

R# 109-1994

Published in The Daily Reporter on JANUARY 20, 1995, 1994

RESOLUTION NO. 109-1994

A RESOLUTION AUTHORIZING A CONDITIONAL USE PERMIT TO AMEND AND EXPAND THE PREVIOUSLY APPROVED CONDITIONAL USE (CU-276) AND TO GRANT A TIME EXTENSION FOR SAND AND GRAVEL EXTRACTION IN THE "R-1" SUBURBAN RESIDENTIAL DISTRICT 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 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 17.C of the Zoning Regulations, a conditional use permit to amend and expand the previously approved conditional use (CU-276) and to grant a time extension for sand and gravel extraction on property zoned "R-1" Suburban Residential and "LC" Light Commercial District, legally described below:

Case No. CU-373

Conditional use permit request to amend and expand the previously approved conditional use (CU-276) and to grant a time extension for sand and gravel extraction on property zoned the "R-1" Suburban Residential District.

The Southeast quarter of Section 27, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, EXCEPT the North 295 feet of the East 295 feet of the South Half of said Southeast Quarter; AND EXCEPT the South 50 feet and the East 30 feet for road right-of-way. Generally located west of Hoover between 37th St. North and K-96.

Sent to City Clerk to be
published 1-15-95

FILE COPY

SUBJECT TO THE FOLLOWING CONDITIONS:

- A. Prior to the publication of the resolution effectuating the Conditional Use permit, the applicant shall dedicate right-of-way by separate instrument as required for major arterials, 50 feet of half-street right-of-way for Hoover Road and 37th Street North, increasing to 75 feet within 350 feet of the intersection
- B. The applicant shall submit a restrictive covenant providing that no foreign matter, such as rubbish, trees, car bodies, new asphaltic concrete mix, and building rubble or other trash shall be deposited on the application area or within the excavation.
- C. A minimum 58-inch high fence shall be constructed around the entire application area prior to the beginning of any excavation operation (including topsoil, overburden, and/or sand), and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel, 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 or 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.

- D. 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.
- E. 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.

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- F. All slopes shall have vegetative covering consisting of a perennial drought resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- G. To minimize blowing soil in this area, no overburden shall 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 a good sod cover to help prevent erosion.
- H. All of the area outside of the sandpit lake shall be graded so as to drain into the lake.
- I. No storage of equipment or stockpiling of sand and gravel shall be permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line. Excavation shall be no closer than 200 feet from the Hoover Road right-of-way and no closer than 150 feet from the exception area on Hoover Road.
- J. The sand plant operator shall be responsible for seeing that all operational roads on the site are maintained in a graveled or sanded condition to minimize blowing silt.
- K. Commercial recreational activities, such as boating, fishing, skiing, etc., shall not be permitted in the area unless duly authorized under provisions of the County Zoning Regulations.
- L. 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.
- M. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
- N. All materials and equipment, in particular broken asphalt and concrete, not associated with the approved operation shall be prohibited from the site or stored on an area approved for such use by means of a separate conditional use or rezoning application.
- O. The present operation shall be in compliance with all conditions of approval prior to expanding the sand and gravel operation into the east portion of the application area.

- P. The applicant shall comply with Condition B prior to the publication of the resolution establishing the conditional use.
- Q. The conditional use permit for the sand and gravel extraction operation shall expire on December 31, 1997, unless an extension is granted by the County Commission after a public hearing is held by the MAPC to review the application for extension.
- R. All materials and equipment associated with the sand and gravel extraction operation and associated asphalt and concrete mixing plant shall be removed from the site within 60 days after termination of the conditional use permit.
- 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 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.

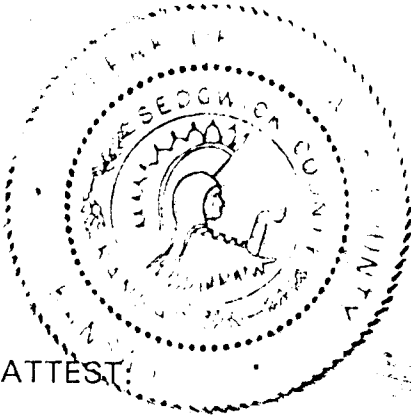
Commissioners present and voting were:

PAUL W. HANCOCK
THOMAS G. WINTERS
ANDREW L. BIAS
MARK F. SCHROEDER
BETSY GWIN

Aye
Aye
Aye
Aye
Aye

DATED this 20th day of July, 1994.

BOARD OF COUNTY COMMISSIONERS OF
SEDGWICK COUNTY, KANSAS



Betsy Gwin
BETSY GWIN, Chair 7-20-94

Andrew L. Bias
ANDREW L. BIAS, Chairman Pro Tem

Susan Crockett-Spoon
SUSAN CROCKETT-SPOON
County Clerk

Paul W. Hancock
PAUL W. HANCOCK, Commissioner

APPROVED AS TO FORM ONLY:

Thomas G. Winters
THOMAS G. WINTERS, Commissioner

David E. Brown
County Counselor/Assistant

Mark F. Schroeder
MARK F. SCHROEDER, Commissioner

S.E. COR. S.E. 1/4
SEC 27, T26S, R1W.

ECK CONDITIONAL USE CU-373

STAFF REPORT

June 16, 1994

CASE NUMBER: CU-373

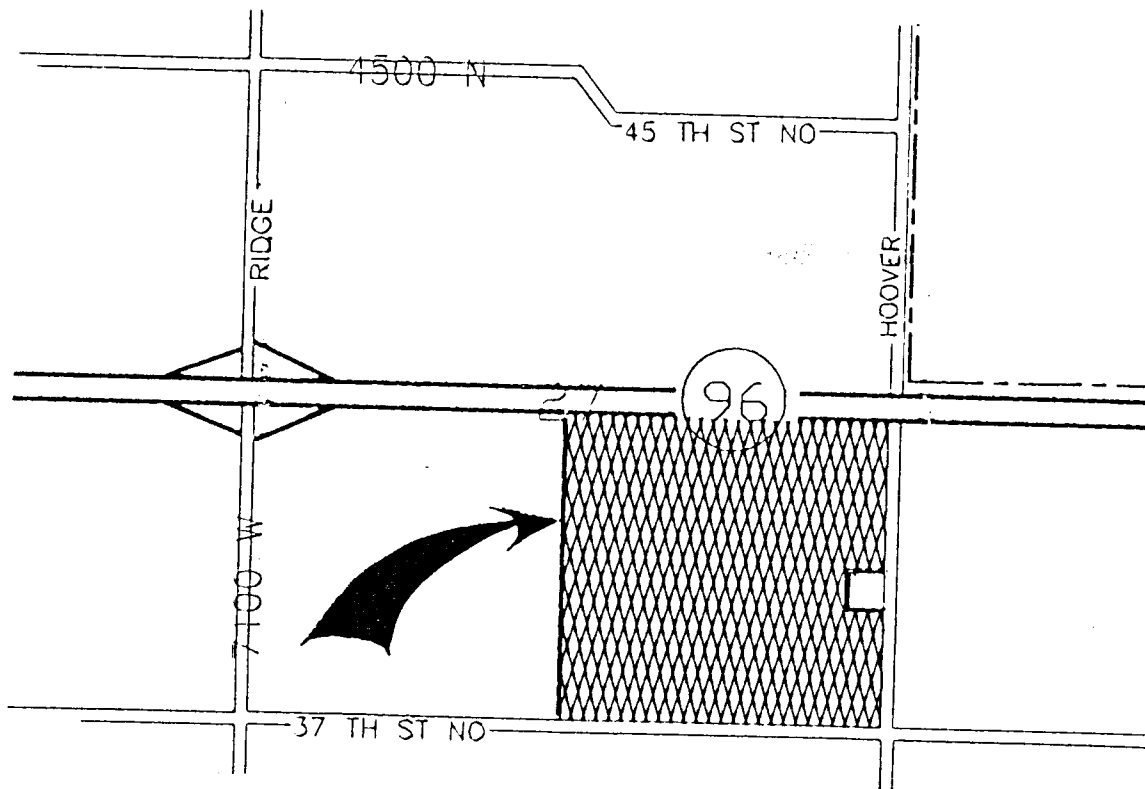
APPLICANT/AGENT: Les Eck & Assoc. Material and Supply Co. / Gary Wiley

