley vacation feeling it should be left as a utility easement.

Further comments and questions were invited. The Public Hearing closed at 7:35 P.M.

Public Hearing: M.A.P.D. Case #SCZ 0527, Zone change from "R-1" to "LC" on the NE corner of Hydraulic & 63rd Street South - Applicant George W. Nicholson. Mr. Jack Galbraith presented the case for the M.A.P.D. stating the reason for the request, as provided by the petitioner, is that this 40 acres has just been platted and feel the growth of the area and increased traffic flow at 63rd and S. Hydraulic warrants a "LC" corner. Galbraith pointed out this land is also in the Haysville area of influence, appearing on their Agenda for November 10, 1983, for making recommendation to the M.A.P.C. and Board of County Commissioners.

It was requested for vacation of the access control on both major streets and dedication of complete access on Kansas Street, with no curb approaches to that street.

Mr. Nicholson has asked for a ten year extension on the redevelopment plan submitted for conditional use permit in 1979 which is coming up before too long.

After discussion of questions and comments the Public Hearing closed at 7:45 P.M.

Public Hearing - M.A.P.D. Case #CU 265 - For earth extraction operation, to allow for the construction of a lake for future development, - Dewitt Land Company, Inc., Applicant.

Mr. Jack Galbraith presented the County conditional use of borrowing dirt for filling off-site and to construct a lake for future residential development at Broadway and 63rd Street South. The conditions in the Staff Report are subject to the general type of conditions approved for sand pits. If Mr. Dewitt has any problems with the conditions he will have to resolve them at the County Commission level. This property just caught a portion of Derby's three mile area of influence.

Mr. Dewitt presented his request and explained the nature of his intended use of the land. He felt the levee problem wording was of future concern. Haysville will furnish sewer and water to the development.

Mr. Galbraith stated there is no conditional use permit suggested at this time. However, sometimes in the past, in extremely congested or developed areas, they have asked sand plants to cease operation within a certain period of time, but he feels this is small enough site, and knowing it is for dirt extraction, they will be out reasonably soon.

The issue of salt water was discussed.

The Public Hearing was closed at 7:54 P.M.

Public Hearing - M.A.P.D. Case #SCZ 0526 - Zone change from "R" to "C" - James R. Barber Applicant. Request to establish a business of auto repair garage and used auto sales along with vegetable produce and retail store on South Broadway.

Mr. Jack Galbraith presented the application for this irregular-shaped tract of land just north of 79th Street South on the east side of Broadway, having rural residential, suburban residential and "C" Commercial next to the City of Haysville. He was concerned at first with spot zoning, but in checking Haysville's Comprehensive Plan it does adhere to their regulations. This case will be scheduled on the Haysville Agenda for Thursday P.M., November 10, 1983.

Comments and questions were invited. The Public Hearing closed at 7:58 P.M.

C.T.O. 8:07 P.M.

Business: Minutes of October 20, 1983, approved as mailed.

Sheldon Mohr - request for alley vacation, 210 Sunnyside:

Motion: "Move to deny the request for alley vacation as presented." - Dick Loosen -

Second: Larry Sims

Vote: All yea

O-nay

Motion carried

Ray Warren - Fulton Heights and Rainbow Valley: Ray Warren presented developer's agreement and restrictive covenants to comply with the sub-division regulations for Fulton Heights requesting "R2" for duplex zoning, which it is now, to square up the lot lines. Sewer and water service will be requested after the area north is more fully developed, thus reducing the costs.

Mr. Warren presented the final plat on Rainbow Valley explaining the problems which have caused delay since presenting the preliminary plat; also, providing developer's agreement and restrictive covenants. The drainage plan was discussed and Max Hubbel, from the City Engineer's office, presented their opinion. A discussion of lining drainage easements ensued.

A five-minute recess was requested at 8:50 P.M. to allow discussion by the Board.

Meeting re-convened at 8:55 P.M.

Motion: "Move to recommend approval of the final plat of re-plat of part of Fulton Heights." - Dick Loosen -

Second: Larry Sims

Vote: All-yea

O-nay

Motion carried

It was decided to have a meeting at Q Corporation on Tuesday, November 8, 1983, at 7:00 P.M. to further discuss the final plat of Rainbow Valley. Ray Warren will appear again at the next regular Planning Commission Meeting on November 17, 1983, to present the final plat for recommendation of approval of Rainbow Valley.

Committee Reports: Dick Loosen attended the City Council Meeting of November 1, 1983, and updated the Planning Commission on the activities of the City Council.

Items from Bickley Foster: The Minutes of October 6, 1983, Page 2, contains wording concerning the reason for accepting or denying zone change requests which will be amended for clarification.

Also, it was recommended that Jeff Prince be retained as Secretary of the Planning Commission and Ruth Hermes act as Clerk to the Planning Commission.

Motion: "Move Jeff Prince be retained as Secretary of the Planning Commission and Ruth Hermes be named as Clerk of the Planning Commission." - Dick Loosen -

Second: Red Rehburg

Vote: All-yea

O-nay

Motion carried

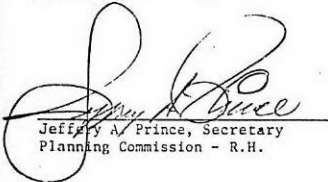
The M.A.P.C. Public Hearing on countywide zoning issue was held October 27, 1983, and their recommendations were approved.

