

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, August 29, 2007, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Gene Carroll, Michael Cornelius, Dick Esseks, Roger Larson, Mary Strand, Lynn Sunderman and Tommy Taylor (Gerry Krieser absent). Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Ed Zimmer, Brian Will, Tom Cajka, Sara Hartzell, Christy Eichorn, Brandon Garrett, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and advised that **Item No. 5.1, County Special Permit No. 07009**, Kadavy Estates Community Unit Plan, has been withdrawn.

Mayor Beutler made a special presentation to Mary Strand and Jon Carlson for their years of service on the Planning Commission, whose terms expire this month. Strand expressed her appreciation to the Commissioners and staff and expressed how much she has enjoyed working with everyone. Carlson expressed his appreciation to the Commissioners and staff, both past and present, as well. He also expressed appreciation to the public and those that come forward to testify.

Carlson then requested a motion approving the minutes for the regular meeting held August 15, 2007. Motion for approval made by Carroll, seconded by Strand and carried 8-0: Carlson, Carroll, Cornelius, Esseks, Larson, Strand, Sunderman and Taylor voting 'yes'; Krieser absent.

### **ELECTION OF CHAIR AND VICE-CHAIR**

Chair Carlson opened the nominations for Chair, for a two-year term until August, 2009. Strand nominated Eugene Carroll. There were no other nominations. Carroll was elected Chair by vote of 8-0: Carlson, Carroll, Cornelius, Esseks, Larson, Strand, Sunderman and Taylor voting 'yes'; Krieser absent.

Chair Carroll then opened the nominations for Vice-Chair for a two-year term until August, 2009. Strand nominated Lynn Sunderman. There were no other nominations. Sunderman was elected Chair by vote of 8-0: Carlson, Carroll, Cornelius, Esseks, Larson, Strand, Sunderman and Taylor voting 'yes'; Krieser absent.

Carroll expressed appreciation to Mary Strand and Jon Carlson for their outstanding leadership, dedication and service throughout the years.

**CONSENT AGENDA**

**PUBLIC HEARING & ADMINISTRATIVE ACTION**

**BEFORE PLANNING COMMISSION:**

August 29, 2007

Members present: Carlson, Carroll, Cornelius, Esseks, Larson, Strand, Sunderman and Taylor; Krieser absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 07048 and MISCELLANEOUS NO. 07007.**

Ex Parte Communications: None.

**Item No. 1.2, Miscellaneous No. 07007**, was removed from the Consent Agenda and scheduled for separate public hearing.

Taylor moved to approve the remaining Consent Agenda, seconded by Cornelius and carried 8-0: Carlson, Carroll, Cornelius, Esseks, Larson, Strand, Sunderman and Taylor voting 'yes'; Krieser absent.

**THERE WERE NO REQUESTS FOR DEFERRAL.**

**MISCELLANEOUS NO. 07007**

**DECLARATION OF BLIGHTED AND SUBSTANDARD AREA  
FOR THE "WEST HAYMARKET AREA".**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 29, 2007

Members present: Sunderman, Larson, Carroll, Strand, Esseks, Taylor, Cornelius and Carlson; Krieser absent.

Ex Parte Communications: None.

Staff recommendation: A finding that there is a reasonable presence of substandard and blighted conditions.

This application was removed from the Consent Agenda and had separate public hearing.

Staff presentation: **Sara Hartzell of Planning staff** advised that according to redevelopment law in Nebraska, any area designated to be part of a redevelopment project must be found to be blighted and substandard. In order to meet the requirements for blight and substandard, there are specific factors to be considered according to the Community Development Law. This study was done by a consultant for Urban Development, and the study found that all four of the substandard factors were present to some degree in this area, and that ten of the blighted facts were substantially met.

**Dallas McGee of the Urban Development Department** explained that this is the first step of many public steps as we begin to address the redevelopment of the West Haymarket Area. The State statutes require declaration of blight before any redevelopment. After the declaration of blight and substandard, a redevelopment plan will be prepared and brought to the Planning Commission and City Council. Once the redevelopment plan is acted upon by the City Council, there will be the ability to use TIF (tax increment financing) to assist in redevelopment of the area and the ability to prepare an invitation for redevelopment proposals, including seeking developer interest in a hotel and convention center, which would be a key part of this West Haymarket development. McGee assured that there will be many more opportunities for public input.

McGee explained that the somewhat irregular shape included in the blight study is the result of other blight studies that have already been conducted in the area, i.e. Lincoln Center Redevelopment Plan to the east, West O Street Redevelopment Plan to the west; Northwest Corridors to the northwest and Antelope Valley to the northeast.

