

"#269-1990

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RESOLUTION NO. 269-1990

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

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

SECTION I. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section 17.C of the Zoning Regulations, a conditional use permit for sand extraction and associated temporary asphalt mixing plant on property zoned "R-1" Suburban Residential and "R" Rural Residential Districts is hereby approved on lands legally described below:

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

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

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

SUBJECT TO THE FOLLOWING CONDITIONS:

- A. Since the proposed excavation is within 1,000 feet of a flood protection structure, the applicant shall obtain a permit from the County Engineer. This permit is required by K.S.A. 19-3309 and shall be obtained prior to this case being considered by the Board of County Commissioners.
- B. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the City-County Flood Control Office and as to form by the County Counselor. The covenant shall provide for the construction and/or maintenance of a loop levee on the premises at such a location as the Flood Control Office may direct in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications, Sections 1 and 2 of Construction and Maintenance Specifications, as prepared by the City-County Flood Control Office. Said covenant shall run with the land and be binding on all owners, successors, or assigns.
- C. The extraction of sand on this site shall proceed in accordance with the operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan. The temporary asphalt mixing plant, which is an accessory use to the sand excavation operation, shall be placed on the site at the location labeled "permanent plant location" on the operational plan.
- D. Four copies of a revised operational plan shall be submitted which do not depict the fencing off of the temporary circular turnaround dedicated on this property to terminate Boyd Street to the south of this conditional use permit site. This temporary dedication was established when the McGonigle-Kessler Addition was platted. The instrument was filed on Film 495, Page 1475. The revised operational plan shall depict the temporary turnaround dedication, along with the pertinent recording information. Also, as approved by the MAPC, the revised operational plan shall depict realignment to the east of the operational roadway as it intersects with 53rd Street North.
- E. In order to assist in the enforcement of the operational plan for this extraction and temporary asphalt mixing plant, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.
- F. Adjacent to the north, west and east lines of the application area, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation (topsoil, subsoil or sand) and shall be maintained at the locations depicted on the operational plan. Said fence shall be placed on steel posts which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart. The fence shall be a minimum height of 60 inches and shall be of the following types of construction.
 1. A 50-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
 2. A 50-inch-high or higher solid metal or solid masonry fence with 3 or more strands of barbed wire; or

3. A 50-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gate at an angle not to exceed 160° facing away from the excavation.

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

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

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

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

- M. The applicant shall submit a covenant satisfactory in form to the County Counselor and Sedgwick County Department of Public Works which authorizes the use of the extraction area as a detention storage facility for public drainage purposes.
- N. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand extraction and temporary asphalt mixing plant.
- O. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
- P. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
- Q. To minimize blowing soil in this area, overburden shall not be removed more than one year in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover of help prevent erosion.
- R. The storage of equipment or stockpiling of sand is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.
- S. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment and the temporary asphalt mixing plant shall be removed from the subject site.
- T. The applicant shall dedicate, by separate instrument, the 60 feet of half-street right-of-way required for 53rd Street North adjacent to this property.
- U. All asphalt mixing shall cease and all asphalt mixing equipment shall be removed from the site within one year after County Commission approval of this conditional use permit, unless an extension of time for that temporary use is granted by the County Commission after the MAPC has reviewed the extension request at a formal public hearing. All sand extraction shall cease and all sand extraction equipment shall be removed from the site within 10 years after approval of this conditional use permit by the Board of County Commissioners. This conditional use shall expire 10 years from County Commission approval, unless an extension is granted by that governing body after a public hearing is held by the MAPC to review the application for extension.
- V. All waste generated by the asphalt mixing plant operation shall be disposed of in accordance with the standards of the Wichita-Sedgwick County Health Department and the Kansas Department of Health and Environment (KDHE). Solid waste is as defined by the Sedgwick County Health and Sanitation Code #5.
- W. The asphalt mixing plant shall meet the permitting, reporting and operating requirements of the Kansas Air Pollution Control Regulations. The asphalt mixing plant

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

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

SECTION II. That upon the taking effect of this Resolution, the notation of such conditional use permit shall be entered in the official zoning atlas on file in the Office of the County Zoning Administrator and in the Office of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION III. That this Resolution shall take effect and be in force from and after its adoption and publication in the official county paper.

