



Wichita-Sedgwick County Metropolitan Area Planning Department

August 27, 2012

Kenneth Cain
10911 S. Hydraulic Avenue
Mulvane, KS, 67110

Re: CON2012-00035: An Administrative Adjustment to condition of approval #14 for CU-562 to extend the time of the Conditional Use for a sand and gravel operations on RR Rural Residential ("RR") zoned property; generally located approximately 550-feet north of 111th Street South, on the west side of Hydraulic Avenue. (BoCC #2)

Legal Description: The East half of Southeast Section 28, Township 29 South, Range 1, East of the 6th PM, Sedgwick County, Kansas, except the east 40-feet and the south 550-feet thereof.

Dear Mr. Cain:

We have reviewed your request for an Administrative Adjustment to condition of approval #14 for Conditional Use CU-562; approved by the Metropolitan Area Planning Commission (MAPC) February 24, 2000 and the Board of County Commissioners (BoCC) March, 22, 2000. Condition of approval #14 required sand and gravel operations on the subject property to cease on March 22, 2007. According to a November 23, 2005, letter from the Kansas Department of Agriculture, Division of Water Resources, you requested and were granted additional time to complete the diversion work required by the state prior to beginning the sand and gravel operation on the site. Therefore, you requested an Administrative Adjustment to for a 7-year extension of CU-562; CON2006-00034. CON2006-00034 was approved August 24, 2006, extending the sand and gravel operations to March 22, 2013, while keeping all other conditions of approval in effect. Per your letter, due to the area's economic downturn in residential development the demand for sand has decreased, leaving your sandpit about 50% complete. This economic downturn is the trigger for your requesting another 7-year extension for sand and gravel operations.

The Unified Zoning Code allows the Planning Director, with the concurrence of the Zoning Administrator, to approve minor adjustments to conditions of approval for Conditional Uses as long as the adjustment does not have any of the negative impacts stated in Section V-1.6. Staff has received no calls protesting the requested adjustment. We find that extending the time of the Conditional Use meets the four conditions required by Section V-1.6 of the Unified Zoning Code as set out below:

- 1) Impact on safety and convenience of vehicular and pedestrian circulation: Extending the length of

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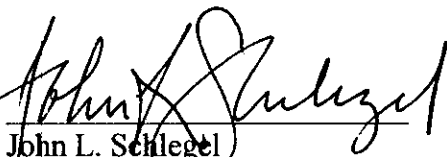
time to complete excavation of the lake will have no significant impact on the safety and convenience of vehicular and pedestrian circulation.


- 2) Impact on existing uses in surrounding areas: Condition of approval #14 is in place to ensure that operations are completed in a reasonable amount of time to limit the impact of operations on surrounding areas. Extending the length of time for sand and gravel operations as permitted on the site increases the duration of the negative impacts adjacent properties; however, existing uses in surrounding areas are primarily agricultural and extractive in nature and should not be detrimentally impacted from additional time to complete operations.
- 3) Compatibility with existing or permitted uses on abutting sites: Sand and gravel extraction has been found to be compatible with existing or permitted uses on the site through the approval of CU-562. The compatibility with existing or permitted uses on abutting sites should not be impacted significantly by extending the time period for which sand and gravel extraction is permitted.
- 4) Effect on public health, safety or welfare: There will be no encroachment into public utility easements or right-of-way, therefore, there should not be a negative impact on the public health, safety or welfare nor will properties or improvements in the vicinity be materially injured.

Our signatures below indicate that an administrative adjustment to condition of approval #14 for CU-562 to extend the Conditional Use on the aforementioned property is hereby granted subject to the following conditions:

- 1) Sand and gravel extraction operations shall cease no later than August 27, 2019.
- 2) All other conditions of approval for CU-562 shall be met.
- 3) If the Zoning Administrator finds that there is a violation of any of the conditions of the Administrative Adjustment, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Administrative Adjustment is null and void.

The zoning adjustment sign may now be removed from the property.


