

R# 254-1994

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RESOLUTION NO. 254-1994

A RESOLUTION AUTHORIZING A CONDITIONAL USE PERMIT TO ALLOW A SAND EXTRACTION AND TOPSOIL REMOVAL OPERATION ON PROPERTY ZONED '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.

FILE COPY

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 to allow a sand extraction and topsoil removal operation on property zoned 'R-1' Suburban Residential District, legally described below:

Case No. CU-366

Conditional use permit request for a sand extraction and topsoil removal operation, on property zoned the 'R-1' Suburban Residential District.

Described as: at the S/2 of the SE/4 of Section 28-T26S-R1W of the 6th P.M., Sedgwick County, Kansas, except beginning at the Northeast corner of the S/2 of the SE/4 of said Section 28; thence South 403.43 feet; thence West 1159.52 feet; thence North 395.08 feet to the North line of the S/2 of the SE/4 of said Section 28; thence east 1159.46 feet to the point of beginning, subject to road right-of-way. Generally located on the northwest corner of 37th Street North and Ridge Road.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. Prior to the publication of the resolution effectuating the conditional use, the applicant shall dedicate right-of-way by separate instrument as required for major arterials, 60 feet of half-street right-of-way for Ridge Road increasing to 75 feet within 350 feet of the intersection and 50 feet of half-street right-of-way for 37th Street North.
2. Prior to the publication of the resolution effectuating the conditional use, the applicant shall submit a revised operational plan illustrating 60 feet of half-street right-of-way for Ridge road increasing to 75 feet within 350 feet of the intersection. The operational plan shall designate screening of at least 350 feet from the east property line along the northeast portion of the property. All operations, including phasing of the excavation, shall comply with the revised operational plan.
3. Prior to the publication of the resolution effectuating the conditional use, the applicant shall submit a revised redevelopment plan illustrating a second cul-de-sac in the southeast portion of the site to serve the 2 lots located along 37th Street North and west of Ridge Road.
4. Prior to publication of the resolution effectuating the conditional use, the applicant shall submit a restrictive covenant to the Planning Department, which provides that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the site or in the extraction area and which specifies what bank stabilization materials are acceptable.
5. Prior to the publication of the resolution effectuating the conditional use, the applicant shall submit and obtain approval of a drainage/grading plan from the County Bureau of Public Services. The drainage/grading plan shall indicate all topographic features and information required by County Engineering.
6. Prior to the publication of the resolution effectuating the conditional use, in accordance with the County's Floodplain Management Resolution, the applicant shall submit operational and extraction plans to the state Division of Water Resources for review and approval.
7. Prior to the publication of the resolution effectuating the conditional use, the applicant shall execute a Floodway Reserve agreement covering the area which is a designated floodway on the FEMA maps and obtain a floodplain development permit from the County Bureau of Public Services in accordance with the County's Floodplain Management resolution.

8. Prior to the publication of the resolution effectuating the conditional use, the applicant shall submit a covenant satisfactory in form to the County Counselor and Sedgwick County Bureau of Public Services, which authorizes the use of the extraction area as a detention storage facility for public drainage purposes.
9. Prior to the publication of the resolution effectuating the conditional use, the applicant shall submit 4 copies of a landscape plan for approval by the Planning Department denoting the location, types and size of plant materials to be utilized for screening along the northern boundary of the property as a buffer from the existing single family residence to the north of the application area. Said plant materials shall be placed as indicated on the approved plan in the first planting season after the extraction operation commences and their planting and maintenance shall be the responsibility of the owner.
10. Prior to the publication of the resolution effectuating the conditional use, all applicable state and federal permits shall be acquired for wetlands preservation and for rechanneling the Big Slough.
11. No stockpiling of sand, excavation, or storage of equipment shall occur within 100 feet of any public right-of-way or within 100 feet of all remaining property lines.
12. The earth in the proposed lake area shall be extracted to at least a minimum depth of six feet below the water table as determined by the City-County Health Department.
13. 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 to help prevent erosion.
14. To provide for bank stabilization and safety of future uses, the side slopes of the lake excavation shall be no steeper than five horizontal to one vertical.
15. 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.
16. It is encouraged that topsoil and subsoil be removed and stockpiled during the summer months. The area where soil has been removed shall be tilled and planted with acceptable vegetative cover in the fall immediately following the soil removal. Should reasonable germination not occur, than replanting in the spring with some alternate cover material shall be required.

17. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant so as to minimize blowing dust.
18. Adjacent to the perimeter of the application area, a minimum 60-inch high fence shall be constructed prior to the point that extraction of topsoil, subsoil or sand has reached 2 feet from the original elevation. 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 minimum height of 60 inches and shall be of the following types of construction:
 - a. A 48-inch high or higher chain link fence with 3 or more strands of barbed wire;
 - b. A 48-inch high or higher solid metal or solid masonry fence with 3 or more strands or barbed wire; or
 - c. A 48-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 degrees facing away from the excavation.

19. Concrete or asphalt mixing plants, and commercial recreational activities, such as boating, fishing, skiing, etc, shall not be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
20. All slopes shall have vegetative covering consisting of a perennial drought resistant grass or a combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
21. 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.
22. 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 to help prevent erosion.
23. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.

24. The applicant shall allow the City-County Health Department and the Kansas Department of Health and Environment access to the site with reasonable notice for the purpose of establishing groundwater monitoring wells.
25. The manner in which fuels or chemicals are stored on-site must be approved by the City-County Health Department.
26. No pumping of sand or gravel shall occur between the hours of 7:00 p.m. and 6:00 a.m.
27. The property shall be platted prior to the issuance of any zoning or building permits except those necessary for the sand excavation operation.
28. The approval of the Conditional Use is for a period not to exceed twelve years from the date of approval by the Board of county Commissioners and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises.
29. In order to assist in the enforcement of the operational plan for this conditional use case, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.
30. The applicant shall proceed in accordance with the operational plan approved by the Board of county Commissioners, and shall excavate the lake and form the banks as indicated on the approved plan. Expansion shall not proceed from one stage of sand extraction and topsoil removal to the next stage until the land in the one stage is regraded in accordance with the approved grading/drainage plan and a vegetative cover established.
31. 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 shall be removed from the project site.
32. The applicant shall provide access to the property and allow the Groundwater Management District No. 2 to install monitoring wells and check for water quality.
33. Violation of any of the conditions of approval shall render 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.