Commissioners present and voting were:

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

DATED this 7th day of November, 1990.

BOARD OF COUNTY COMMISSIONERS OF
SEDGWICK COUNTY, KANSAS

Mark F. Schroeder
MARK F. SCHROEDER, Chairman

David Bayouth
DAVID BAYOUTH, Chairman Pro Tem

Paul W. Hancock
PAUL W. HANCOCK, Commissioner

Bernard A. Hentzen
BERNARD A. HENTZEN, Commissioner

Billy Q. McCray
BILLY Q. McCRAY, Commissioner



Don Wright
DON WRIGHT, County Clerk

APPROVED AS TO FORM ONLY:

Henry H. Buse
County Counselor/Assistant



SW COR E1/2 SW1/4 — 53RD STREET NORTH — SE COR SW1/4 — SW COR SE1/4 — SE COR W1/2 SE1/4

SW COR E1/2 SW1/4 — 53RD STREET NORTH — SE COR SW1/4 — SW COR SE1/4 — SE COR W1/2 SE1/4

PETE NICHOLSON COMMENTED ABOUT THE
ENFORCEMENT OF CONDITIONAL USES



AGENDA ITEM NO. _____

STAFF REPORT

Maize PC February 6, 1997

MAPC February 27, 1997

CASE NUMBER: CU-328 Amendment #1

APPLICANT/AGENT: Margaret Kessler (property owner); Leslie and Delora Kohl (property owner); Robert Kaplan (agent)

REQUEST: A 10 year time extension for a sand extraction and temporary asphalt plant operation

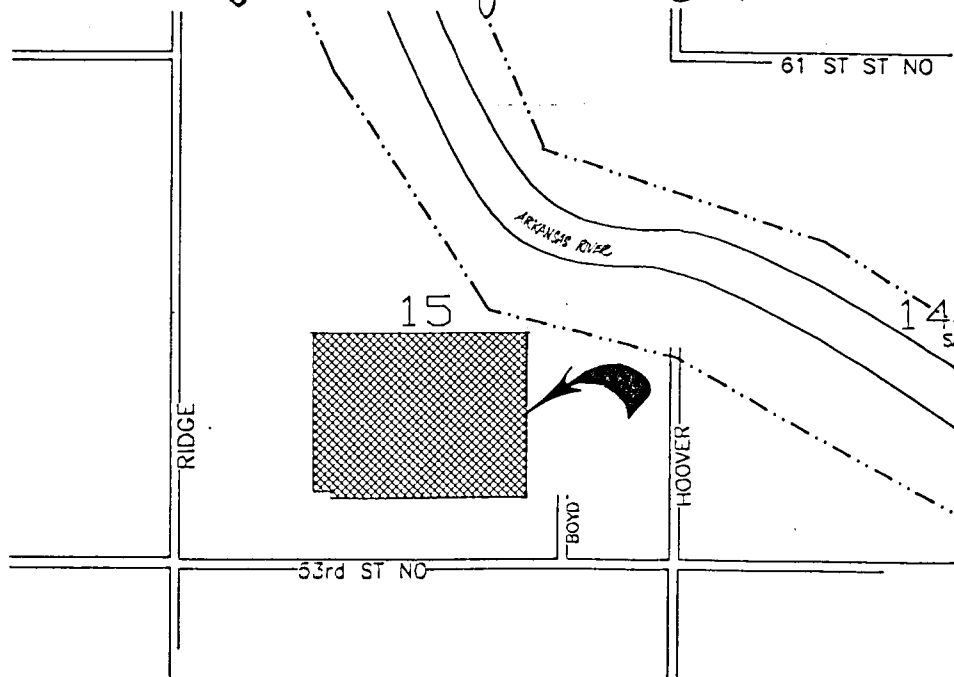
CURRENT ZONING: "RR" Rural Residential & "SF-20" Single-Family Residential

SITE SIZE: 101.7 acres

LOCATION: North of 53rd Street North, approximately 1/2 mile east of Ridge Road.