REQUEST: Conditional Use permit to amend and expand the previously approved Conditional Use (CU-276) and to grant a time extension for sand and gravel extraction.

CURRENT ZONING: "R-1" Suburban Residential and "LC" Light Commercial

SITE SIZE: 152 acres

LOCATION: West of Hoover between 37th Street North and K-96



BACKGROUND: The applicant requests a Conditional Use permit for a 152 acre site zoned "R-1" Suburban Residential, generally located west of Hoover between 37th Street North and K-96. The permit would amend and expand the previously approved Conditional Use (CU-276) and grant a time extension for sand and gravel extraction to December 31, 1997. The existing Conditional Use permit expired in 1990. The proposal would allow the existing lake (and excavation operation) to be expanded further to the east towards Hoover Road and approximately 50 feet further south towards 37th Street North.

The lake expansion would create an island which would accommodate a future home site. The applicant indicates that the lake will be used for a private recreation area after the sand and gravel extraction operation is complete. The limits of the proposed lake (and excavation area) would range from between 150 feet and 250 feet west of the Hoover Road right-of-way, 200 feet from the 37th Street North right-of-way, and from 150 feet to 350 feet from the half section line on the west side of the application area.

CASE HISTORY: Conditional Use permit (CU-176) was granted in 1975 to allow a sand extraction operation within the S½ of the SE¼ of this section, except the east 600 feet thereof. In September 1985, the County Commission approved an amended Conditional Use permit (CU-276) to expand the sand and gravel extraction operation and to allow a concrete and asphalt mixing plant in the "R-1" Suburban Residential District, subject to 18 conditions. In May 1985, the County Zoning Regulation was amended to permit storage of concrete and asphalt for recycling and portable rock crushers as temporary uses under a Conditional Use permit, rather than requiring industrial zoning. Therefore, an associated zone change request for "F" Heavy Industrial zoning (SCZ-0521) for a 13 tract of land within the application area was replaced by a request for a Conditional Use permit.

In September 1985, The Board of County Commissioners approved a Conditional Use permit (CU-286) for a "temporary" rock crusher, generally located on the north side of 37th Street North in an area west of Hoover. The County Commission also approved a Special Use permit (DR-85-17) for an asphalt mixing plant as a temporary use associated with two County paving projects

At the MAPC hearings in 1985 for the previously identified applications, concern was expressed by area property owners about the uses that would be permitted under Heavy Industrial zoning (request withdrawn), drainage problems in the general area, waste and rubble located on the site, truck traffic, and the condition of area roadways. The conditions of CU-279, as approved by the County Commission, includes restrictions to prohibit foreign matter from being deposited on the application area and required the site to be graded so as to drain into the lake. The Conditional Use permit (CU-279) was subject to a 5-year restriction which expired in September 1990. However, the site has continued to be used for sand extraction purposes since the permit expired four years ago.

ADJACENT ZONING AND LAND USE:

NORTH:	"R-1"	K-96, agricultural uses approved for extraction and topsoil removal operation (CU-288)
SOUTH:	"R-1"	Single family home, agricultural uses
EAST:	"R-1", "LC"	Single family home, agricultural uses
WEST:	"R-1"	agricultural uses

PUBLIC SERVICES: Municipal water and sewer services are not available to serve this site. The site has access from Hoover Road and 37th Street North, both of which are unimproved section line arterials with 30 feet of existing half street right-of-way. The standard half street right-of-way for section line arterials is 50 feet.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area for agricultural uses. The County Zoning Resolution allows the development of natural resources and extraction of raw materials in areas zoned "R" Rural Residential or "R-1" Suburban Residential with a Conditional Use permit. The request is consistent with the Comprehensive Plan's recommendation to support natural resource-based industries in rural areas.

RECOMMENDATION: Planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. Prior to the publication of the resolution effectuating the Conditional Use permit, the applicant shall dedicate right-of-way by separate instrument as required for major arterials, 50 feet of half-street right-of-way for Hoover Road and 37th Street North, increasing to 75 feet within 350 feet of the intersection
- B. The applicant shall submit a restrictive covenant providing that no foreign matter, such as rubbish, trees, car bodies, new asphaltic concrete mix, and building rubble or other trash shall be deposited on the application area or within the excavation.
- C. A minimum 58-inch high fence shall be constructed around the entire application area prior to the beginning of any excavation operation (including topsoil, overburden, and/or sand), and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel, 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:

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- (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.

- D. 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.
- E. 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.
- F. All slopes shall have vegetative covering consisting of a perennial drought resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- G. To minimize blowing soil in this area, no overburden shall 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 a good sod cover to help prevent erosion.
- H. All of the area outside of the sandpit lake shall be graded so as to drain into the lake.
- I. No storage of equipment or stockpiling of sand and gravel shall be permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.
- J. The sand plant operator shall be responsible for seeing that all operational roads on the site are maintained in a graveled or sanded condition to minimize blowing silt.
- K. Commercial recreational activities, such as boating, fishing, skiing, etc., shall not be permitted in the area unless duly authorized under provisions of the County Zoning Regulations.

- L. 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.
- M. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
- N. All materials and equipment, in particular broken asphalt and concrete, not associated with the approved operation shall be prohibited from the site or stored on an area approved for such use by means of a separate conditional use or rezoning application.
- O. The present operation shall be in compliance with all conditions of approval prior to expanding the sand and gravel operation into the east portion of the application area.
- P. The applicant shall comply with Condition B prior to the publication of the resolution establishing the conditional use.
- Q. The conditional use permit for the sand and gravel extraction operation shall expire on December 31, 1997, unless an extension is granted by the County Commission after a public hearing is held by the MAPC to review the application for extension.
- R. All materials and equipment associated with the sand and gravel extraction operation and associated asphalt and concrete mixing plant shall be removed from the site within 60 days after termination of the conditional use permit.
- 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 surrounding area is primarily characterized by agricultural uses with a few single family homes located to the south and east of the application area. The extraction operation is an appropriate use in a rural area and is permitted under the existing "R-1" Suburban Residential zoning with a Conditional Use permit.

2. Extent to which removal of the restrictions will detrimentally affect nearby property: Conditional Use permit (CU-176) was granted in 1975 to allow a sand extraction operation within the S½ of the SE¼ of this section, except the east 600 feet thereof. In September 1985, the Board of County Commissioners approved an amended Conditional Use permit (CU-276) to expand the sand and gravel

extraction operation and to allow a concrete and asphalt mixing plant. The proposed time extension and expansion of the excavation area and lake should not impact area residents more than what was previously approved for this site.

3. Conformance of the requested change to adopted or recognized Plans/Policies: The Sedgwick County Development Guide of the Comprehensive Plan identifies this area for agricultural uses. The proposed use is consistent with the Comprehensive Plan's recommendation to support agricultural based industries in rural areas.

4. Impact of the proposed development on community facilities: The proposed use does not require municipal water and sewer services. The application area is bordered by two unimproved section line arterials and the proposed use (and the existing operation) will generate truck traffic on the surrounding roadways. However, truck traffic associated with the proposed use should not impact area roadways more than what has been previously approved for this site. The proposed use would also be required to be graded to contain all runoff on-site in the lake.