Leon Saltee reported that the supply of Comprehensive Plan Books and Zoning Regulations Books is exhausted. Both are in the process of being revised by Bickley Foster. Max Hubbell mentioned drainage plans should be addressed before areas are developed, and felt it a good idea to have all easements dedicated as utility and drainage easements.

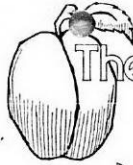
Motion: "Move to adjourn." - Larry Sims -

Second: Red Rehburg

Time: 9:15 P.M.



Jeffrey A. Prince, Secretary
Planning Commission - R.H.



The City of Haysville

"THE PEACH CAPITAL OF KANSAS"

P.O. Box 404
Haysville, Kansas 67060

RECEIVED

NOV 7 1983

METROPOLITAN PLANNING

ROUTE

November 1, 1983

Ron Worley
County Inspector
Sedgwick County Court House
525 N. Main
Wichita, Kansas 67203

Dear Mr. Worley:

It has become imperative that I explain my concerns as to the excavation taking place at the southeast corner of 63rd Street and Broadway and my previous understandings.

When I attended a meeting September 30 with you and Mr. Jack Galbraith, I was invited by you to find out what exactly was taking place and by whom. At the meeting, you showed me a letter instructing the builder, DeWitt, to cease his action immediately and I understood you had the jurisdiction to do so.

As a result of the meeting, the County agreed to allow Mr. DeWitt to excavate his land subject to 1) a conditional use permit being submitted the next Monday morning 2) no more than three acres of ground would be excavated and 3) that the builder would agree to a letter indicating that he would return the land to its original condition if the permit was denied.

No indication was given by me, since I simply did not have the jurisdiction, that Haysville would concur with the excavation. I strongly mentioned the example we had of the Mardis case where I personally pursued Mr. Mardis selling dirt from his property and brought this to Court at a later date.

I did say, that subject to the Haysville and Derby Planning Commission approval, the City of Haysville would welcome a new housing development there and would entertain extending service such as water and sewer.

I also mentioned to all parties at the meeting that I thought the Planning Commission would have reservations about approving any conditional use permit after the fact that excavation had taken place. I mentioned that the builder, DeWitt, would have to explain his intentions to the Planning Commission once he came before them and express to them why he neglected to get a permit in the first place.

My interest was strictly; if the County allowed the excavation to continue, that we have assurances from the developer that he intended to return the lot to its original condition without using the fill Mardis had used (rubber tires, scrap, etc.) should the conditional permit be denied. I wanted that lot to remain useful for

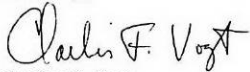
Ron Worley
November 1, 1983
Page 2

residential use as per our land use plan for the City and its surrounding area and not be affected by the temporary excavation.

As I left the meeting I told DeWitt that he may be pressured by the County Commission to cease his operation and if so would have to do so immediately. I was not prepared to talk for the City on the temporary excavation, only on the conditional use permit and the condition of the land would be returned, if the County permitted the temporary excavation.

I hope this clarifies my understanding of the situation.

Sincerely,



Charles F. Vogt
City Administrator

cc: Planning Commission
Mayor Glenn O. Crum

October 26, 1983

Claud S. Shelor, Director, County Department of Public Works
Jack H. Galbraith, Chief Planner

CU-265 - Request to extract fill dirt only and to construct
a lake.

Attached is a site plan for the above captioned case. This site is at the southeast corner of 63rd Street South and Broadway and the owner began several weeks ago to remove fill dirt and construct a lake in violation of the County Zoning Regulations. After a meeting with the owner Dean De Witt, M. S. Mitchell, Ron Worley and me, the applicant contacted Bill Korber to file the appropriate application. As we understand the request, it is not for the excavation of sand, but is for the removal of fill dirt only and to construct a lake for future residential development.

This case is scheduled for consideration by Derby on November 3rd, Haysville on November 10th, and MAPC on Nov. 17th. Attached is a copy of our staff report and suggested conditions of approval. We would appreciate your reviewing this material and advising us whether or not you concur with the suggested conditions or any additions or deletions that you believe would be appropriate. If you have any questions concerning this case, please call me at 268-4404.

Jack H. Galbraith
Chief Planner

JHG:el

Attachments

also attached:
a Notice
Derby Referral Sheet
Haysville " "

DEWITT DEVELOPMENT

508 SOUTH BROADWAY SUITE 200 WICHITA, KANSAS 67202
(316) 262-3365



COMMERCIAL - INDUSTRIAL

September 23, 1983


Mr. Ron R. Worley
Zoning Administrator/Sedgwick County
1248 South Seneca
Wichita, Kansas 67213

Dear Mr. Worley:

In response to your letter dated September 22, 1983, please be advised that the three trailers mentioned are scheduled for removal on Monday, September 26, 1983. I plan to follow this up and make sure they are removed at this time.