PROPOSED USE: Sand extraction and temporary asphalt plant operation

File w/ Register of Deeds



BACKGROUND: The applicant requests an amendment to a previously approved Conditional Use (CU-328) to grant a 10-year time extension for a sand extraction and temporary asphalt plant operation located on 101.7 acres zoned "LI" Limited Industrial north of 53rd Street North, approximately 1/2 mile east of Ridge Road.

On November 7, 1990, the Board of County Commissioners approved CU-328, subject to 27 conditions of approval (*see Resolution #269-1990*). The existing Conditional Use permit for the sand extraction operation is set to expire on November 7, 2000, while the asphalt plant expired on November 7, 1991. Condition "U" allows for time extensions beyond those established and states that "all asphalt mixing shall cease and all asphalt mixing equipment shall be removed from the site within one year after County Commission approval of this conditional use permit, unless an extension of time for that temporary use is granted by the County Commission after the MAPC has reviewed the extension request at a formal public hearing. All sand extraction shall cease and all sand extraction equipment shall be removed from the site within 10 years after approval of this conditional use permit by the Board of County Commissioners. This conditional use shall expire 10 years from County Commission approval, unless an extension is granted by that governing body after a public hearing is held by the MAPC to review the application for extension."

The applicants have submitted the same operational plan, which shows the location the general shape of the excavation area and the location of the plant site. The main access road to 53rd Street is paved and located east of the extraction operation at the quarter-mile line, with a secondary access point along the half-mile line directly south of the plant site. The County Department of Code Enforcement have received no complaints concerning this sand extraction operation and continue to make periodic spot checks.

The general vicinity is characterized by a mixture of agricultural uses and suburban single family homes on property zoned "SF-20" and "RR". There is approximately 750 feet of separation from the extraction site and the closest home to the south with 9 other homes within 1,000 feet. There are two sand extraction operations in the area, one is approximately 3,000 feet west and the other is approximately 4,500 feet southeast of this application site. Also, CU-346 allows another sand extraction operation on property adjacent to the east of this site.

No portion of the subject property is located within a floodplain. The most recent information pertaining to wetlands from the Sedgwick County Soil Conservation District and the Soil Survey of Sedgwick County indicates that the site includes Farnum loam, Maron fine sandy loam, and Waldeck sandy loam soils, which are not commonly associated with wetlands.

CASE HISTORY: CU-328 was approved on November 7, 1990 by the Board of County Commissioners, and on April 12, 1990 by the MAPC.

ADJACENT ZONING AND LAND USE:

NORTH:	"RR"	Agricultural uses
SOUTH:	"SF-20"	Single-family residences; agricultural uses
EAST:	"SF-20"	Agricultural uses
WEST:	"RR"	Agricultural uses

PUBLIC SERVICES: Municipal water and sewer services are not necessary to serve the proposed use. The property has access to 53rd Street North, a 2-lane paved section-line arterial, with existing traffic volume of approximately 2,217 average daily trips (ADT) from Ridge Road to Hoover. The 2020 Transportation Plan projects traffic along 53rd Street to decrease to approximately 1,891 ADT for this segment. There are no scheduled road improvements to 53rd Street at this time.