Esseks was impressed with the size of the area, i.e. 400 acres. Do you see this as an integrated focus or two or three separate areas for separate plans? McGee stated that the blight study is larger than the area that will be focused upon initially, but they looked at the larger area because there is potential for additional private development in future years. This will complete the blighted areas, making them contiguous. The initial focus will be 7<sup>th</sup> Street, "N" Street and north as far as Haymarket Park, but does not include the entire area at this time.

### Opposition

**1. Roxanne Smith**, 711 Peach Street, testified in opposition and begged the Commission not to take this first step. This is a floodplain. The floodplain issues far outweigh any benefits that will be gained from development in this area. The developers who want to do this (the city) have chosen this site because it is highly desirable. Taxpayers should expect then that the developers be able to go into this area and use their own money to finance the construction of a hotel, the arena and all the parking garages. Taxpayers should not expect to have to pay the bill to fill the floodplain and do any kind of mitigation. She acknowledged that this is a very desirable location for economic development, but the developers should be expected to bear that burden themselves. We should not use TIF for development. Please do not declare this area blighted. The infrastructure expenses

that we have put into Antelope Valley cannot be duplicated in the floodplain. We should take advantage of the Antelope Valley infrastructure and a hotel and convention center should be built closer to Antelope Valley. Pershing Center, the federal parking garage, and the city blocks just to the east along 16<sup>th</sup> and 17<sup>th</sup> are much more accessible and are out of the floodplain. We need to determine whether the consultants have actually looked at the best site in this city. A convention center will totally change the character of the Haymarket. The purpose of declaring an area blighted is to allow TIF. As a taxpayer, Smith does not want TIF expended to develop an isolated floodplain. We do not have money in our basic budget right now for health and safety. We have cut expenses for senior citizens and health projects. Do not take future tax revenues away from Lincoln that should be spent on public health and safety issues. Do not take this first step.

Response by the Applicant

McGee stated that Urban Development is fully aware of the many, many challenges that this site represents. There will be a time to evaluate what, if any, development is appropriate here. He believes this is a very appropriate first step to begin looking at the site and to begin to address the conditions of the site.

Esseks pointed out that the blight declaration does not commit to locating an arena or convention center here. McGee agreed. A redevelopment plan will be prepared for the area which will come before the Commission and the City Council, and the issues of the site will be addressed at that time.

Strand asked Dave Landis, Director of Urban Development, to explain TIF. Landis stated that TIF essentially dedicates the increased taxes that come from the existence of the development to pay the public costs for allowing that development to occur. You freeze the value of the land before development. You then take the increase in the taxes that occur because the value goes up once there is development. You run that up no longer than 15 years, and that increment of money is dedicated for the purpose of demolition of the site, run utilities in a different way, manage the city streets and their access points, etc. It does not diminish taxes. It dedicates the taxes that exist because of the development to the essential public costs arrived at in making that site suitable for development. No one is excused from taxes. But the disposition of those taxes are dedicated to making this development work from a public perspective.

**ACTION BY PLANNING COMMISSION:**

August 29, 2007

Strand moved a finding of blighted and substandard, seconded by Larson and carried 8-0: Sunderman, Larson, Carroll, Strand, Esseks, Taylor, Cornelius and Carlson voting 'yes'; Krieser absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 07049 HP**  
**TO DESIGNATE A LANDMARK**  
**and**  
**SPECIAL PERMIT NO. 07034**  
**TO UTILIZE A LANDMARK**  
**ON PROPERTY LOCATED AT 1204 PEACH STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 29, 2007

Members present: Sunderman, Larson, Carroll, Strand, Esseks, Taylor, Cornelius and Carlson; Krieser absent.

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone and conditional approval of the special permit.

Staff presentation: **Ed Zimmer of Planning staff** presented the proposal, explaining that the first step in the process is review by the Historic Preservation Commission and they have recommended approval of both applications.

Zimmer showed photographs of the subject structure at 1204 Peach Street. One of the specific conditions of the special permit is that it takes effect only upon approval of the landmark designation by the City Council. The structure was built in 1912 on a corner property at 1204 Peach Street. It has been very well preserved. It is of a very boxy, simple design, with a full length porch. There is a stained glass bay window on the west with dormers above. The family occupying this property has taken very good care of this house. The photographs also showed the sign for the tearoom which would be the only sign approved under the special permit. Occasionally, landmark designations cover interior features, although this is not commonly done on private homes. However, just to show the character of the interior, Zimmer did show some slides of the interior and stated that there are public benefits to this special permit.

Proponents

**1. Miss Ruby**, 1204 Peach Street, stated that she would be delighted to operate a tearoom. She has read the staff report and agrees with the recommendation and conditions of approval.

Esseks noted that one of the conditions in the report is to limit the operation of the tearoom to four days a week, Wednesday through Saturday, 11:30 a.m. to 1:00 p.m. Would there be any nighttime commercial activity? Miss Ruby agreed with the stated hours and confirmed that there would be no nighttime activity.