John L. Schlegel
Planning Director


Bud Lett
Interim Code Enforcement Director

cc: Bud Lett, Sedgwick County Code Enforcement
Jim Weber, Sedgwick County Public Works Engineer, 1144 S Seneca, Wichita, KS, 67213
Kelly Dixon, Sedgwick County Code Enforcement, 1144 S Seneca, Wichita, KS, 67213
County Commissioner Tim R. Norton, District 2



STAFF REPORT

MAPC January 27, 2000
MAPC February 24, 2000

CASE NUMBER: CU-562

APPLICANT/AGENT: Kenneth J. Cain (Owner/Applicant); P.E.C., PA c/o Gary Wiley (Agent)

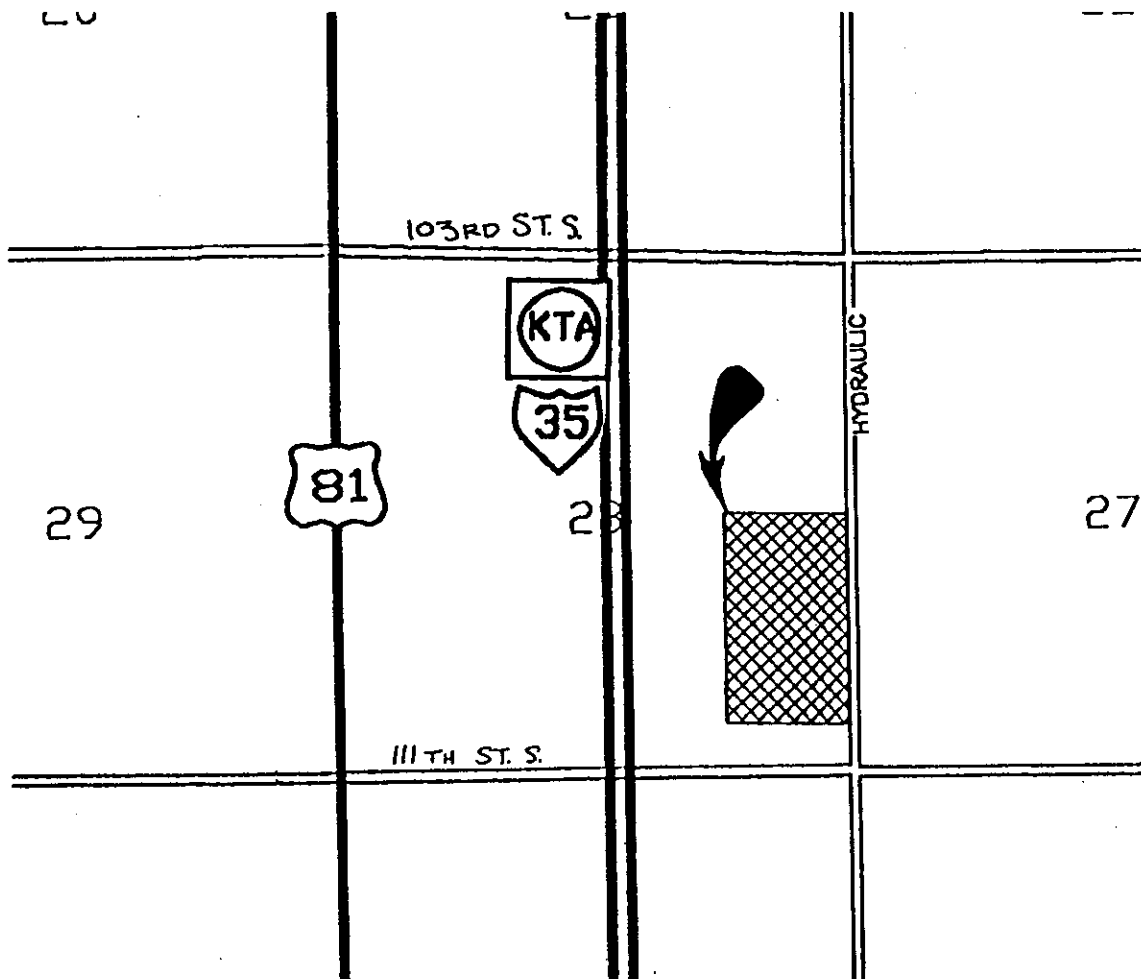
REQUEST: Conditional Use to allow sand and gravel extraction