As of September 23, 1983, I have instructed Baughman Company, PA, 330 Laura, Wichita, Kansas, to proceed with all engineering and information required to obtain a "CU" Conditional Use on this property for the purpose of removing dirt and creating a lake for a future housing development. It is my understanding that they will proceed as quickly and diligently as possible in obtaining this information and requesting the "CU".

Sincerely,


Dean DeWitt, President
DeWitt Land Company, Inc.

DD:jd

RECEIVED

SEP 26 1983

METROPOLITAN PLANNING
ROUTE _____



COUNTY OF SEDGWICK

DIVISION OF BUILDING INSPECTIONS
PLANNING AND ZONING

Ron R. Worley
Division Director

1248 S. SENECA, WICHITA, KANSAS 67213-4498

TELEPHONE 268-7951

NOTICE OF VIOLATION OF THE SEDGWICK COUNTY ZONING RESOLUTION

September 22, 1983

DeWitt Land Company
505 South Broadway
Wichita, KS 67202

Re: 6402 South Broadway, Key No. RI-448

Dear Sir:

As required under the Zoning Resolution, notice is hereby given that you are in violation of Section No. III, of the Zoning Resolution.

The violations noted are extraction of natural resources from property zoned "R" Rural Residential. A "CU" Conditional Use is required before such use can take place on property zoned "R". In addition, you are parking truck trailers on the above-mentioned property. A zone change to "E" Light Industrial would be required before such use can be made of this property.

The first violation is noted as being observed on September 21, 1983, and the following actions should be taken. Immediately cease and desist operations at that site. As soon as possible, but not later than October 1, 1983, remove all equipment currently stored at that site, and have the excavated area properly filled.

Penalties provided for in Section XIV, of the Zoning Resolution may be applicable as of the first day of violation.

Please feel free to contact this office at 268-7951, for we are available to assist you in clarifying this matter.

Ron R. Worley
Zoning Administrator

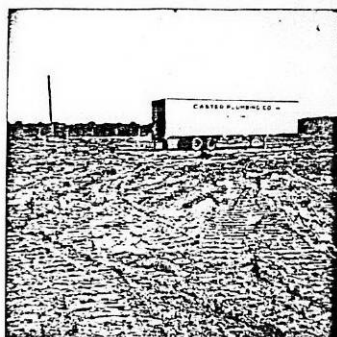
RECEIVED

SEP 26 1983

METROPOLITAN PLANNING

ROUTE

RRW:jy



WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

CU-265 - CONDITIONAL USE PERMIT FOR EARTH EXCAVATION OPERATION
Generally located on the southeast corner of 63rd Street
South and Broadway.

DCPC HEARING DATE: 11-03-83
HCPC HEARING DATE: 11-10-83
MAPC HEARING DATE: 11-17-83

Acres: 42.3

Size: 1350'x1450'

Reason: To extract dirt for fill off site. To permit construction
of a lake for future development.

	<u>Land Use</u>	<u>Zoning</u>
Existing	Single-family & undeveloped	"R"
North	Single-family & orchard	"R" & "C"
East	Sand pit	"R"
South	Flood control ditch	"R"
West	General business, single- family & auto salvage	"R-1" & "C"

History: None

Applicant: DeWitt Land Co., Inc., 505 S. Broadway, Wichita 67202

COMMENTS:

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

The applicant is requesting a Conditional Use permit for an earth excavation operation to form a lake on a tract of land containing approximately 42 acres located at the southeast corner of 63rd Street South and Broadway.

An operational and redevelopment sketch plan submitted with the application indicates the limits of the excavation to form the lake and future building sites.

The "sketch plan" proposes a total of 46 building sites, each of which contains approximately 9,600 square feet. The existing "R" zoning requires two acres per building site and will require a change of zoning to "AA" if developed as proposed.
- It should be pointed out that subject property is adjacent to the Wichita-Valley Center Flood Control Ditch and prior to any excavation a permit authorizing same must be obtained from the County Engineer.
- Should the Planning Commission recommend approval of this application, for fill dirt extraction only, the following conditions should be included in the recommendation:
 - The applicant shall obtain a permit from the County Engineer to comply with Section KSA 19-3309 prior to any excavation.
 - The applicant dedicating by separate instrument the necessary half-street rights-of-way for the east half of Broadway and the south half of 63rd Street to bring them up to major street standards.

- C. The applicant shall submit a restrictive to the Planning Department, approved as to content by the City-County Flood Control Office and to form by the County Counselor. The covenant shall provide for the construction and/or maintenance of a loop levee on the premises at such a location as the Flood Control Office may direct in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the City-County Flood Control Office. Said Covenant shall run with the land and be binding on all owners, successors, or assigns.
- D. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.
- E. A minimum 58-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
 - 1. A 48" or higher chainlink fence with three or more strands of barbed wire; or
 - 2. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
 - 3. A 48" or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire. The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.
- F. The earth shall be extracted to at least a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
- G. 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.
- H. All of the area outside of the excavation shall be graded so as to drain into the lake.
- I. The owner of the property shall be responsible for:
 - 1. Insuring that the loop levee elevation be maintained if constructed.
 - 2. Maintaining all operational roads in a graveled condition.
- J. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.

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

CU-265 - 40 "Notice to adjoining property owners" mailed 10-26-83
for the Derby P.C. meeting of 11-3-83, the Haysville
P.C. meeting of 11-10-83, and the MAPC meeting of
11-17-83.

