



**Wichita-Sedgwick County Metropolitan Area Planning Department**

May 19, 2008

Virginia Masters  
7711 S Greenwich Rd  
Derby, KS 67037

Lyle Schuette  
15001 East 79<sup>th</sup> St., South  
Wichita, KS 67037

**RE: CON2008-00011** - County Conditional Use to permit soil extraction on 30 acres located at 11100 east 47th Street South (NW corner of 47th Street and Greenwich).

Dear Ladies and Gentlemen:

At its regular meeting on **May 14, 2008**, the Board of County Commissioners considered the above captioned request. The action of the BoCC was to **APPROVE** the request subject to the conditions stated in the enclosed resolution.

If you have any questions concerning this case please contact our office at 268-4421.

Sincerely,

A handwritten signature in cursive script that reads 'Dale Miller'.

Dale Miller  
Current Plans Manager  
Current Plans Division

DLM:mc

Enclosure

Copies to:

Benchmark Land Survey, 416 S. Market, Wichita, KS 67202  
Kevin Keen, 11005 E. 47<sup>th</sup> St., South, Wichita, KS 67037  
BoCC V, Gwen Welshimer, Mail Stop County, Room 320  
County Manager, Bill Buchanan, County Room 343  
Bob Parnacott, County Law, Mail Stop Room 359  
Glen Wiltse County Code Enforcement, 1144 S Seneca, Wichita, KS 67213  
Jim Weber County Public Works, 1144 S Seneca, Wichita, KS 67213  
City Hall • 10th Floor • 455 North Main • Wichita, Kansas 67202-1688

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[www.wichita.gov](http://www.wichita.gov)

RESOLUTION NO. 75-08

A RESOLUTION ESTABLISHING CONDITIONAL USE 2008-00011 TO PERMIT "MINING OR QUARRYING (TOP SOIL REMOVAL)" ON PROPERTY ZONED RR RURAL RESIDENTIAL ("RR"), LOCATED AT THE NORTHWEST CORNER OF GREENWICH ROAD AND 47<sup>TH</sup> STREET SOUTH, LOCATED WITHIN THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY 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 BOARD OF COUNTY COMMISSIONERS  
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 V-D of the Wichita-Sedgwick County Unified Zoning Code, a conditional use amendment for the land legally described herein is approved as follows:

**CASE No. CON2008-00011**

A Conditional Use to permit "mining or quarrying (top soil removal)" on property legally described as:

The East 990 feet of the South 1/2 of the Southeast 1/4, except the South 60 feet & the East 50 feet for Roads, Section 16, Township 28 South, Range 3 West fo the 6<sup>th</sup> P.M., Sedgwick County, Kansas. Generally located at the northwest corner of south Greenwich Road and 47<sup>th</sup> Street South.

**SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Conditional Use is approved for the removal of top soil. Removal of soil shall proceed in accordance with the approved site plan.
2. The Conditional Use permit authorizing top soil removal shall be effective for 10 years from the final approval date.
3. Not more than one acre of ground may be roto-tilled and top soil removed at any one time. Once the soil had been removed from the one acre working area it must be reseeded, or some other form of erosion control acceptable to the Director of County Code Enforcement must be established, prior to beginning roto-tilling or soil removal on the next acre. A maximum of five acres of surface area may be mined in any given calendar year. The owner of the property shall be responsible for minimizing blowing dust from the site.
4. Top soil may be removed up to a depth of 10 inches however there must be four inches of topsoil remaining to permit reseeded.
5. Four and one-half acres around the existing house and lagoon shall be identified on the site plan and set aside. Mining is not allowed within the four and one-half acres surrounding the home.
6. Mining is to begin east of the creek, and proceed south to north. Once mining is complete on the east side of the creek, mining may begin on the west side of the creek, south to north.