CURRENT ZONING: "RR" Rural Residential

SITE SIZE: 60.3 acres

LOCATION: North of 111th Street South and west of Hydraulic

PROPOSED USE: Sand and gravel extraction



BACKGROUND: The MAPC considered this case at their January 27, 2000 hearing and received information from a neighboring property owner regarding problems with the proposed sand and gravel extraction and its impact on the availability of ground water in the area. Therefore, the MAPC voted to defer the case for four weeks to allow time to follow up on the information provided by the neighboring property owner. At the February 24, 2000 MAPC hearing, a representative from the Kansas Division of Water Resources will appear before the MAPC to provide information ground water impacts of this case.

The applicant is requesting a Conditional Use to allow sand and gravel extraction on a 60.3 acre unplatted tract located north of 111th Street South and west of Hydraulic. The subject property is zoned "RR" Rural Residential.

The attached site plan shows that the proposed sand and gravel extraction operation would create a 40.2 acre lake. The operational plan shows a fence east and south of the operation, with the remainder of the site to be enclosed by an existing hedge row. Storage of equipment and material would not be permitted within 100 feet of Hydraulic or 50 feet of any property line. The redevelopment plan shows that the portion of the site east of the lake is proposed to be platted as 11 residential lots along a frontage road to Hydraulic.

The subject property is within a zone likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Also, the most recent information pertaining to wetlands from the Sedgwick County Soil Conservation District and Soil Survey of Sedgwick County indicates that the site does not contain soil commonly associated with wetlands.

All of the property surrounding the site is zoned "RR" Rural Residential and is used for agriculture with farm-related single family residences. The Cowskin Creek and the Kansas Turnpike are located west of the property. The nearest residences not owned by the applicant are located approximately 300 feet north and 600 feet south of the site.

CASE HISTORY: The site is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	"RR"	Agriculture
SOUTH:	"RR"	Agriculture
EAST:	"RR"	Agriculture
WEST:	"RR"	Agriculture

PUBLIC SERVICES: This site has access to Hydraulic, a two-lane paved section line road. Hydraulic has current traffic volumes of 725. The 2030 Transportation Plan estimates that these volumes will increase to 1,422. Municipal services are not available to serve this site. On-site water and sewer services will be required to serve this site due to its remote location.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Agriculture" (20 acre minimum lot size), which accommodates agricultural operations as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural

uses. In the "Agriculture" category, subdivision into multiple lots less than 20 acres, as proposed in the redevelopment plan, generally should be developed through cluster provisions that reserve land for agricultural uses or open space, which is proposed by the applicant with 11 single family lots on 60.3 acre site with a 40.2 acre lake reserved for open space.

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

1. The applicant shall submit a operational plan for the area to be excavated. 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.
2. In order to assist in the enforcement of the operational plan for this extraction use, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.
3. Adjacent to the east and south property lines of the application area, as indicated on the approved operational plan, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation. The fence along the east and south property lines and the existing hedge row along the north, west, and south property lines shall be maintained at the locations depicted on the approved 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:

- A. A 48-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
- B. A 48-inch-high solid metal or solid masonry fence with 3 or more strands of 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° facing away from the excavation.

4. 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 Wichita-Sedgwick County Health Department.

5. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no more steep than five horizontal to one vertical.
6. 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.
7. All of the area included within the fenced sand extraction operation shall be graded in accordance with a plan submitted to, and approved by, the Sedgwick County Bureau of Public Works.
8. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel, prior to the commencement of any sand extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
9. 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.
10. 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.
11. To minimize blowing soil in this area, overburden shall not be removed more than six months 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.
12. 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.
13. 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 shall be removed from the subject site.
14. The approval of the Conditional Use is for a period not to exceed seven years from the date of approval by the MAPC and/or 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. As part of the required operational plan, the applicant shall divide the site into 2 distinct areas for the purpose of showing phased excavation over time. The plan would show which area was to be excavated and at what time.

15. Hours of operation for the sand extracting business shall be limited to 6:00 a.m. to sunset.
16. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
17. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of health and Environment rules and regulations.
18. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
19. Any on-site storage of fuels or chemical must be approved by the Wichita Sedgwick County Health Department.
20. Drainage plan needs to be submitted and approved by the Bureau of Public Works prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with a plan submitted to, and approved by, the Sedgwick County Bureau of Public Works.
21. 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 to as to minimize blowing dust.
22. Any violation of conditions attached shall declare the conditional use permit null and void.

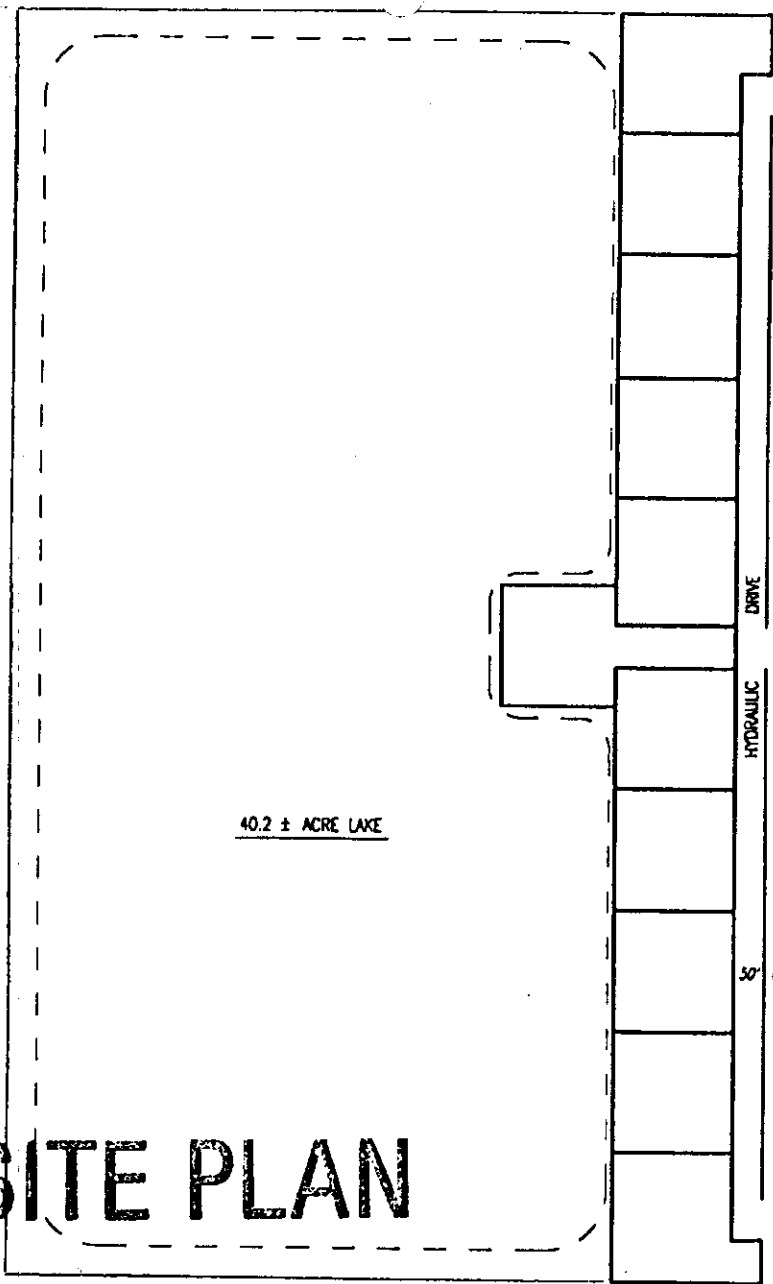
This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is zoned "RR" Rural Residential, which accommodates very large lot, single-family residential development in areas where a full range municipal facilities and services are not available. All of the property surrounding the site is zoned "RR" Rural Residential and is used for agriculture with farm-related single family residences. The Cowskin Creek and the Kansas Turnpike are located west of the property.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently used for agriculture and this use could continue given the exclusively agricultural character of the area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized by the various setback requirements and operational restrictions required as conditions of approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Wichita/Sedgwick County Comprehensive