THE FOLLOWING RECEIVED A NOTICE, STAFF REPORT & REFERRAL
SHEETS:

2 Applicants
14 Derby P.C., Secretary & outside agent, Shelor & Worley
12 Haysville P.C., Secretary, Shelor & Worley
—
68 TOTAL

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

October 25, 1983

NOTICE TO ADJOINING PROPERTY OWNERS:

NOTICE IS HEREBY GIVEN that on November 3, 1983, at 7:00 p.m., the DERBY CITY PLANNING COMMISSION, City Hall, Derby, Kansas, will consider the following item for purposes of making a recommendation to the Metropolitan Area Planning Commission and Board of County Commissioners.

CASE NO. CU-265

Conditional Use Permit to Establish an Earth Excavation Operation
on Property Zoned "R" Rural Residential District

That part of the West half of the Northwest Quarter of Section 33, Township 23 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29,459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film 266, page 956, in the Office of the Register of Deeds of Sedgwick County, Kansas. Generally located at the southeast corner of 63rd Street South and Broadway.

This matter will also appear on the agenda for the regular meeting of the HAYSVILLE CITY PLANNING COMMISSION at 8:00 p.m., Thursday, November 10, 1983, City Hall, Haysville, Kansas, for purposes of making a recommendation to the Metropolitan Area Planning Commission and Board of County Commissioners.

If this matter is not deferred for further hearings by either the Derby City Planning Commission or the Haysville City Planning Commission, it will appear on the agenda for the regular meeting of the WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION, which begins at 1:30 p.m. Thursday, November 17, 1983, in the City Commission Meeting Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at which time you may appear either in person or by agent or attorney, if you so desire.

As provided in the County Zoning Resolution, Section 14 - Administration, sub-paragraph C the same will there be discussed and considered by the said Wichita-Sedgwick County Metropolitan Area Planning Commission and all persons interested in said matter will be heard at this time concerning their views and wishes in the premises and any protest against any of the provisions of the proposed Conditional Use will be considered as by law provided.

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

Robert A. Lakin
Secretary

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

CU-265

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

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

- A. APPLICANT DeWitt Land Co. Inc. %Dean DeWitt
 ADDRESS 505 S. Broadway 67202 PHONE 262-3365
 AGENT Baughman Co., P. A.
 ADDRESS 330 Laura 67211 PHONE 262-7271
- B. APPLICANT _____
 ADDRESS _____ PHONE _____
 AGENT _____
 ADDRESS _____ PHONE _____
- C. APPLICANT _____
 ADDRESS _____ PHONE _____
 AGENT _____
 ADDRESS _____ PHONE _____

(Use separate sheet if necessary for names of additional applicants).

2. a. The applicant proposes to establish a -Lake
earth excavation operation (use)
 on property legally described as Lot(s) _____
 _____, Block(s) _____
 of the _____ Addition.

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

That part of the W $\frac{1}{4}$ of the NW $\frac{1}{4}$ 33-28-1E, lying north of Flood Control Right of way.

2. b. There are 42.3 acres (round to nearest tenth) in the above described property.

T9-333-2

MAP 3539
Derby 11/3
Haysville 11/10
DNR 5 Flood Control
E R W R 1-10 MPC 11/7/83

Revised 8/80

STATEMENT OF OWNERSHIP

CU-265

earth excavation

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

The undersigned duly bonded and qualified abstractor within and for the County and State aforesaid, does hereby certify:

That we have examined the records in the office of the Register of Deeds of Sedgwick County, Kansas, with reference to the ownership of the following property in Sedgwick County, Kansas viz:

*we
for legal*

Record Owners within 1000 feet of: That part of the West Half of the Northwest Quarter of Section 33,, Township 28 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29,459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film "488", page 956, in the Office of the Register of Deeds of Sedgwick County, Kansas.



And from such examination find that the owners thereof are as set opposite the description of the property below, viz: (Addresses as given are furnished as a service and not certified.)

DESCRIPTIONS

RECORD OWNERS

That part of the West Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East, Sedgwick County, Kansas, lying North of the North line of land condemned in Case No. 29,459, in the District Court of Sedgwick County, Kansas, for flood control purposes, except a tract of land conveyed to The Secretary of Transportation, State of Kansas, by Warranty Deed recorded in Film "488", page 956, in the Office of the Register of Deeds of Sedgwick County, Kansas.

D DeWitt Land Company, Inc.
505 S. Broadway
Wichita, Kansas 67202

Northeast Quarter of the Northwest Quarter of Section 33, Township 28 South, Range 1 East,

Condemnation Case #A-54472
Tract #6-32A
Kansas Turnpike Authority
9401 E. Kellogg
Wichita, Kansas 67207

South Half of the Northwest Quarter of Section 33, Township 28 South, Range 1 East,

Cowskin Floodway
Condemnation Case A-29459.
✓ David Stowe - Oper + Maint
✓ Chris Breitenstein, Engr



DESCRIPTIONS

RECORD OWNERS

Beginning 910 feet North of the Southwest corner of the Southwest Quarter; thence East 300 feet; thence North 200 feet; thence West 300 feet; thence South 200 feet to beginning, Section 28, Township 28 South, Range 1 East,

✓ Gerald E. & Jo Lynn Blood
6346 S. Broadway
Wichita, Kansas 67233

Southwest Quarter of Section 28, Township 28 South, Range 1 East, except a tract condemned for Right of Way in Case #A-40603 & Case #A-55178 and except the West 300 feet of the North 200 feet of South 1110 feet and except the North 10 feet of the South 40 feet and except 82 acres conveyed to Kansas Turnpike Authority in Book "1232" of Deeds, page 76,

Gerald E. & Jo Lynn Blood
6346 S. Broadway
Wichita, Kansas 67233

Beginning at the Southeast corner of the Southeast Quarter; thence West 264 feet; thence North 247.5 feet; thence East 264 feet; thence South 247.5 feet to beginning, Section 29, Township 28 South, Range 1 East,

✓ Elizabeth DeLong &
Constance M. Blood
6347 S. Broadway
Wichita, Kansas 67233



Southeast Quarter of the Southeast Quarter except beginning at the Southeast corner of the Southeast Quarter, except above described tract and except beginning at the Northeast corner of the Southeast Quarter of the Southeast Quarter; thence West 180 feet; thence South 180 feet; thence East 180 feet; thence North to beginning, Section 29, Township 28 South, Range 1 East,

Gerald E. Blood
6346 S. Broadway
Wichita, Kansas 67233

Beginning 1200 feet North of the Southeast corner of the Northeast Quarter; thence North 120 feet; thence West 85.9 feet; thence South 07° 45' W, 121.1 feet; thence Easterly 101.8 feet to point of beginning, Section 32, Township 28 South, Range 1 East,

City of Haysville
Haysville, Kansas 67060

AND
Beginning 990.0 feet North of the Southeast corner of the Northeast Quarter; thence Northerly 210 feet; thence Westerly 116.8 feet; thence South 210 feet; thence East 117.3 feet to point of beginning, Section 32, Township 28 South, Range 1 East.

Beginning 1320 feet North of the Southeast corner of the Northeast Quarter; thence West 962.8 feet; thence South 120 feet; thence East 962.8 feet; thence North to beginning, except beginning 1200 feet North of the Southeast corner of the Northeast Quarter, thence North 120 feet; thence West 85.9 feet; thence Southwesterly 129.1 feet; thence East 101.8 feet to beginning, Section 32, Township 28 South, Range 1 East,

✓ Donald J. Boote
6603 S. Broadway
Wichita, Kansas 67233



DESCRIPTIONS

Northeast Quarter except the North 1449.2 feet and except the East 462 feet of the South 132 feet, Section 32, Township 28 South, Range 1 East,

Lot 1, Block 1, WARDS FOURTH ADDITION,

Lots 2, 5, 14 and 15, Block 1, WARDS FOURTH ADDITION,

Lot 3, Block 1, WARDS FOURTH ADDITION,

Lot 4, Block 1, WARDS FOURTH ADDITION,



Lot 6, Block 1, WARDS FOURTH ADDITION,

Lot 7, Block 1, WARDS FOURTH ADDITION,

Lot 8, Block 1, WARDS FOURTH ADDITION,

Lot 9, Block 1, WARDS FOURTH ADDITION,

Lot 10, Block 1, WARDS FOURTH ADDITION,

Lot 11, Block 1, WARDS FOURTH ADDITION,

Lot 12, Block 1, WARDS FOURTH ADDITION,

Lot 13, Block 1, WARDS FOURTH ADDITION,

Lot 16, Block 1, WARDS FOURTH ADDITION,

RECORD OWNERS

Floodway Condemnation Case #A-29459

Sunflower Improvement District
ADDRESS UNKNOWN

✓ Veterans Administration
901 George Washington Blvd.
Wichita, Kansas 67211

✓ JoyAnne Rogge
6421 Sunnyside Road
Wichita, Kansas 67233

✓ Lorrene W. & Asive Reid
6425 Sunnyside Road
Wichita, Kansas 67233

✓ Glen W. & Hazel B. Bartels
6439 Sunnyside Road
Wichita, Kansas 67233

✓ Marla J. Glass
6445 Sunnyside
Wichita, Kansas 67233

✓ Edward J. Randall and
Tena M. Kriste
6449 Sunnyside Road
Wichita, Kansas 67233

✓ Cline H. & Ruby McCutchen
6455 Sunnyside Road
Wichita, Kansas 67233

✓ Thomas J. & Cora L. Ashton
6459 Sunnyside Road
Wichita, Kansas 67233

✓ Reuben H. Wiens
6501 Sunnyside
Wichita, Kansas 67233

✓ Arthur H. & Barbara J.
Rogge
6507 Sunnyside
Wichita, Kansas 67233

✓ Larry W. & Rita F.
Caswell
6511 Sunnyside Road
Wichita, Kansas 67233

✓ John G. & Diana L. Hudson
114 E. Sandy
Wichita, Kansas 67233

DESCRIPTIONS

RECORD OWNERS

Lot 17, Block 1, WARDS FOURTH ADDITION, ✓ David L. Sutton
100 E. Sandy
Wichita, Kansas 67233

Lot 18, Block 1, WARDS FOURTH ADDITION, ✓ Allan W. Rhodes
5051 E. Lincoln
Wichita, Kansas 67218

Lot 19, Block 1, WARDS FOURTH ADDITION, ✓ Jerry Alan & Helen L. Bishop
6506 A Street
Wichita, Kansas 67217

Lot 20, Block 1, WARDS FOURTH ADDITION, ✓ Robert M. & Peggy G. Moon
6500 A Street
Wichita, Kansas 67217

Lot 21, Block 1, WARDS FOURTH ADDITION, ✓ John R. & Meta Rae Bush
6460 A Street
Wichita, Kansas 67217

Lot 22, Block 1, WARDS FOURTH ADDITION, ✓ Orville E. & Maxine Guest
6456 A Street
Wichita, Kansas 67217

Lot 23, Block 1, WARDS FOURTH ADDITION, ✓ Charles R. Zallinger &
Shawny Sterling
6450 A Street
Wichita, Kansas 67217

Lot 24 and beginning at the Northwest ✓ Franklin John & Ruth Mae
corner of Lot 25; thence Southerly to Bennett
a point 5 feet South of the North- 256 Hungerford
west corner of Lot 24; thence Northeast- Haysville, Kansas 67060
erly to a point 5 feet North of the
Northeast corner of Lot 24; thence North
to the Northeast corner of Lot 25;
thence West to beginning, Block 1, WARDS
FOURTH ADDITION,

Lot 24, except beginning at the North- ✓ Willie G. & Betty Jo Trisler
west corner of Lot 24; thence East 72.85 6444 A Street
feet; thence Southwesterly to a point on Wichita, Kansas 67217
the West line of Lot 24, thence 5 feet
South of the Northwest corner; thence
North to beginning and Part of Lot 25,
beginning at the Southeast corner; thence
West 72.85 feet; thence Northeasterly to
a point 5 feet North of Lot 25 on East
line; thence South to beginning, Block 1,
WARDS FOURTH ADDITION,

Lot 26, Block 1, WARDS FOURTH ADDITION, ✓ Mareda Brooks & Terry W.
Bennett
6430 A Street
Wichita, Kansas 67217

Lot 27, Block 1, WARDS FOURTH ADDITION, ✓ George Wallace & Betty Lou
Coffey
6420 A Street
Wichita, Kansas 67217



DESCRIPTIONS

RECORD OWNERS

Lot 28, Block 1, WARDS FOURTH ADDITION,	✓ Marion & Glenda S. West 100 Sunflower Drive Wichita, Kansas 67217
Lot 29, Block 1, WARDS FOURTH ADDITION,	✓ Robert M. & Mary M. Kirby 110 Sunflower Drive Wichita, Kansas 67217
Lot 30, Block 1, WARDS FOURTH ADDITION,	✓ Larry A. & Janis R. Emerson 114 Sunflower Drive Wichita, Kansas 67217
Lot 1, Block 2, REPLAT OF LOT 1, BLOCK 2 IN WARDS FOURTH ADDITION,	✓ Ralph Samuel & Mildred Lucas 6435 A Street Wichita, Kansas 67217
Lot 50, Block 2, REPLAT OF LOT 1, BLOCK 2 IN WARDS FOURTH ADDITION,	✓ Pauline & Kenneth D. Ozbun 6400 Keystone Drive Wichita, Kansas 67217
Lot 51, Block 2, REPLAT OF LOT 1, BLOCK 2 IN WARDS FOURTH ADDITION,	✓ Leatha Benefiel 6415 A Street Wichita, Kansas 67217
Lot 52, Block 2, REPLAT OF LOT 1, BLOCK 2 IN WARDS FOURTH ADDITION,	✓ Carl, Jr. & Violet M. Drake 6421 A Street Wichita, Kansas 67217
Lot 53, Block 2, REPLAT OF LOT 1, BLOCK 2 IN WARDS FOURTH ADDITION,	✓ Roy J. & Peggy F. Roles 6429 A Street Wichita, Kansas 67217
Beginning 280 feet South of the North- east corner of the Northeast Quarter; thence South 476 feet; thence West 548 feet; thence North 476 feet; thence East 548 feet to beginning, Section 32, Township 28 South, Range 1 East, AND Beginning 204 feet; thence West to the Northeast corner of the Northeast Quarter; thence West 344 feet; thence South 280 feet; thence East 344 feet; thence North 280 feet to beginning, except East 8 feet thereof, Section 32, Township 28 South, Range 1 East, AND Beginning at the Northeast corner of the Northeast Quarter; thence South 280 feet; thence West 204 feet; thence North 280 feet; thence East 204 feet to beginning, Section 32, Township 28 South, Range 1 East,	✓ Leon R. Miller 5925 S. Broadway Wichita, Kansas 67216



DESCRIPTIONS

RECORD OWNERS

South 119 feet of the North 875.5 feet of the East 548 feet of the Northeast Quarter, except the East 55.5 feet for Highway, Section 32, Township 28 South, Range 1 East,

