

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 08072** requested by the Director of Planning, to amend Title 27 of the Lincoln Municipal Code related to provisions for excavation and stone milling.

STAFF RECOMMENDATION: Approval.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 01/28/09
Administrative Action: 01/28/09

RECOMMENDATION: Approval (7-0: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Sunderman and Taylor voting 'yes'; Larson and Partington absent).

FINDINGS OF FACT:

1. This is a request by the Director of Planning to amend Title 27 of the Lincoln Municipal Code to adjust the current conditions of review and approval for soil mining special permits. Specifically, this text amendment allows excavation and stone milling to be approved by special permit in the AG, AGR, R-3, B-2, H-2, H-3, H-4 and I-2 zoning districts, and provides more comprehensive conditions governing said use. The amendment provides consistency in the varied terminology currently used to describe mining and crushing activities.
2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.3-4, concluding that this amendment should substantially mitigate impacts and improve the operation and enforcement for this type of operation and result in better standards for excavation and stone milling (formerly known as soil mining). The staff presentation is found on p.5.
3. Proposed amendments to the similar text amendment to the Lancaster County Zoning Resolution by a group of neighbors who have generally been opposed to the provisions and enforcement of soil mining special permits during deliberation of past applications are found on p.8-13. Three of the neighbors who worked on the proposed amendments testified in support (p.5). They continue to have concerns about enforcement of reclamation.
4. Testimony in opposition is found on p.5-6 opposed to the requirement for a monitoring well as a blanket condition on all special permits. There is also concern about only being allowed to operate during daylight hours. There needs to be some flexibility based on weather conditions, etc.
5. Staff does not object to the amended language proposed by the neighbors but would prefer the language proposed by staff be adopted.
6. On January 28, 2009, the Planning Commission agreed with the staff recommended language and voted 7-0 to recommend approval (Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Sunderman and Taylor voting 'yes'; Larson and Partington absent).
7. On January 28, 2009, the Planning Commission also voted 7-0 to recommend approval of the associated text amendment to the Lancaster County Zoning Resolution (County Change of Zone No. 08071), which is scheduled for public hearing and action by the Lancaster County Board of Commissioners on Tuesday, March 3, 2009, at 9:30 a.m.

FACTSHEET PREPARED BY: Jean L. Preister

DATE: February 23, 2009

REVIEWED BY: _____

DATE: February 23, 2009

REFERENCE NUMBER: FS\CC\2009\CZ.08072 text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for JANUARY 28, 2009 PLANNING COMMISSION MEETING

PROJECT #: City Change of Zone No. 08072 and County Change of Zone 08071

Note: This is a combined staff report for related items. This report contains a single background and analysis section for all items.

PROPOSAL: Text amendment to change the provisions for soil mining in the City and County zoning. This will set new conditions in the Special Permit provisions, 27.63.160 in the City and 13.001 (14) in the County and related district references.

LOCATION: The Lincoln Municipal Code and the Lancaster County Zoning Resolution relative to the above districts

CONCLUSION: This proposal would adjust the current conditions of review and approval of soil mining special permits. This should result in better standards for soil mining and resolve many current issues.

RECOMMENDATION:	Approval of the attached text
------------------------	-------------------------------

GENERAL INFORMATION:

COUNTY CHANGE OF ZONE NO. 08071, amending the Lancaster County Zoning Resolution by amending Article 13, Special Permit, Section 13.001(14), to allow excavation and stone milling to be approved by special permit in the AG and AGR zoning districts and to provide conditions governing said use; and to add Section 13.017 relating to enforcement and revocation of special permits.

CITY CHANGE OF ZONE NO. 08072, amending Title 27 of the Lincoln Municipal Code relating to zoning by amending Section 27.07.040, 27.09.040 and 27.49.040 to add excavation and stone milling as a permitted special use in the AG, AGR, and I-2 zoning districts, respectively; by amending Section 27.63.160 to allow excavation and stone milling to be approved by special permit in the AG, AGR, R-3, B-2, H-2, H-3, H-4, and I-2 zoning districts and to provide conditions governing said use; amending Sections 27.15.040, 27.31.050, 27.35.020, 27.41.040, 27.43.040, 27.45.030, 27.47.030, and 27.51.030 to provide consistency in the terminology used in each section relating to excavation and stone milling; by repealing Sections 27.63.310 and 27.63.360 in their entirety; and repealing Sections 27.07.040, 27.09.040, 27.15.040, 27.31.050, 27.35.020, 27.41.040, 27.43.040, 27.45.030, 27.47.030, 27.49.040, 27.51.030, and 27.63.160 of the Lincoln Municipal Code as hitherto existing.

COMPREHENSIVE PLAN SPECIFICATIONS:

The community should capitalize upon both the environmental and economic benefits that the natural resources features provide. Pg 51

Examine ways of simplifying the development regulations and supporting documentation to encourage a broader understanding of planning concepts and their relevance to neighborhoods' and businesses' continuity and viability. Pg 152

ANALYSIS:

1. The past several years have seen an increase in the number of applications received by the Planning Department for the excavation and removal for sale of soil for road-building and other construction activities. The locations of these sites surround the city, with some concentration to the north, due to contracts to improve Interstate 80. Mining and the extraction of sand, gravel and soil is currently allowed within the City and County by Special Permit with conditions. These conditions typically deal with filling requirements, grading, erosion control, groundwater concerns, vehicle storage and entrance, and other issues.
2. Over the past couple of years, rural residents have expressed concerns that some of the standards and conditions of approval are inadequate, and enforcement is lacking. In response, Planning Commissioners and Planning staff discussed the issue with the City Council and County Board, and staff organized meetings with various stakeholders, including other departments and agencies, mining contractors, and interested neighbors. The meetings were facilitated, and were meant to capture the issues and areas of consensus.
3. The Planning Department prepared a draft list of suggested improvements to the current mining standards and enforcement policies. The Planning Commission was briefed on these suggestions at a workshop on July 30, 2008. Following the workshop, the suggestions, as revised by the Commission, were sent out to various stakeholders for comments. The public was invited to provide feedback via an on-line comments page with seventeen comments and suggestions. The County Ecological Committee review suggestions twice and provided suggestions. The City Council and County Board were briefed at their Commons meeting September 2, 2008.
4. Based on the comments received during the process outlined above, staff prepared suggested zoning changes to the City and County Zoning Codes. The changes generally expand and refine how the mining activity is conducted and what information is required. Lays out a more refined enforcement procedure and provides closure criteria and a performance bond. This draft has been posted on the Planning Department web site and shareholders were advised by letter of the progress to date. A summary of changes are; a definition of soil mining, when a groundwater report is required, implementation of Farm Bill Compliance for returning the site to ag land, a 20 acre working site, a clear listing of posting requirements, an annual review by the Director of Building and Safety, visual screening at entryways to towns, and a bond of \$525 per acre of disturbed area for reclamation.
5. The current special permits for mining, quarrying, and stone milling in I-2 and Mining in Ag, which reference these standards (27.63.310 and 360), have been incorporated into this amendment.
6. Where the County previously had no guidelines in place and typically copied the City standards, the City and County will now have essentially the same provisions built in to the respective codes.

7. This text change should substantially mitigate impacts and improve the operation and enforcement for this type of operation. Site specific adjustments to the conditions may be granted, if appropriate, by the respective elected officials.

Prepared by:
Michael DeKalb, AICP
Planner
441-6370, mdekalb@lincoln.ne.gov

DATE:
January 14, 2009

APPLICANT: Marvin Krout
Planning Director
Lincoln/Lancaster County Planning Department
555 S. 10th St., Ste. 213
Lincoln, NE 68508

CONTACT: Mike DeKalb
Lincoln/Lancaster County Planning Department
Planner
555 S. 10th St., Ste. 213
Lincoln, NE 68508
402-441-6370

**COUNTY CHANGE OF ZONE NO. 08071
and
CITY CHANGE OF ZONE NO. 08072**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 28, 2009

Members present: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Sunderman and Taylor; Larson and Partington absent.

Ex Parte Communications: None.

Staff recommendation: Approval

Staff presentation: **Mike DeKalb of Planning staff** stated that these are text amendments to modify the language relative to soil mining. There have been three contentious soil mining permits in the last year or so. Direction was received from the County Board last year. Meetings have been held with people in the soil mining business, interested citizens, and staff from City, County, State and Federal agencies. Many issues were talked about. The conditions can be adjusted by the City Council or County Board.

Cornelius stated that an extensive request to amend was received from some interested parties. DeKalb stated that the staff recommended language is on the Web site. City staff could accept those proposed amendments if the Commission wishes to do so, but DeKalb believes the staff's proposed language is clearer and appropriate as it stands.

Cornelius wondered about an excavation that leaves a hole, perhaps meant to be a pond. DeKalb stated that there are provisions in the proposal that address that issue.

Proponents

1. **Phil Pfeiffer**, 15400 N. 56th St., appeared to address the bond of \$525.00 per acre. He thinks it is a good starting point. It would include reclamation and would help very much.

2. **Tom Keep**, 8601 Davey Rd., stated that he believes this is a good effort to solve some of the questions. Hopefully this will prevent these soil mining operations from being such a controversy. He strongly supports the provision for 20 acre or less phases and reclaiming each one before you move on to another.

3. **Karen Kurbis**, 17500 N. 84th St., commended the Planning Dept. for all the work they have done. Over the course of time, 11 of the 20 soil mining sites have been returned to agricultural use. Reclamation is very important.

Opposition

1. **Greg Varley**, Land Construction, Inc., testified in opposition. He appreciates the effort that has gone into this and he has participated in the discussions. The cost of doing business goes up every

day. He has an issue with groundwater and monitoring sites. Any effect to the groundwater is absurd. He does not believe you knock off the top of a hill and create water problems for someone else miles down the road. If someone just wants to dig a pond, there are many hoops that you have to go through. He doesn't see that this is a Planning Commission or Building and Safety issue. He does not believe the monitoring well as a blanket condition is necessary. He thinks applications should be looked at on a case-by-case basis.

Another issue is the daylight hours. We don't want to work at night or on Sundays. Rarely do we work at night. We work when we can. Rain affects our work. Double shifts may be necessary to get caught up. He would like to see some flexibility in an unusual situation.

The twenty acre reclamation is fine with him, but why is the bond for the entire area if you are only allowed to work 20 acres at a time?

Staff questions

Esseks asked for clarification on the bond. DeKalb stated that the intent is that the bond be for only the area to be disturbed. Groundwater issues arose with the last few soil mining applications. This is staff's best attempt to address this issue. He believes that one permit allowed work on Saturdays. Daylight hours in summer time are obviously going to be longer.

Cornelius wanted it clarified that there have been applications for soil mining excavations where a well is not within 1,000 feet, so a monitoring well has not been necessary. DeKalb does not know for sure, but he agreed.

COUNTY CHANGE OF ZONE NO. 08071 **ACTION BY PLANNING COMMISSION:**

January 28, 2009

Esseks moved approval, seconded by Taylor and carried 7-0: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Sunderman and Taylor voting 'yes'; Larson and Partington absent. This is a recommendation to the County Board.

CITY CHANGE OF ZONE NO. 08072 **ACTION BY PLANNING COMMISSION:**

January 28, 2009

Cornelius moved approval, seconded by Francis.

Esseks thanked everyone who put time into these proposed regulations.

Motion for approval carried 7-0: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Sunderman and Taylor voting 'yes'; Larson and Partington absent. This is a recommendation to the City Council.

ITEM NO. 4.2a&b: CHANGE OF ZONE NO. 08071
CHANGE OF ZONE NO. 08072
(p.119 - Public Hearing - 1/28/09)



Michael V Dekalb/Notes

01/23/2009 07:22 AM

To Karen Kurbis <llama1mama@gmail.com>

cc Jean L Walker/Notes@Notes, Marvin S Krout/Notes@Notes,
Rick Peo/Notes@Notes

bcc

Subject Re: Proposed Soil Mining Ordinance

Thanks Karen for the comments of the neighborhood and for the effort and attention of all. Will forward this to the Planning Commission and Law Dept. Will give you a call later today.

Karen Kurbis <llama1mama@gmail.com>



Karen Kurbis

<llama1mama@gmail.com>

01/22/2009 02:20 PM

To Mike Dekalb <MDekalb@ci.lincoln.ne.us>

cc

Subject Proposed Soil Mining Ordinance

Mike,

We had a neighborhood meeting last night and discussed the proposed soil mining ordinance. Attached are some suggestions for the meeting next week. We did a few strikeouts and wording changes (in red) that we felt would be appropriate given the history of independent interpretations, as we feel this could alleviate the interpretation issue as we go forward. Could you please contact me at 429-0627 so I could ask a few questions?

Thanks,

Karen

--

"Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has." Margaret Mead (1901-1978)



- 8072 county change of zone soil mining ord.doc

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

1 13.001(14) Special Permit: Excavation and Stone Milling.

2 (14) Excavation and stone milling may be allowed by special permit in the AG and AGR,

3 zoning districts under the conditions below. For purposes of this section, excavation and stone milling
shall mean

4 the removal of clay, soil, limestone, sandstone, sand, or gravel from the earth on a project site in
5 excess of one acre by excavating, stripping, leveling, or any other process together with all other
6 types of mining and quarrying operations for material that is removed from the earth.

7 Excavation shall not include grading of land in accordance with an approved preliminary plat,
8 building permit, or normal farming practices.

9 (a) An application for a special permit for excavation or stone milling shall be
10 accompanied by the following information:

11 (1) A legal description of the proposed site;

12 (2) A site plan drawn to scale that includes but is not limited to identifying
13 proposed vehicle and equipment storage areas and entrance and exit locations to the operation;

14 (3) A map showing the site location and the location of private access roads,
15 existing or proposed, and public roads and highways adjacent to the site which will be affected
16 by the operation;

17 (4) A grading map showing existing contours, proposed excavation contours,
18 proposed final grade contours, and excavation volumes;

19 (5) A full and adequate description of ~~all phases of~~ each phase of excavation of the
contemplated operation

20 and the specific listing of the type of machinery and equipment which will be or might be used to

21 carry on the operation;

22 (6) A groundwater report from a groundwater hydrologist in cases where proposed
23 soil mining operations are: (i) within 1000 feet of any off-site private well, (ii) within 2000 feet
1 of a community well, or (iii) designed to result in an excavated area that does not drain to a lower
2 area (i.e. a "hole"); the report should demonstrate that the operation and ultimate grading will not
3 negatively impact nearby wells by draw-down or contamination, and/or that monitoring wells
4 will be installed to provide early warning of any such impact;

5 Where a pond or lake is proposed, the groundwater report shall also
6 demonstrate that adequate water will be supplied via runoff and/or wells to maintain the pond or
7 lake as a functioning and attractive year-round water feature.

8 (7) Reclamation plans for returning the site to agricultural use, approved by a
9 local official of the Federal Department of Agriculture Natural Resources Conservation Service
10 as meeting the standards of "Farm Bill Compliance".

11 (b) Erosion controls, including retention and sediment basins shall be provided during
12 excavation in conformance with state and federal standards and County land erosion and
13 sediment control regulations to prevent a change in the character of runoff onto adjacent land.

14 (c) No more than one phase of the excavation, not to exceed twenty (20) acres, of the site shall be
open for operations at any one

15 time. The surface shall be maintained in such a manner that surface waters do not collect and
16 pond, unless specifically approved by the County. Underground drainage may be supplied if it
17 connects to an existing drainage facility and is satisfactory to the County.

18 (d) Topsoil shall be collected and stored for redistribution on the site at the termination of
19 ~~the operation or termination of~~ each phase of operation.

20 (e) Excavation shall be conducted in such a way as not to constitute a hazard to any
21 persons, nor to the adjoining properties. Dust shall be controlled on-site to meet Lincoln-
22 Lancaster County Air Pollution Control Program Regulations, and the Lincoln/Lancaster County
23 Health Department may additionally require dust control on unpaved perimeter roads;

1 (f) Safety screening may be required at the outer boundary of the site; visual screening
2 through setbacks, berming and other techniques may also be required where said boundary is
3 adjacent to residential or park land, school property, or at major entryways/corridors into a city,
4 town, or village, or at the discretion of the County Board.

5 (g) Operating hours shall be limited to daylight hours, Monday through Saturday.

6 (h) A sign shall be posted and maintained at the entrance to the site. The sign shall be:

7 (1) Clearly visible from the adjacent road;

8 (2) At least 32 square feet in area;

9 (3) Lettering shall be at least two inches in height, black on a white background;

10 (4) The sign shall list:

11 (i) The approved Special Permit Number;

12 (ii) The name, contact phone, and email address for the land owner;

13 (iii) The name, contact phone, and email address for the operator/ contractor;

14 (iv) The Building and Safety Department contact number.

15 (i) The County or City Engineer may require installation of traffic signs to warn
16 motorists of mining operations and truck traffic.

17 (j) The applicant will take appropriate measures, such as street sweeping or "rumble bars"
18 as specified by the County Engineer to minimize mud or dirt tracking onto streets and roads on a
19 continuing (daily) basis during operation.

20 (k) Permittee shall not begin operations until it has received a certificate of operation
21 from the Director of Building and Safety.

22 (1) The Permittee shall comply with all terms, conditions and requirements of the
23 special permit that are required to be completed before beginning operations. Upon completion

1 of all such terms, conditions and requirement of the special permit, the applicant shall advise the
2 Director of Building and Safety that the applicant has met all such conditions and shall apply to
3 the Director of Building and Safety for a certification of operation.

4 (2) The certificate of operation shall not be issued until the Director of Building
5 and Safety has inspected the premises covered by the special permit, reviewed documentation
6 and evidence of completion of the conditions which shall be provided by the applicant, and has
7 found that all terms, conditions and requirements of the special permit, that are to be completed
8 before beginning operations, have been complied with.

9 (3) Any amendment to a special permit approved subsequent to the issuance of a
10 certificate of operation for such special permit shall require application by the permittee for a
11 new certificate of operation which shall not be issued until the Director of Building and Safety
12 has ascertained that any terms, conditions and requirements of the amendment to the special
13 permit have been complied with.

14 (l) Operations shall commence within one year of approval of the special permit or the
15 special permit will terminate and be considered null and void.

16 (m) Prior to commencing operations, the Permittee shall provide the County with a penal
17 bond in the amount of \$525.00 per acre ~~permitted~~ intended to be disturbed to assure compliance with

the

18 final reclamation plan, including but not limited to regrading, topsoil conditioning, and re-
19 vegetation. A private professional engineer must certify at closure of operations that grading and final
20 reclamation has been completed in accordance with the approved plans before the bond may be
21 released.

22 (n) Within nine months after the completion of excavation on ~~any portion~~ each phase of the site, all
23 cuts shall be returned to a slope of less than three to one, the topography and soils shall be
1 restored and stabilized, and the land shall be graded, seeded, and sodded so as to prevent erosion
2 and siltation, and to protect the health, safety, and general welfare of the public.

3 (o) A special permit may be approved for up to a three year period of time by the County
4 Board. Such period of time shall commence upon the date the special permit is approved by the
5 County Board.

6 (p) Permittee shall prepare and submit an annual report to the Director of Building and
7 Safety addressing the status and extent of operations and each condition of the special permit.

8 (q) Permittee shall be subject to an annual site inspection by the Director of Building and
9 Safety or his assigns. Such inspection shall be paid for by the applicant. Building and Safety
10 shall:

11 1. Inspect the site to determine whether terms, special conditions and
12 requirements imposed by the County Board in the approval of the special
13 permit have been met and complied with; and

14 2. Review all complaints from public and other departments/agencies

15 (r) The County Board may modify or adjust any of the above conditions or impose
16 additional conditions to preserve the public health, safety, and general welfare or to allow the

17 applicant use of the property, while at the same time, protecting the surrounding property.

18 **13.017 Enforcement and Revocation of Special Permits.**

19 (1) (a) The Director of Building and Safety shall make a report to the County Board at anytime
20 the Director of Building and Safety finds the following:

1 (1) Any of the terms, conditions and requirements of a special permit have not
2 been complied with by the Permittee or that any phase thereof has not been completed within the
3 time required under said special permit or any administrative amendment thereto.

4 (b) The County Board may, after a public hearing of which the permittee shall be
5 notified, take any of the following actions:

6 (1) Revoke the special permit for failure to comply with any of the terms,
7 conditions and requirements of the special permit; or

8 (2) Take such other action as it may deem necessary to obtain compliance with
9 the special permit; or

10 (3) Take such action that it deems necessary to preserve the public health, safety,
11 and general welfare.