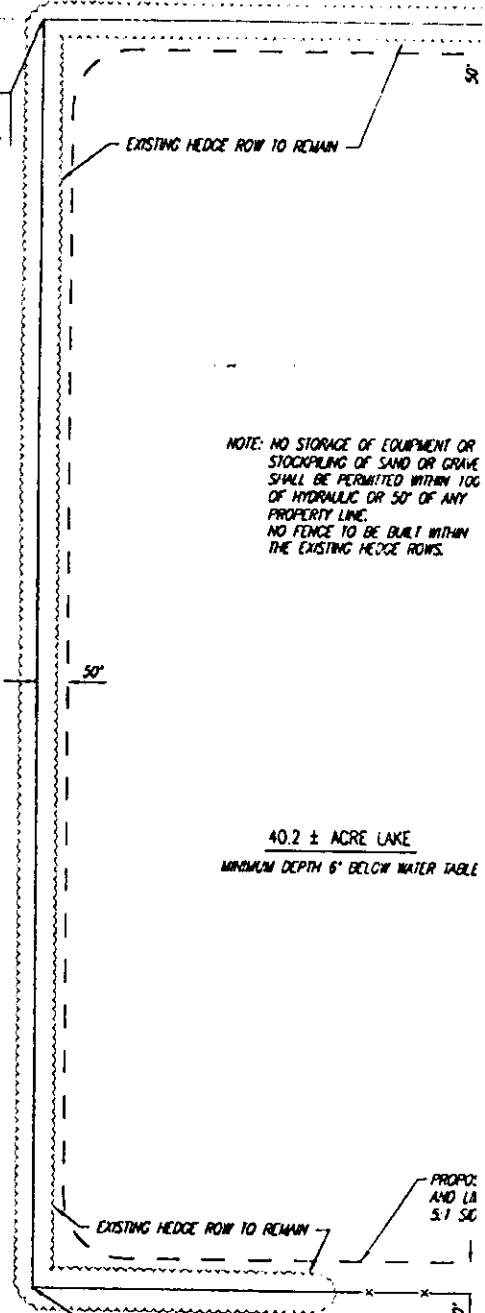
Plan identifies this area as appropriate for "Agriculture" (20 acre minimum lot size), which accommodates agricultural operations as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Agriculture" category, subdivision into multiple lots less than 20 acres, as proposed in the redevelopment plan, generally should be developed through cluster provisions that reserve land for agricultural uses or open space, which is proposed by the applicant with 11 single family lots on 60.3 acre site with a 40.2 acre lake reserved for open space.

5. Impact of the proposed development on community facilities: The development of this property as a sand and gravel extraction operation should not have a significant impact on community facilities. This operation does not generate significant traffic. On-site water and sewer services will be required to serve this site due to its remote location.

SITE PLAN



NW Corner, E 1/2,
SE 1/4 of Section 28,
T29S, R1E of the 6th P.M.



NOTE: NO STORAGE OF EQUIPMENT OR
STOCKPILING OF SAND OR GRAVE
SHALL BE PERMITTED WITHIN 100'
OF HYDRAULIC OR 50' OF ANY
PROPERTY LINE.
NO FENCE TO BE BUILT WITHIN
THE EXISTING HEDGE ROWS.

APPROVED 2-24-00 BY SK

REDEVELOPMENT PLAN

CAIN CONDITIONAL USE

OPERATIONAL