✓ James A. Crane
6509 S. Broadway
Wichita, Kansas 67233

AND
South 119 feet of the North 994.5 feet of the East 548 feet of the Northeast Quarter except the East 56 feet for Highway, Section 32, Township 28 South, Range 1 East,

Beginning 1320 feet North and 481.4 feet West of the Southeast corner of the Northeast Quarter; thence North 113.1 feet; thence West 481.4 feet; thence South 113.1 feet; thence East to beginning, Section 32, Township 28 South, Range 1 East,

✓ Donald J. Boote
6603 S. Broadway
Wichita, Kansas 67233



East Half of the South 2½ acres of a tract described as: Beginning 994.5 feet South of the Northeast corner of the Northeast Quarter; thence West 962.8 feet; thence South 330 feet; thence East 962.8 feet; thence North 330 feet to beginning, except for Street, Section 32, Township 28 South, Range 1 East,

✓ Lawrence W. King
6533 S. Broadway
Wichita, Kansas 67233

AND
Beginning 994.5 feet South of the Northeast corner of the Northeast Quarter; thence West 962.8 feet; thence South 330 feet; thence East 962.8 feet; thence North 300 feet to beginning, except the S 2½ Acres and except the North 110 feet of the South 223.1 feet, except for street, Section 32, Township 28 South, Range 1 East,

AND
North 110 feet of the South 223.1 feet of a tract described as: Beginning 994.5 feet South of the Northeast Quarter; thence West 962.8 feet; thence South 330 feet; thence East 962.8 feet; thence North 330 feet to beginning, except for Street, Section 32, Township 28 South, Range 1 East.

Dated at Wichita, Kansas, this 11th day of October,
1983 at 7:00 A.M.

FIDELITY TITLE COMPANY, INC.

M. L. Sutter
BY

Assistant Secretary

Tracer No. 61676



FORM 29-0.1

PAYMENT NOTICE
City of Wichita

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

DESCRIPTION	AMOUNT

NAME

ADDRESS

FUND

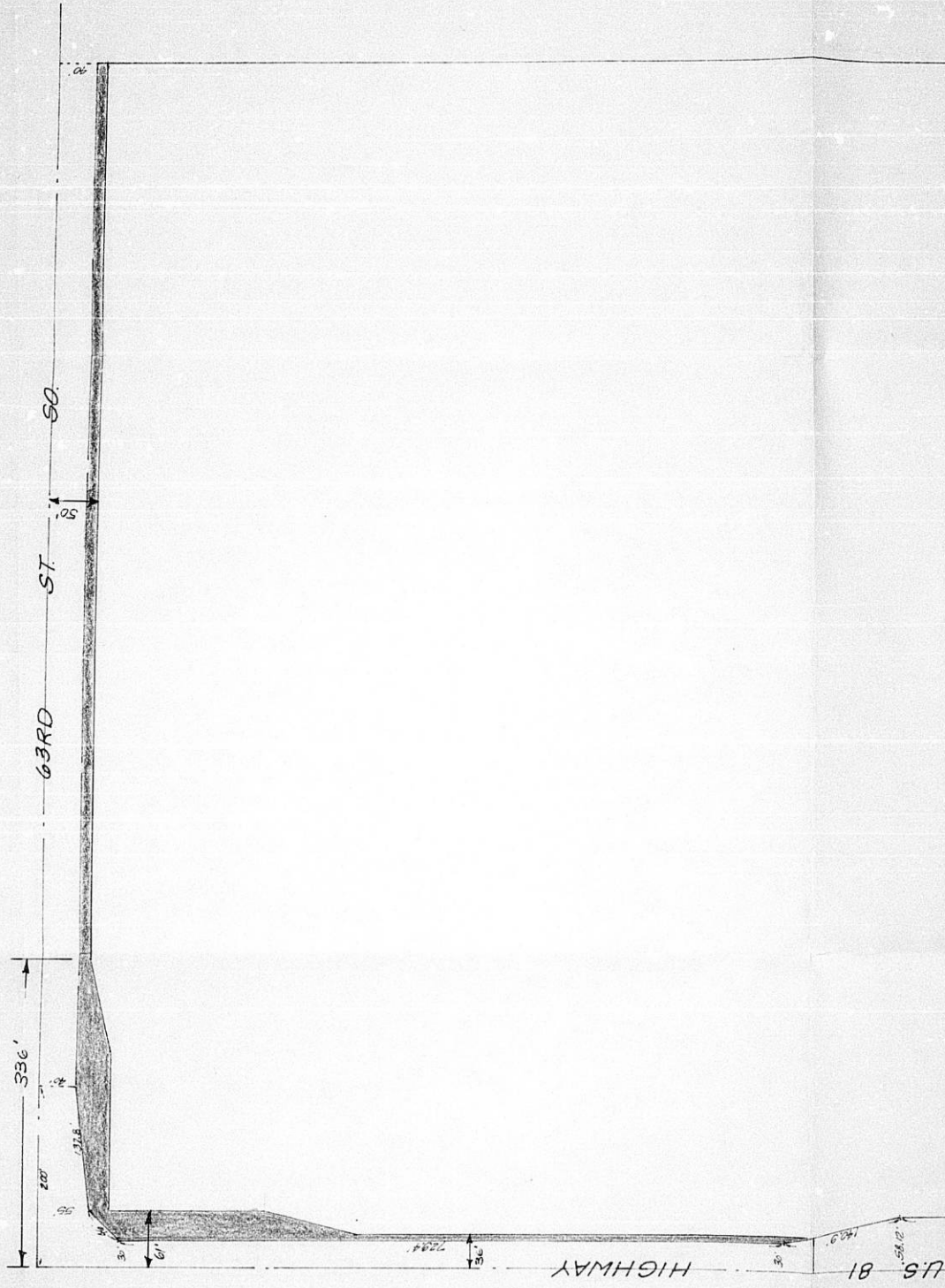
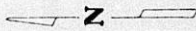
DUE DATE