CONFORMANCE TO PLANS/POLICIES: The Sedgwick County Development Guide of the Comprehensive Plan identifies this area as appropriate for suburban uses. This category seeks to accommodate flexibility of choice for individuals preferring more suburban lifestyles, but is generally located in areas which are not prime agricultural resources. This request is in conformance with the land use objective of the plan by placing industrial uses in rural areas only when it is agriculturally-oriented, dependent upon a natural resource, or as part of an appropriate expansion of an existing industrial area.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The extraction of sand on this site shall proceed in accordance with the operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan. The temporary asphalt mixing plant, which is an accessory use to the sand excavation operation, shall be placed on the site at the location labeled "permanent plant location" on the operational plan.
- B. In order to assist in the enforcement of the operational plan for this extraction and temporary asphalt mixing plant, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.
- C. Adjacent to the north, west and east lines of the application area, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation (topsoil, subsoil or sand) and shall be maintained at the locations depicted on the operational plan. Said fence shall be placed on steel posts which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart.

The fence shall be a minimum height of 60 inches and shall be of the following types of construction:

1. A 50-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
2. A 50-inch-high or higher solid metal or solid masonry fence with 3 or more strands of barbed wire; or
3. A 50-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area or such fence, with 3 or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gate at an angle not to exceed 160° facing away from the excavation.

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

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

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

- D. The earth and sand shall be extracted to at least a minimum depth of 6 feet below the normal water table, as determined by the City-County Health Department.
- E. To provide for bank stabilization and safety of future uses, the side slope of the extraction shall be no more steep than 5 horizontal to 1 vertical.

- F. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
- G. All of the area included within the fenced earth and sand extraction operation, except for the site of the asphalt mixing plant, shall be graded so as to drain into the lake.
- H. The owner of the property shall be responsible for:
 - 1. Insuring that the loop levee elevation be maintained if constructed.
 - 2. The asphaltting and maintenance of all operational roads in order to minimize blowing dust from the site.
- I. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand extraction and temporary asphalt mixing plant.
- J. 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.
- K. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
- L. To minimize blowing soil in this area, overburden shall not be removed more than one year in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion.
- M. The storage of equipment or stockpiling of sand is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.
- N. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment and the temporary asphalt mixing plant shall be removed from the subject site.

O. Length of operation:

1. All asphalt mixing shall cease and all asphalt mixing equipment shall be removed from the site within one year after approval of this conditional use permit by the Metropolitan Area Planning Commission and/or the Board of County Commissioners, unless an extension is granted after a public hearing is held by the MAPC.
2. All sand extraction shall cease and all sand extraction equipment shall be removed from the site ~~within 10 years after approval of this conditional use permit by the Metropolitan Area Planning Commission and/or the Board of County Commissioners, unless an extension is granted after a public hearing is held by the MAPC.~~ *By November 7, 2010.*

P. All waste generated by the asphalt mixing plant operation shall be disposed of in accordance with the standards of the Wichita-Sedgwick County Health Department and the Kansas Department of Health and Environment (KDHE). Solid waste is as defined by the Sedgwick County Health and Sanitation Code #5.

Q. The asphalt mixing plant shall meet the permitting, reporting and operating requirements of the Kansas Air Pollution Control Regulations. The asphalt mixing plant shall not be operated when atmospheric conditions could cause emissions to impact surrounding properties. Hours of operation for both the asphalt mixing and the sand extraction business shall be limited to 6:00 a.m. to 6:00 p.m.

R. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.

S. Any violation of conditions attached shall declare the conditional use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The general vicinity is characterized by a mixture of agricultural uses and suburban single family homes on property zoned "SF-20" and "RR". There are two other extraction operations within 1 mile of the subject property, with the same use allowed on property adjacent to the east.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: The extension of this use would not pose a new threat to this area

of the county. The original conditions of operation, included in this staff report, are designed to mitigate any adverse impact this use may have on surrounding properties.

3. Conformance of the requested change to the adopted or recognized Comprehensive Plan: This request is in conformance with the land use objective of the plan by placing industrial uses in rural areas only when it is agriculturally-oriented, dependent upon a natural resource, or as part of an appropriate expansion of an existing industrial area.
4. Impact of the proposed development on community facilities: Municipal water and sewer services are not necessary for the proposed use. The proposed use should have a minimal impact upon 53rd Street, which currently has, and is projected to have, surplus capacity.