7. A maximum of ten daily truck trips carrying mined top soil are permitted. A truck leaving and returning to the site is counted as one trip.
8. Unless adjusted or amended otherwise, a large-lot single-family residence is the end use of the site.
9. The applicant shall maintain the existing pipe and four-strand wire fence that surrounds the perimeter of the site today.
10. The following *Wichita-Sedgwick County Unified Zoning Code* Supplementary Use Regulations found in the Article III, Section III-D.6.gg shall also be followed: (7), (8), (11), (12), (13), (14), (16), (17), (18), (19), (20), (21), (22) and (23).
11. A commercial type driveway shall be installed that meets the location requirements of the access management policy.
12. In addition to other applicable enforcement remedies, if the Zoning Administrator finds that there is a violation of any of these conditions of approval, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

**SECTION II.** That upon the taking effect of this Resolution, the notation of such zone change 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.

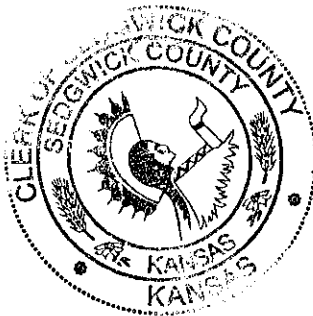
**SECTION III.** That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

Commissioners present and voting were:

DAVID M. UNRUH	<u>aye</u>
TIM R. NORTON	<u>absent</u>
KELLY PARKS	<u>aye</u>
GWEN WELSHIMER	<u>aye</u>
THOMAS G. WINTERS	<u>aye</u>


DATED this 14<sup>th</sup> day of May 2008.

BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS

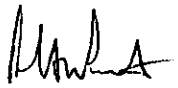


Thomas G. Winters  
Thomas G. Winters, CHAIRMAN  
Third District

ATTEST:

  
\_\_\_\_\_  
DON BRACE, County Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ROBERT W. PARNACOTT,  
Assistant County Counselor

# AGENDA ITEM REQUEST

**Proposed Agenda Item:** CON2008-00011 – Conditional Use to permit soil extraction on 30 acres located at the northwest corner of 47<sup>th</sup> Street South and Greenwich Road (11100 east 47<sup>th</sup> Street South) (District 5)

**Presented By:** John L. Schlegel, Director of Planning *JLS*

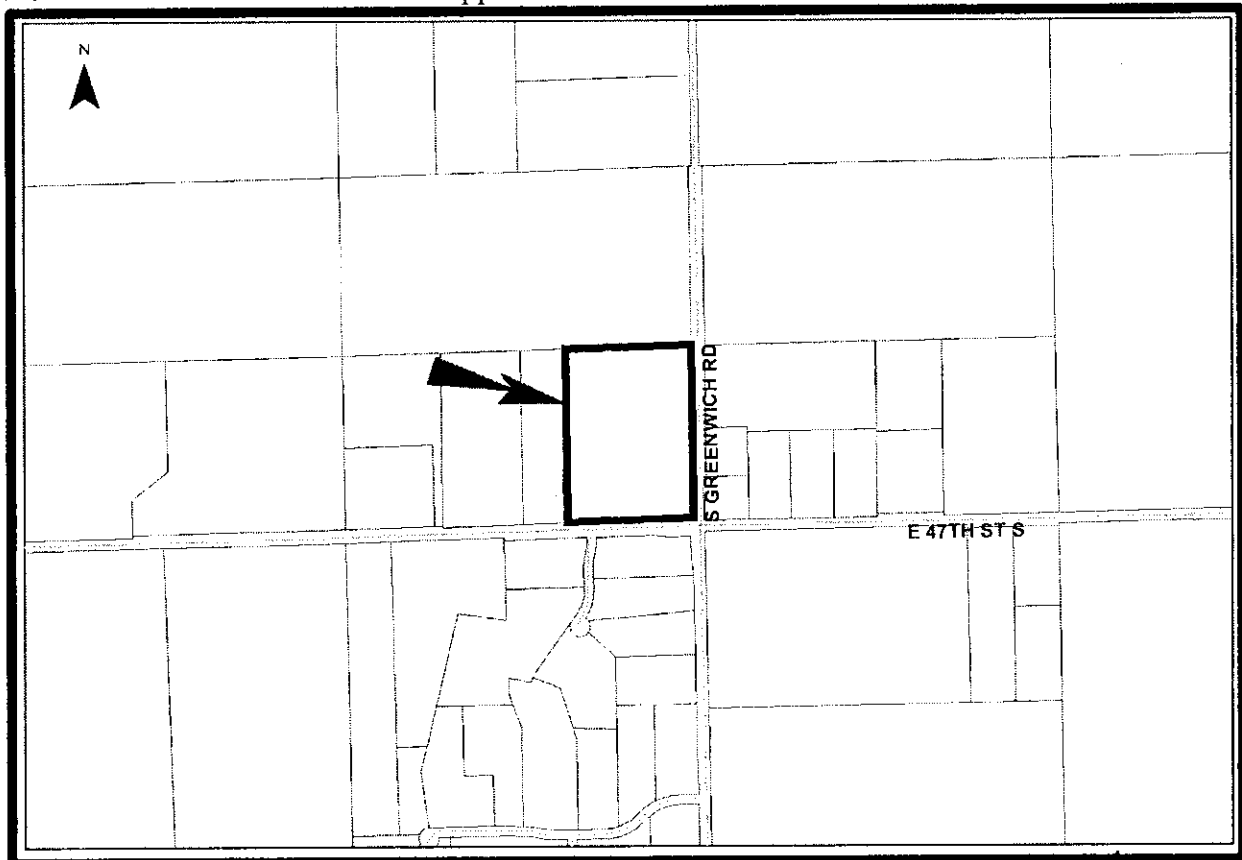
**Recommended Action:** Approve the Conditional Use, subject to the conditions recommended by the Metropolitan Area Planning Commission (MAPC), adopt the findings of the MAPC and authorize the Chairman to sign the resolution.

**Proposed Agenda Date:** May 14, 2008

**Outside Attendees:** Lyle Schuette (contract purchaser / co-applicant)

**Multimedia Presentation:** Powerpoint

**Donations:** Not applicable



**Background:** The contract purchaser of the 30.4 acres located at the northwest corner of 47<sup>th</sup> Street South and Greenwich Road seeks a Conditional Use to allow top soil mining. The acreage is currently zoned RR Rural Residential ("RR"). Mining is permitted in the RR district with an approved Conditional Use. The site is currently developed with a large-lot single-family residence served by a lagoon, a barn and a corral located in the southeastern corner of the property. The balance of the site is a fenced grass pasture. The site is unplatted, however, the applicant's site plan notes the existence of a "floodway reserve agreement" (film 411, page 615) that encumbers the center one-third to one-half of the site. The property is currently fenced with a pipe and four-strand wire fence. The berm shown on the proposed site plan is to be deleted.

The applicant proposes to excavate no more than one acre of top soil at a time, and the excavations will not exceed 10-inches deep. The site would be worked, east of the creek from the south to the north, and then, west of the creek from the south to the north. He indicates that he uses a tractor mounted roto-tiller to dig up the soil and then loads the material onto his one truck. He also indicates he will leave four inches of top soil as a seed bed for the grass that he plans to plant to stabilize excavated areas. No more than one acre at a time will be mined, with each acre being reseeded after excavation. The applicant states that he will not excavate more than five acres a year and will not exceed 10 truck trips a day from the site. He may excavate less area in a given year and may have less than 10 truck trips per day. The applicant indicates that he will disc excavated areas to minimize blowing dust.

The applicant's site plan establishes a limit of excavation line at 20 feet from the property line. The site appears to have three access points, two on Greenwich Road (250 feet and 850 feet from the intersection) and one on 47<sup>th</sup> Street South (275 feet from the intersection). The site has approximately 16 feet of fall from the lot's southeast corner to the center of the site at the creek and about 13 feet of fall from the lot's northwest corner to the center of the site. The Sedgwick County soils map indicates the soil on this property is classified as Irwin silty clay loam. These soils are typically found on uplands susceptible to erosion.

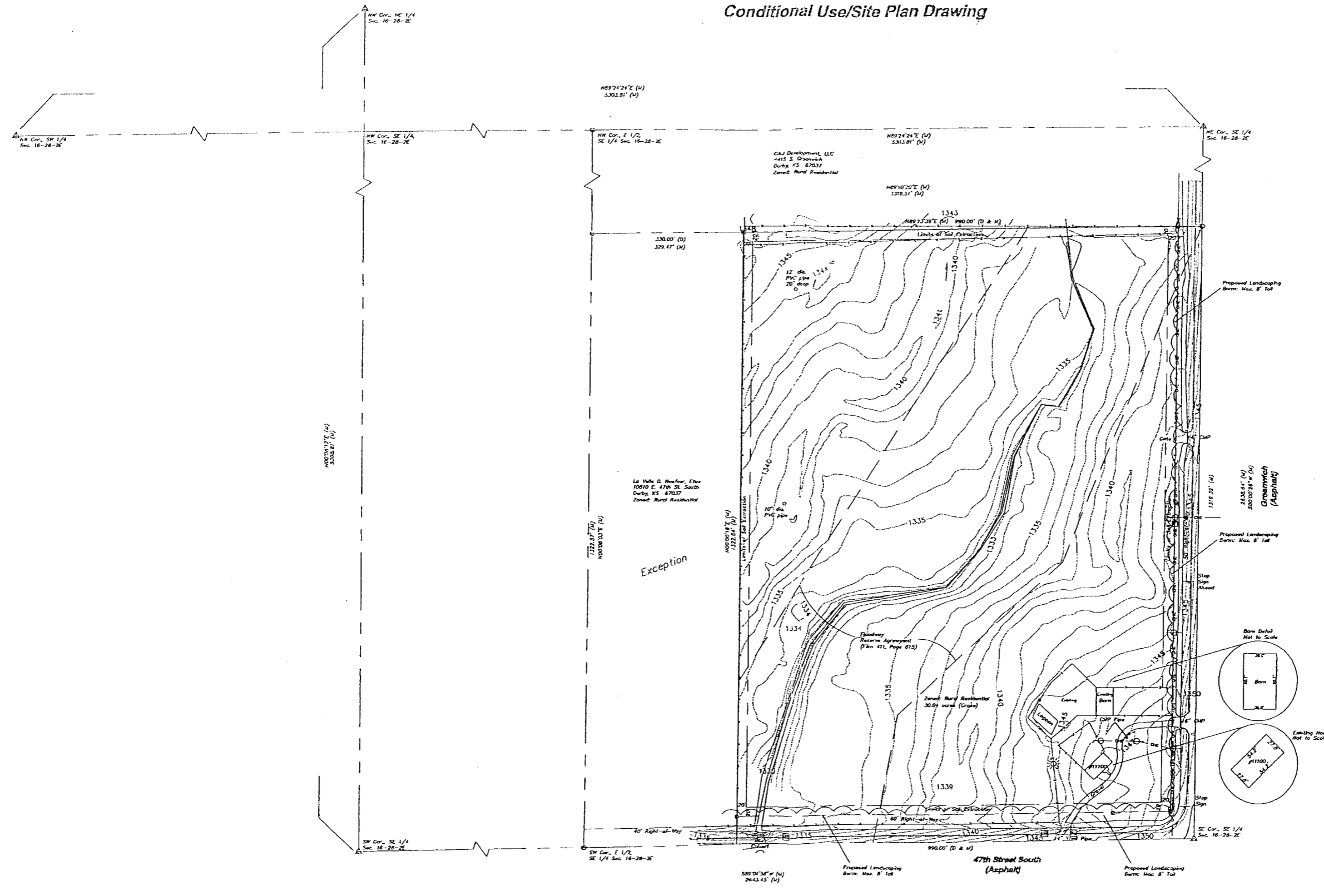
The applicant will be required to set aside 4.5 acres around the existing home to meet minimum area standards for homes utilizing lagoons, and to preserve the integrity of the home as a residential use separate from the soil extraction use.

Based upon the applicant's expectation of extracting between one and five acres a year, and after setting aside 4.5 acres for the home site, the lagoon and the creek bottom, it could take approximately 25 years (at one acre per year) or as few as five years (at five acres per year) to complete excavation. When excavation has been completed, the site is to continue as a large-lot residence.

On April 10, 2008, the MAPC voted 12-0 to recommend approval of the request, subject to the conditions recommended in the staff report. At least two appeals of the application, equaling 17.81 percent, have been received, requiring the Board of County Commissioners review of the request. Concerns expressed either at MAPC or in phone conversations with staff include: ground and surface water contamination; unsightliness of the extraction process; safety hazard and mosquito breeding.



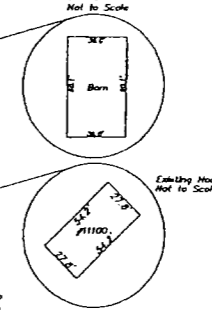
# Conditional Use/Site Plan Drawing



- NOTES:**
- 1) No live tree removal
  - 2) Contour elevations are existing NAVD 88 Datum
  - 3) 10" Maximum Proposed Top Soil Removal
  - 4) Proposed Maximum Top Soil Removal of 10 Truck Loads per Day
  - 5) Proposed Maximum Top Soil Removal of 5 acres (Surface Area) per Year
  - 6) Maximum of 1 acre of Top Soil (surface area) will be removed before reseeding
  - 7) 4" of Top Soil will be left after Top Soil extraction
  - 8) 1 acre work site will be disced to help alleviate dust blowing
  - 9) All excavated areas will be reseeded in grass

**FLOOD NOTE:** By graphic plotting only, this property is in Zone (A) of the Flood Insurance Rate Map, Community Flood No. 280135502E, which bears an effective date of 1/25/2007, and is not in a Special Flood Hazard Area. By Linsphere Corp dated March 1, 2008, to the National Flood Insurance Program (NFIP-638-8820) we have learned this community does currently participate in the program. No field surveying was performed to determine the zone and an elevation certificate may be needed to verify this determination or apply for a variance from the Federal Emergency Management Agency.

Zone "X" represents areas to be determined to be outside the 0.2% annual chance floodplain.



**LEGEND:**

(M) - MEASURED OR CALCULATED FROM MEASUREMENT	⊠ - MARKER
△ - FOUND 3/8" REBAR (ORIGIN UNKNOWN)	⊙ - WELL HEAD
○ - FOUND 1/2" IRON PIPE (ORIGIN UNKNOWN)	⊖ - SIGN (As Noted)
○ - FOUND 3/4" IRON PIPE (ORIGIN UNKNOWN)	⊕ - POWER POLE
○ - FOUND 1/2" IRON PIPE (ORIGIN UNKNOWN)	⊗ - TELEPHONE RISER
● - SET 1/2" REBAR (CLS #148)	☀ - LIGHT POLE
CMP - CORRUGATED METAL PIPE	⊳ - CUT WIRE
— D/E — - OVERHEAD ELECTRIC LINE	
— — — - FENCE	

State of Kansas }  
 County of Sedgewick } SS

I, Chad R. Abbott, L.S. #340 do hereby certify that this drawing is a true representation of a Conditional Use Drawing performed by me or under my direct supervision and that I am a duly licensed Land Surveyor in the State of Kansas.

The East 990 feet of the South half of the Southwest corner EXCEPT South 60 feet and East 30 feet for roads, Section 16, Township 28 Range 3 East of the 6th P.M., Sedgewick County, Kansas.

Date of Survey: January 11, 2008  
 Date of Preparation: March 3, 2008

Chad R. Abbott, L.S. #340

<b>JOB DESCRIPTION:</b> Conditional Use	
PREPARED FOR: Lyle Schutte 15001 E. 79th South Darcy, KS 67037	
<b>JOB LOCATION:</b> 47th South & Creech	<b>DATE OF PREPARATION:</b> 1/30/08
<b>JOB NUMBER:</b> 5078	<b>SHEET 1 OF 1</b>

