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FILED
APP. DOCKET NO.

AUG 18 11 00 AM '99

CLERK OF DISTRICT COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

MAURICE L. CASTER d/b/a
CASTER EXCAVATING,

Plaintiff,

v.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS, et al.,

Defendants.

Case No. 98-C-3245

JOURNAL ENTRY OF JUDGMENT

NOW on this August 18, 1999, this cause comes before the Court for trial and judgment. Plaintiff appears by Stephen M. Stark and Stephen E. Robison of Fleeson, Gooing, Coulson & Kitch, L.L.C. Defendants appear by Roger D. Hughey and Patrick B. Hughes of Adams & Jones, Chartered. There are no other appearances.

The Court makes the following findings of fact, conclusions of law, and enters judgment. The following findings of fact are based on the agreement of the parties to this case for the purposes of this controversy only. They are not intended to be preclusive in other cases or controversies, without regard to whether such cases or controversies are already commenced or commenced in the future.

1. The claims of Plaintiff in the Petition are dismissed with prejudice.
2. This action concerns real estate described as:

The South 988.9 feet of that part of the Northeast Quarter (NE/4) of Section Twelve (12), Township Twenty-six (26) South, Range One (1) East lying east of the C.R.I.P. Railroad right-of-way, subject to road easement on the east 30 feet thereof, Sedgwick County, Kansas,

commonly described as 6609 North Woodlawn, Wichita, Kansas, herein called the "Subject Property."

3. The east 850 feet of the Subject Property is zoned for Limited Industrial usage.
4. The Subject Property, except the east 850 feet thereof, is zoned for Rural Residential usage.
5. Plaintiff has conducted and is continuing to conduct a metal recycling business operation on both portions of the Subject Property.
6. Plaintiff has systematically dumped construction debris in large areas of the Rural Residential portion of the Subject Property.
7. Plaintiff's dumping activities constitute a landfill, in violation of Rural Residential zoning.
8. Plaintiff's metal recycling operations violate Limited Industrial zoning.
9. Plaintiff has expressed an intention to continue to conduct his operations on the Subject Property unchanged but for an order of this Court and/or agreement with Defendants.
10. The Court should enjoin Plaintiff's landfill activities on the Rural Residential portion of the Subject Property.
11. The Court should enjoin Plaintiff's metal recycling business operations on the Subject Property effective at a reasonable time, which the Court determines to be September 15, 1999.

12. Plaintiff and Allie M. Caster have executed and acknowledged a Declaration of Restrictive Covenants and recorded the same this day in the Office of the Register of Deeds of Sedgwick County, Kansas, in which document the Subject Property is divided into two functional tracts, being the "LI Property," described as:

The South 534 feet of the East 830 feet of the Northeast Quarter of Section 12, Township 26 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas,

and the "RR Property," described as all of the Subject Property except the LI Property.

13. The Court should order Plaintiff to comply with the above-referenced Restrictive Covenants and enjoin him from violating them.

NOW THEREFORE, the Court: (1) orders Plaintiff to refrain from conducting any metal recycling activities on the Subject Property, (2) orders Plaintiff to refrain from dumping construction debris on the Subject Property, (3) does not order Plaintiff to excavate previously-dumped and buried construction debris, and (4) orders Plaintiff to comply with the following terms:

A. Effective September 15, 1999, the LI Property shall be used exclusively for any or all of the following purposes:

Parking, storing, servicing, maintaining and washing vehicles and mobile equipment used only in Plaintiff's business activities of excavating, demolition and/or construction, including trucks, trailers, forklifts, backhoes, loaders and a crawler loader;

Parking for Plaintiff's employees and customers during regular business hours;

Fabrication of items for use only in Plaintiff's business activities of excavating, demolition and/or construction, including dumpsters, replacement or repair items for equipment, and construction materials, provided such fabrication is conducted inside presently-existing buildings, to the extent reasonably practicable;

Storage of construction materials for use only in Plaintiff's construction business, including concrete forms, steel beams, sand, rock, gravel and topsoil;

Business office for Plaintiff's business activities of excavating, demolition and/or construction; and

Any other uses allowed as a by-right under LI (limited industrial district) zoning, as prescribed by the Unified Zoning Code for Wichita and Sedgwick County, as it is now in force or as it may hereafter be amended (the "Code"), subject to Paragraph C below.

B. The RR Property shall be used exclusively for any or all of the following purposes:

The existing radio broadcasting antenna and the existing support structure;

The existing sewage lagoon serving the LI Property, covering:

That part of the Northeast Quarter of Section 12, Township 26 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, described as: commencing at the Southeast corner of said Northeast Quarter; thence North on the East line of said Northeast Quarter with an assumed bearing of North 0°38'33" West, a distance of 534.00 feet; thence South 89°34'25" West, parallel with the South line of said Northeast Quarter, a distance of 559.50 feet to the **Point of Beginning**; thence South 89°34'25" West, a distance of 85.00 feet; thence North 0°38'33" West, a distance of 115.00 feet; thence North 89°34'25" East, a distance of 85.00 feet; thence South 0°38'33" East, a distance of 115.00 feet to the **Point of Beginning**

and a fenced radius of 50 feet outside thereof;

Construction of an earthen berm, including the expansion of the existing berm, provided that the material therefor shall be exclusively earth and clean rubble, and that before January 1, 2001, all portions of any berm facing North shall be covered with grass or other landscaping; and

Rural Residential purposes.

C. Without limiting the generality of the foregoing, the following uses and activities are prohibited on the Subject Property:

After September 15, 1999, receiving any scrap metal or keeping or permitting to be kept any scrap metal received after September 15, 1999;

Excavating, except when necessary for construction of the berm permitted by paragraph B above, a residence or other permitted improvement and such construction is diligently completed;

General Manufacturing, except for the fabrication permitted by paragraph A above;

Metal recycling, except that it shall be permitted on the 1st Property and on the Eastern portion of the RR Property on which metal recycling activities were conducted in January, 1999, during the hours of 8:00 a.m. until 5:00 p.m., Mondays through Fridays except Federal Holidays, until September 15, 1999, which date shall extend to the first date electrical power of sufficient capacity to operate Plaintiff's metal recycling equipment, scales, office and maintenance shop is installed by the applicable public utility company to Lot 7, North Industrial Park 4th Addition to Wichita, Sedgwick County, Kansas, as evidenced by the utility company actuating transformer boxes on Lot 7, but no later than November 15, 1999.

E. No use or activity that is in violation of the Code or that is out of character with ordinary and customary standards and practices for a permitted use to such an extent that the use or activity is obnoxious, dangerous, offensive or a nuisance due to odor, dust, smoke, noise, vibration or other similar causes shall be carried on or permitted on the Subject Property.

F. Plaintiff shall not permit any Hazardous Materials to be produced, stored, dumped or generated on the Subject Property, except: (i) the storage of petroleum products for use in an Owner's vehicles or equipment on the LI Property, (ii) the use of one parts-cleaning device operated on the LI Property in compliance with all applicable laws, or (iii) a use in compliance with Governmental Requirements of general application.

G. No inoperable vehicle shall be stored within sight from the street or any neighbor on the Subject Property. For purposes of this section, an "inoperable vehicle" shall mean any vehicle which has not been driven under its own propulsion or has not been moved for a period of one month or longer, except for a vehicle owned by Plaintiff before becoming inoperable and undergoing or awaiting repair within a reasonable time.

IT IS SO ORDERED.

APPROVED:

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JUDGE