COMMENTS

DATE

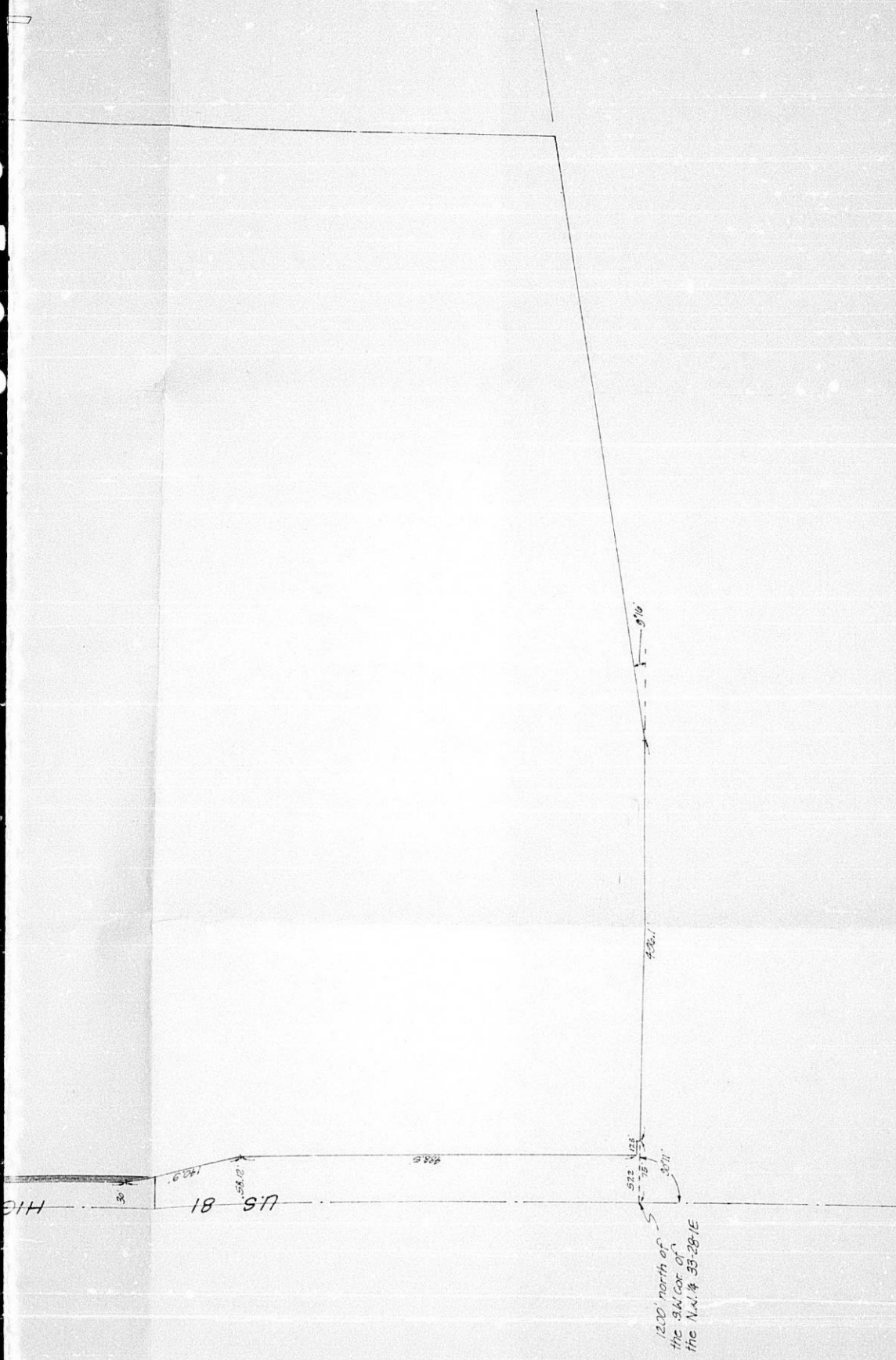
BY

Additional R.O.W. being dedicated by D.W. Bell



to be prepared U.S. 81
 and follow through
 to the west of section line

U.S. 81
 18



12.0' north of
 the 94' cor. of
 the N.L. & S.S. 28-1E

Existing T.O.W.

BAUGHMAN COMPANY, P.A.
 SURVEYING & ENGINEERING
 316/763-7271 • 330 LAURA • WICHITA, KANSAS 67211

RECEIVED 12-15-83

*

This CU File

Has a Large Drawing

On 35mm Microfilm.

Roll # 1

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