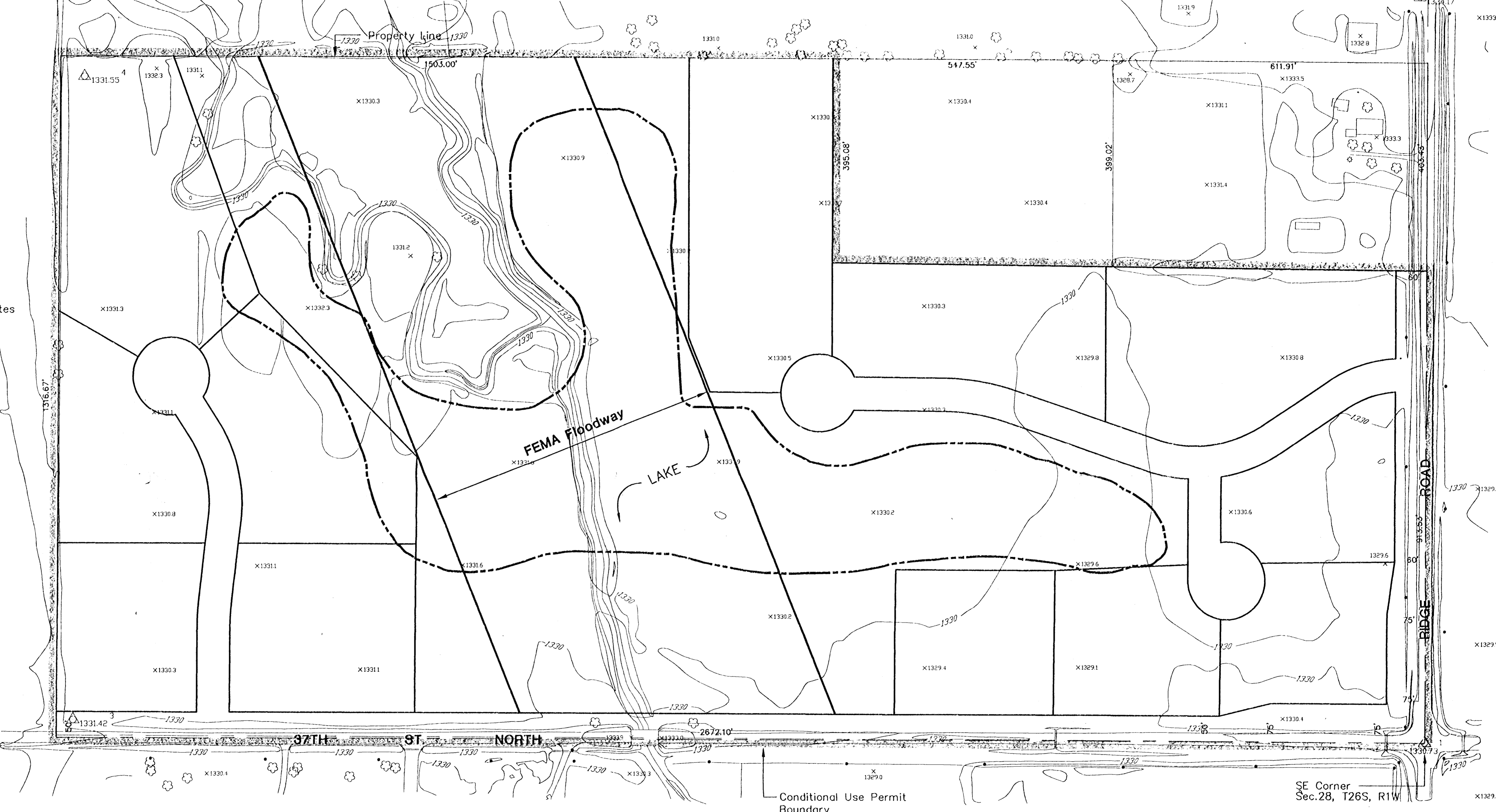


Scale: 1" = 100'

Topographic Survey: November 1993
Aerial Data Service, Inc.
Ground Control Survey: Poe and Associates

BENCHMARKS

- 2.0 miles southeast along the Missouri Pacific Railroad from the station at Maize, Sedgwick County, at pole 493/1/2, at a county-road crossing, 50 feet southwest of the center line of the track, and 20 feet west of the center line of the road. A standard disk stamped "F 210 1934" and set in the top of a concrete post projecting 8 inches above ground. Elev. 1339.604
- T 26 S, R 1 W, Cor. Secs. 28, 29, 32, and 33. "□" chiseled 33 feet south and 10 feet west from crossroads, on west headwall of concrete culvert. Elev. 1343.130



SOUTH HALF SECTION 28 - T 26 S - R 1 W

REDEVELOPMENT PLAN

OWNERS: Lavonna Moldenhauer 4103 W. 10th Wichita, Kansas 67212	CONTRACT PURCHASER: Pearson Excavating, Inc. 4740 W. Eastner Wichita, Kansas 67209
Edythe Haywood 1329 Woodhill Drive Lebanon, Missouri 65636	ENGINEER: Poe and Associates Consulting Engineers 434 N. Oliver, Suite 110 Wichita, Kansas 67208
DATE: March 1994	

CU-366
APPROVED BY BCOC
4-20-94
MAPS COPY 2-62

STAFF REPORT

MARCH 24, 1994

CASE HISTORY: MAPC DEFERRED 4 WEEKS FEB 24, 1994

CASE NUMBER: CU-366

APPLICANT/AGENT: LaVonna Moldenhauer, Pearson Excavating, Inc., and
Edythe Haywood/
Poe & Associates

