

ORDINANCE NO. 2268

**AN ORDINANCE AMENDING A SPECIAL USE PERMIT GRANTED BY
ORDINANCE 1071 AND ORDINANCE 1100 FOR A SAND DREDGING
OPERATION AND SAND PLANT OPERATION TO KAW SAND
COMPANY, INC AND PENNY'S CONCRETE, INC. ON LAND GENERALLY
LOCATED NEAR 79TH & GARDNER ROAD WITHIN THE
CITY OF DE SOTO, JOHNSON COUNTY, KANSAS.**

WHEREAS, proper application has been made by Kaw Sand Company, Inc. and Penny's Concrete, Inc. (hereinafter referred to as "Permittee") to amend the Special Use Permit granted by Ordinance 1071 (whose legal description was corrected by Ordinance 1100), to operate a sand dredging operation and sand plant operation on property within the City of De Soto generally located near 79th & Gardner Road; and

WHEREAS, the Permittee now comes requesting a reduction in the pit setback for a portion of the property located east of Gardner Road and along the north line of property owned by the City of Olathe from 350 feet to 50 feet; and

WHEREAS, the Planning Commission of the City of De Soto, Kansas did hold a public hearing after proper publication of notice and proper service of notice upon property owners within 200 feet of the property which shall be subject to the requested Special Use Permit; and

WHEREAS, City Staff and the Governing Body do not believe the requested amendment substantially changes the Special Use Permit, thereby requiring review of Permittee's entire operations pursuant to the City's current Zoning Regulations, given that the property owner affected by the reduction in the setback (i.e. the City of Olathe) is in agreement with, and supportive of, the change in the setback; and

WHEREAS, the Planning Commission recommended that the requested amendment to the Special Use Permit be approved.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DE SOTO, KANSAS:

Section 1. Basis of Decision. That the Governing Body, in making its decision on the application for amendment of the special use permit, considered the evidence forwarded to it by the City Planning Commission, as well as the following criteria (as applied to the requested amendment) contained in the City's Zoning Regulations and as required by Kansas law:

- A. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.
- B. The nature and intensity of the proposed change in use and its compatibility with the zoning and uses of nearby properties.
- C. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the proposed amendment, or present parking problems in the vicinity of the property.
- D. The environmental impacts that the proposed amendment would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm.
- E. The extent to which the proposed amendment may detrimentally affect nearby property.

- F. The relative gain (if any) to public health, safety, & welfare from denial of the proposed amendment as compared to the hardship imposed upon the special use applicant from denial of the amendment.
- G. Consistency of the proposed amendment with the Comprehensive Plan, Utilities and Facilities Plans, Capital Improvement Plan, Area Plans, ordinances, policies, and applicable City Code of the City of De Soto and the general safety, health, comfort and general welfare of the community.
- H. The recommendation of professional staff.

Section 2. Conditions. The Special Use Permit for a sand dredging operation and sand plant operation use is hereby amended subject to the following conditions:

All terms and conditions defined and listed in Ordinance 1071, for property located as defined in Ordinance 1100, shall remain in full force and effect except for Condition S, which shall be amended to read: “Construction and maintenance of the pits shall be such that the top of each pit shall not be any closer than 50 feet from the North property line of property now owned by the City of Olathe.”

Section 3. Permit Revocation. The effectiveness of the Special Use permit (as so amended) is conditioned upon the strict compliance by the Permittee with the provisions of the Permit and in the City of De Soto Zoning Regulations. Should Permittee fail to comply with any term or provision thereof and shall such failure continue following notice from City to Permittee specifying the breach and actions to be taken to cure the same, then, at the direction of the City Administrator, Permittee will be notified that the Special Use Permit (as amended) is revoked and all uses permitted thereby on the Property must immediately cease. Reinstatement following default may only be effected by action of the Governing Body. Wholly separate and apart from the specific conditions of the City’s Zoning Regulations are the City’s interest and duties to protect the public health, safety and welfare. Permittee agrees that this Ordinance shall not operate or be construed to impede or impair the lawful function of City government operation in this area.

Section 4. Effective Date. This ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law, which will also be the effective date for purposes of the amendment to the special use permit herein granted.

PASSED AND APPROVED BY THE GOVERNING BODY THIS 21st day of October, 2010.

(Seal)

David R. Anderson, Mayor

ATTEST:

Lana R. McPherson, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney