

BRIEFING NOTES

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, September 9, 2009, 11:45 a.m.
Room 113, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Michael Cornelius, Dick Esseks, Wendy Francis, Leirion Gaylor Baird, Lynn Sunderman and Tommy Taylor. Roger Larson, Jeanelle Lust and Jim Partington absent.

OTHERS IN ATTENDANCE: Chris Schroeder of the Health Department; Fred Hoke, Terry Kathe, Chuck Zimmerman, Mel Goddard of Building and Safety; Rick Peo of the City Law Department; Tom Fox of the County Attorney Office; Marvin Krout, Mike DeKalb, Steve Henrichsen and Michele Abendroth of the Planning Department; other interested parties.

STATED PURPOSE OF MEETING: Soil Excavation Permit Enforcement

Lynn Sunderman called the meeting to order at 11:46 a.m.

Mike DeKalb began by stating that the Commissioners had previously asked a question regarding enforcement of soil excavation permits. In response to this question, the Planning Department invited the key agencies to brief the Commissioners today on how this would take place. He noted that staff from the Planning Department, Building & Safety, the Health Department, the City Attorney and County Attorney are present to provide information and answer any questions from the Commission.

Fred Hoke stated that these operations presented a challenge to the County, the residents and enforcement agencies. Building and Safety receives many of the complaint calls. While they are happy to serve in this capacity, he stressed that enforcement is up to the appropriate jurisdictional power to enforce their ordinances. When a complaint comes in, Building & Safety first contacts the owner and requests immediate attention. They also contact the other agencies who have jurisdiction power.

Hoke noted that the most frequent complaints have come with the Harry Muhlbach operation; and to a lesser extent last year with the Sanford operation on North 56th Street. Although five property owners near the Muhlbach operation have sent letters of approval for his application, there were three letters in opposition, one of which was an anonymous letter representing eleven neighbors to the north, but it was not signed by any of them. There have been complaints for excessive dust, dirt on the highway, the gate not being secured after operating hours, lack of maintenance to the access, loaded trucks leaving the property during restricted hours when school buses are on the road, noise and many signage issues. They have sent an inspector to the site at least six times and issued a "cease operations" citation twice for infractions. The work ceased on this investigation.

Mr. Muhlbach's County Special Permit came before the County Commissioners at its September 8th meeting. Although Mr. Muhlbach has 58.59 acres in his mining operation, he currently is working 19.5 acres, including two existing ponds used as sediment traps. He must mine within this area before approval to move beyond that area.

He requested a waiver to provide screening and to post a bond for the work. The Planning Commission voted 7-1 on August 12th for conditional approval, waiving the screening but not the bond.

The County Engineer's memo of July 9, 2009 indicated no objections. The Health Department noted that off-site dust emission be in accordance with Lincoln-Lancaster Air Pollution Regulations. A geotechnical engineer indicated that there was no impact on wells and that there was adequate water for the pond.

Hoke noted that there are a number of subjective conditions, that without a civil engineer or land surveyor's expertise, they are at a distinct disadvantage to make a practical judgment on an issue.

Hoke noted that there are several stipulations for a renewed permit:

- Reasonable operating hours – Monday through Saturday during daylight hours;
- The operation will have 15 -20 foot cuts and will remove about 240,000 cubic yards of soil.;
- A legal description of the proposed site;
- Site plan drawn to scale;
- Map of the site location;
- Grading map;
- Full and adequate description of all phases of the contemplated operation;
- A groundwater report;
- Reclamation plans for returning the site to agriculture use;
- Erosion controls including sediment basins;
- No more than 20 acres open for operations at any one time;
- Excavations not to constitute a hazard to any persons nor the adjoining property;
- Sign clearly visible from the adjacent road;
- County or State may require traffic signs;
- Street sweeping continuing daily during operations;
- Requirement of a Certificate of Operation from Building and Safety upon determination that the terms and conditions of this Permit have been met;
- Private engineer to certify the closure of operations for grading and reclamation
- All cuts shall be returned to a slope of less than three to one with soils restored and stabilized;
- An annual report to the Director of Building and Safety addressing the status and extent of operations and each condition of the special permit.

With the new permit, Building and Safety has the primary zoning enforcement for the operations. With the concerns of a number of neighbors, Building & Safety will improve its methodology for enforcing the provisions of this and subsequent permits. Hoke will be the collection point for all complaints related to soil mining operations. He is developing a spread sheet for each soil mining operation which will include special permit requirements, pre-operation inspections, and coordination with the County Health Department, NDOR, and the County Sheriff. They are also developing a shared computer file with complaint information, response from Building and Safety investigations and results, enforcement activities and current status of each entry.

Hoke noted that this has not been a smooth operation for all parties concerned. Now we have permit language that clearly lists each of the obligations of the owners/operators. Building & Safety will communicate back to the complainant the actions Building and Safety has taken with their complaint. They will compile the complaints, actions, and enforcements in a quarterly report to the Planning Commission and the County Commissioners on the status of the soil mining operations. These quarterly reports will become the major attachments to our Annual Report on these operations to the Planning and County Commission.

Chris Schroeder stated that the primary concern of the Health Department is off-site dust from the property and perimeter roads. For enforcement, they have ordinances that prohibit off-site dust. When they receive a complaint, they go out and measure the dust. They strongly recommend using chemical treatment for dust control instead of water treatment. Other concerns are ground water contamination. They have staff that review hydrology levels in the ground water. Since it is under their regulation and standards, they can administer a fine or notice of violation. But typically they like to work with the businesses and landowners, who are usually willing to comply with their regulations.

Schroeder stated that the problem with soil mining is the heavy truck traffic which has more of an impact on the road.

Esseks stated that he appreciates this opportunity for dialogue. One issue that is still concerning is the lack of staff with a professional background in soil engineering. He suggested working with the County Ecological Advisory Committee.

Cornelius asked if there are historical records as that was the problem with the most recent application. He believes a record of past issues or complaints and the enforcement that was rendered would be very helpful. Hoke stated that the information is available in PermitsPlus. Sunderman asked for clarification on how the Planning Commission can use past compliance issues. Peo stated that the primary emphasis of the Planning Commission is the appropriateness of the land use. When reviewing a renewal permit, then past compliance issues can be considered.

Gaylor Baird asked if every citizen complaint is investigated. Hoke stated that it is not realistic to investigate every complaint that comes in. Due to limited resources, they must prioritize the complaints. However, dust is a big enforcement issue.

Esseks asked if the landowners are expected to restore the land. DeKalb stated that the owner must return the land to a usable state.

Gaylor Baird asked how many soil mining operations exist. DeKalb stated that there are five operations in business today. Gaylor Baird asked how many complaints they receive on a monthly basis. Hoke stated that there are approximately 1-2 complaints a month, but three of the five businesses have not received any complaints.

Schroeder stated that another factor to consider is the sites that are just bringing in clean fill. A special permit is not needed, but they still have heavy truck traffic.

Cornelius stated that it would be helpful to have some guidance for neighbors to direct them to where they could go for help. Hoke stated that he feels it is easier to have one point of contact, which would be Building & Safety. If the issue is not in their jurisdiction, they can refer the person to the appropriate department.

DeKalb noted that a contact list of “who to call” had been developed for soil mining and is available to the public.

The meeting was adjourned at 12:47 p.m.

Respectfully submitted,

Michele Abendroth
Planning Department