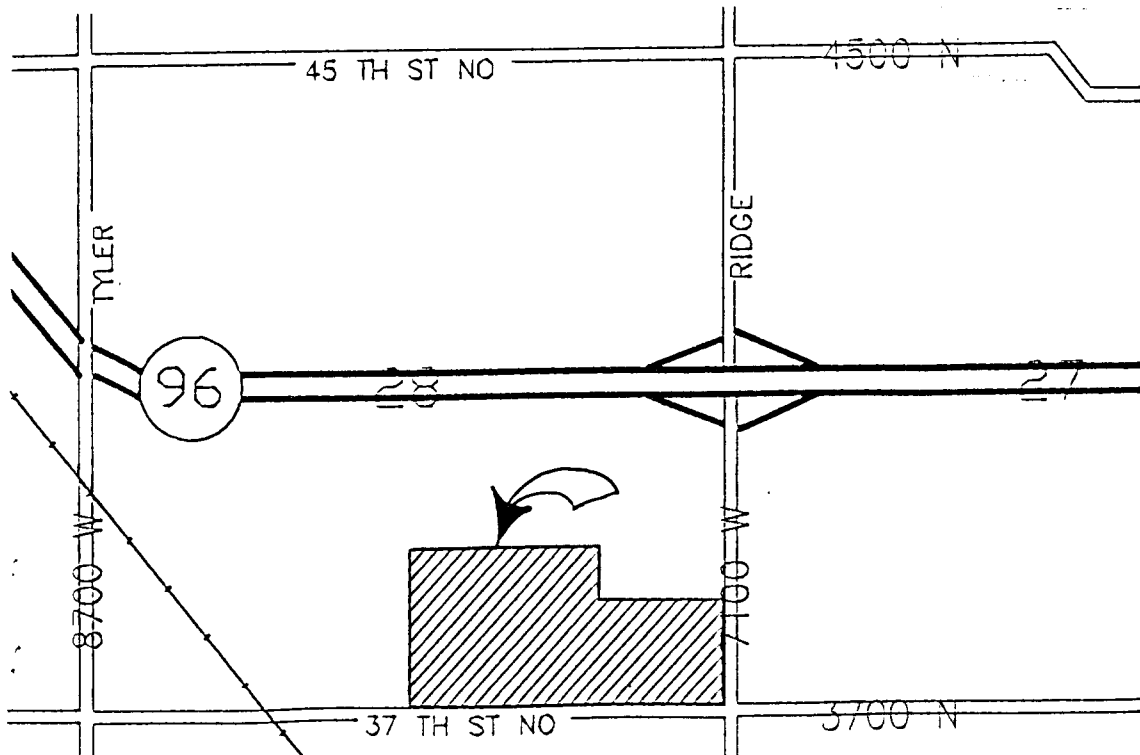
REQUEST: Conditional Use Permit for sand extraction and topsoil
removal

CURRENT ZONING: "R-1" Suburban Residential District

SITE SIZE: 61.7 acres

LOCATION: Northwest corner of 37th Street North and Ridge Road

PROPOSED USE: Sand extraction and an accessory construction yard



BACKGROUND: On February 24, 1994, MAPC held a public hearing for this request. The MAPC recommended that the case be deferred for 4 weeks to allow the applicant and staff to further discuss the details of this case. The MAPC also recommended that the public hearing be held open for additional comment at the March 24, 1994 meeting.

The applicant requests a conditional use permit for sand extraction and topsoil removal on a 61.7 acre unplatted tract generally located at the northwest corner of 37th Street North and Ridge Road. The application area is currently zoned "R-1" Suburban Residential. The operational plan submitted by the applicant indicates that approximately 42 acres of the site will be excavated. The applicant intends to remove topsoil and excavate sand in a 13.68 acre area identified as phases 1-4 with the intention of creating a lake. The applicant also intends to remove topsoil from areas identified as phases 1A - 4A. Fill from phases 1-4 will be used to return the grade back to normal in the areas identified as phases 1A - 4A. The applicant indicates excavation of materials from the site will be conducted in 4 phases, each requiring from 2½ to 3 years for a maximum of 12 years .

A grading plan submitted by the applicant illustrates the probable maximum fill in phases 1A - 4A for the possibility of future residential development. The redevelopment plan submitted by the applicant identifies a residential subdivision consisting of 12 lots.

The application area is currently vacant. A single family residence is located north of the site along Ridge Road and zoned "R-1" Suburban Residential. The remaining surrounding property is undeveloped and used primarily for agricultural uses. The four corners of Ridge Road and 37th Street North are undeveloped and zoned "LC" Light Commercial. An associated zoned change request (SCZ-0663) for "C" Commercial filed for a 2.4 acre tract has been withdrawn.

The application area is characterized by shallow ground water at depths of approximately 6 feet below the surface. The entire application area is located in a Type A floodplain which are areas within the 100-year flood boundaries and areas where the base flood elevations and flood hazard factors are not determined. The City-County Health Department indicates that due to the Type A floodplain designation, on-site sewage disposal will not be permitted in this area. Therefore, any residential redevelopment of this site will require municipal sewer services. At this time, no municipal services are planned for this area.

The most recent information pertaining to wetlands from the Sedgwick County Soil Conservation District and the Soil Survey of Sedgwick County indicates that all of the area consists of hydric soils adjoining the Big Slough (Plevna) and potentially hydric soils (Waldeck and Lesho). Hydric soils are commonly associated with wetlands. Preliminary operational plans submitted by the applicant indicated excavation on the entire site. However, the applicant has since met with representatives of the Army Corps of Engineers and has submitted a revised

operational plan to exclude an area in the northwest portion of the site from excavation which the Corps identified as a probable wetlands area. Prior to excavating this site, the applicant will need to acquire all necessary permits for the protection and management of any wetland or riparian areas located within the application area.

The application area includes the confluence of the Big Slough and Little Slough Rivers which flows from this site to an existing topsoil and sand extraction operation directly south of 37th Street North. The Big Slough River flows southward from this location to the Sedgwick County Park / Sedgwick County Zoo in northwest Wichita and drains into the Wichita-Valley Center Flood Control project. The applicant will need to contact federal and state agencies to obtain all applicable permits associated with rechanneling the Big Slough through the application area.

In 1986, the County Commission approved a conditional use permit (CU-293) for a sand extraction operation for an 80-acre site located southwest of 37th Street North and Ridge Road. This operation is located south of the application area, with the Big Slough flowing through the center of the property. Approval of this conditional use was subject to numerous conditions including a Floodway Reserve Agreement covering the Big Slough Floodway, a Floodplain Development Permit covering all areas of the site located in the Zone A flood hazard area, a letter of approval from the Division of Water Resources, and an engineer's certification that the development would not increase the base flood elevation.

In 1990, the County Commission approved a conditional use permit (CU-327) for topsoil, subsoil, and sand extraction for a 30-acre site on the south side of 37th Street North, approximately 1,300 feet west of Ridge Road. This conditional use permit was also subject to the standard conditions for topsoil and subsoil removal and sand extraction.

CASE HISTORY: The application area was zoned "R-1" in the 1960's.

ADJACENT ZONING AND LAND USE:

NORTH:	"R-1"	Single family residence, agricultural use
SOUTH:	"R-1", "LC"	Undeveloped, agricultural use, operation for topsoil, subsoil, and sand extraction
EAST:	"R-1", "LC"	Undeveloped, agricultural use
WEST:	"R-1"	Undeveloped, agricultural use

PUBLIC SERVICES: Municipal water and sewer services are not available to serve this site. The site is accessed by 37th Street North, an unpaved section-line arterial, and Ridge Road, a 2-lane paved F.A.S. designated roadway, with 40 feet of existing half street right-of-way. The standard half street right-of-way along F.A.S. roadways is 60 feet. In 1993, Ridge Road was resurfaced from 29th Street

North to 53rd Street North.

CONFORMANCE TO PLANS/POLICIES: The Sedgwick County Development Guide of the Comprehensive Plan identifies this area for agricultural uses. Suburban growth areas (generally areas of large-lot residential development where municipal services are not planned) are located approximately ¾ mile north of this site, north of K-96, and southwest of this site, west of the Missouri Pacific railroad tracks.

The Comprehensive Plan recommends the protection of areas which provide significant wildlife habitat, are environmentally sensitive or unique, or have significant water and topographic features. The Plan also recommends development in rural areas when it is agriculturally-oriented or dependent upon a natural resource.

RECOMMENDATION: Planning staff recommends that the request for sand extraction be APPROVED subject to the following conditions:

1. Prior to this item being scheduled before the Board of County Commissioners, the applicant shall dedicate right-of-way by separate instrument as required for major arterials, 60 feet of half-street right-of-way for Ridge Road increasing to 75 feet within 350 feet of the intersection and 50 feet of half-street right-of-way for 37th Street North.
2. Prior to this item being scheduled before the Board of County Commissioners, the applicant shall submit a revised operational plan illustrating 60 feet of half-street right-of-way for Ridge Road increasing to 75 feet within 350 feet of the intersection. The operational plan shall designate screening of at least 350 feet from the east property line along the northeast portion of the property. All operations, including phasing of the excavation, shall comply with the revised operational plan.
3. Prior to this item being scheduled before the Board of County Commissioners, the applicant shall submit a revised redevelopment plan illustrating a second cul-de-sac in the southeast portion of the site to serve the 2 lots located along 37th Street North and west of Ridge Road.
4. Prior to publication of the resolution effectuating the conditional use, the applicant shall submit a restrictive covenant to the Planning Department which provides that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the site or in the extraction area and which specifies what bank stabilization materials are acceptable.
5. Prior to the publication of the resolution effectuating the conditional use, the applicant shall submit and obtain approval of a drainage/grading plan from

the County Bureau of Public Services. The drainage/grading plan shall indicate all topographic features and information required by County Engineering.

6. Prior to the publication of the resolution effectuating the conditional use, in accordance with the County's Floodplain Management Resolution, the applicant shall submit operational and extraction plans to the State Division of Water Resources for review and approval.
7. Prior to publication of the resolution effectuating the conditional use, the applicant shall execute a Floodway Reserve agreement covering the area which is a designated floodway on the FEMA maps and obtain a floodplain development permit from the County Bureau of Public Services in accordance with the County's Floodplain Management Resolution.
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9. Prior to the publication of the resolution effectuating the conditional use, the applicant shall submit 4 copies of a landscape plan for approval by the Planning Department denoting the location, types and size of plant materials to be utilized for screening along the northern boundary of the property as a buffer from the existing single family residence to the north of the application area. Said plant materials shall be placed as indicated on the approved plan in the first planting season after the extraction operation commences and their planting and maintenance shall be the responsibility of the owner.
10. Prior to the publication of the resolution effectuating the conditional use, all applicable state and federal permits shall be acquired for wetlands preservation and for rechanneling the Big Slough.
11. No stockpiling of sand, excavation, or storage of equipment shall occur within 100 feet of any public right-of-way or within 100 feet of all remaining property lines.
12. The earth in the proposed lake area shall be extracted to at least a minimum depth of six feet below the water table as determined by the City-County Health Department.
13. 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 to help prevent erosion.

14. To provide for bank stabilization and safety of future uses, the side slopes of the lake excavation shall be no steeper than five horizontal to one vertical.
15. 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.
16. It is encouraged that topsoil and subsoil be removed and stockpiled during the summer months. The area where soil has been removed shall be tilled and planted with acceptable vegetative cover in the fall immediately following the soil removal. Should reasonable germination not occur, than replanting in the spring with some alternate cover material shall be required.
17. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant so as to minimize blowing dust.
18. Adjacent to the perimeter of the application area, a minimum 60-inch high fence shall be constructed prior to the point that extraction of topsoil, subsoil or sand has reached 2 feet from the original elevation. 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:
 - a. A 48-inch high or higher chain link fence with 3 or more strands of barbed wire;
 - b. A 48-inch high or higher solid metal or solid masonry fence with 3 or more strands or barbed wire; or
 - c. A 48-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 degrees facing away from the excavation.

19. Concrete or asphalt mixing plants, and commercial recreational activities, such as boating, fishing, skiing, etc. shall not be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.

20. All slopes shall have vegetative covering consisting of a perennial drought resistant grass or a combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
21. 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.
22. 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 to help prevent erosion.
23. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
24. The applicant shall allow the City-County Health Department and the Kansas Department of Health and Environment access to the site with reasonable notice for the purpose of establishing groundwater monitoring wells.
25. The manner in which fuels or chemicals are stored on-site must be approved by the City-County Health Department.
26. No pumping of sand or gravel shall occur between the hours of 7:00 pm and 6:00 am.
27. The property shall be platted prior to the issuance of any zoning or building permits except those necessary for the sand excavation operation.
28. The approval of the Conditional Use is for a period not to exceed twelve years from the date of approval by the Board of County Commissioners and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises.
29. In order to assist in the enforcement of the operational plan for this conditional use case, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.
30. The applicant shall proceed in accordance with the operational plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan. Expansion shall not proceed from one stage of sand extraction and topsoil removal to the next stage until the land in the one stage is regraded in accordance with the approved grading/drainage plan and a vegetative cover established.

31. 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 shall be removed from the project site.
32. Violation of any of the conditions of approval shall render the conditional use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the area: The surrounding area is primarily characterized by residential and agricultural uses. The conditions for setbacks and landscaping should minimize nuisances for surrounding property owners.
2. The suitability of the subject property for the uses to which it has been restricted: Several extraction operations are operating or have been approved in this area of the County.
3. Conformance of the requested change to adopted Plans/Policies: The Comprehensive Plan identifies this area for agricultural uses. The Comprehensive Plan recommends the protection of areas which provide significant wildlife habitat and are environmentally sensitive or unique and the preservation of existing stands of trees and other native vegetation. Any significant natural features will be subject to review by appropriate federal and state agencies. The applicant is required to obtain any necessary permits for wetlands preservation, for rechanneling the Big Slough, and to ensure that the development will not increase the base flood elevation.
4. Impact of the proposed development on community facilities: The proposed extraction operation will not require municipal services. Since municipal services are not planned for this area, any future residential development in this area will require approval by the City-County Health Department.