**Support**

**1. Marty Link**, testified in support and submitted her testimony in writing. She has lived at 1210 Peach Street since 1985. When the Innis family moved in three years ago, the home needed a lot of work. The Innis' have fit into the neighborhood as if they have been there forever. She noted that there have been several concerns raised about parking. This is a working class neighborhood. A few extra cars in the middle of the day is not a hardship to the residents. There will be no increased traffic due to the tearoom. This tearoom has brought a positive interest to the neighborhood. This change will help to preserve the neighborhood and make it better.

**2. Pat Anderson-Sifuentez**, 1500 S. 11<sup>th</sup>, Secretary of **Everett Neighborhood Association**, testified on behalf of the Association Board and stated that the Board voted to support this landmark designation and special permit. The Innis' have been great stewards for the neighborhood. The location of the tearoom is a great opportunity to bring people into the neighborhood and dispel some of the myths about older neighborhoods. There was no testimony in opposition.

**CHANGE OF ZONE NO. 07049 HP**

**ACTION BY PLANNING COMMISSION:**

August 29, 2007

Taylor moved approval, seconded by Sunderman and carried 8-0: Sunderman, Larson, Carroll, Strand, Esseks, Taylor, Cornelius and Carlson voting 'yes'; Krieser absent. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 07034**

**ACTION BY PLANNING COMMISSION:**

August 29, 2007

Larson moved to approve the staff recommendation of conditional approval, seconded by Taylor.

Taylor knows that the Innis' are very fine people and the statements made about them are very accurate.

Motion for conditional approval carried 8-0: Sunderman, Larson, Carroll, Strand, Esseks, Taylor, Cornelius and Carlson voting 'yes'; Krieser absent. This is a final action, unless appealed to the City Council within 14 days.

**COUNTY SPECIAL PERMIT NO. 07033**  
**FOR SOIL MINING ON PROPERTY GENERALLY**  
**LOCATED AT HWY 77 AND BRANCHED OAK ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 29, 2007

Members present: Sunderman, Larson, Carroll, Strand, Esseks, Taylor, Cornelius and Carlson; Krieser absent.

Ex Parte Communications: None.

Staff recommendation: Conditional Approval.

Staff presentation: **Mike DeKalb of Planning staff** presented the proposal for extraction of soil on a tract of land consisting of approximately 160 acres. The applicant intends to excavate on the southern two-thirds of the property, which is a little less than the prior application, with 26' cuts and up to 1,300 cubic yards of soil to be removed.

The property is shown as AG in the Comprehensive Plan. The applicant is proposing only one access on Branched Oak Road. DeKalb suggested that this proposal is very similar to a prior application about a year ago for mining, which was recommended for conditional approval by the Planning Commission and the County Board chose to deny it. This is the fourth special permit application on this parcel of land, and the third for mining only.

Esseks referred to Condition #2.1.9 relating to how long this land is going to be open with no grass, creating the possibility of dried earth blowing and causing a nuisance, and the possibility of soil pollution as stormwater drains off the area. What is the definition for "open" for 10 months? DeKalb explained that the thought was that the dirt would be exposed to the sky for 10 months. This came from the discussion on the prior special permit on property located about two miles to the south. Esseks confirmed that the closing of the period of openness would be the seeding. DeKalb agreed - topsoil and seeding.

Proponents

**1. Mark Hunzeker** appeared on behalf of the applicant and owner, **Greg Sanford**. This is an identical grading plan that was shown approximately one year ago, which was approved unanimously by the Planning Commission, with conditions; however, the conditions then were somewhat less onerous than those proposed today.

Hunzeker noted that Condition #2.1.2. prohibits access to Hwy 77. He pointed out that the Hwy 77 access is a safe access which was built and designed into the roadway at the time Hwy 77 was widened. There is a turn lane into that access point which gives not only a safe turning pocket for vehicles entering the site, but also a point in the middle of the highway for a vehicle exiting the site to take short refuge while awaiting a gap in traffic. The sight distance is adequate because it was designed into the highway. To prohibit that

access unnecessarily limits flexibility and forces all access to be taken from Branched Oak Road, which Hunzeker believes is unnecessary.

Hunzeker also pointed out that all of the issues of erosion and sediment control, etc., are incorporated into the NPDES permit required as a condition of approval, which incorporates all EPA regulations that are enforced by NDEQ.

Larson inquired as to the location of the access onto Hwy 77. Hunzeker stated that it is at the half-mile point. Larson inquired whether all of the traffic will go through that access. Hunzeker stated, "not necessarily, we're showing an access to Branched Oak Road, which is also paved." The applicant is required to gravel the entrance road onto the site to minimize any tracking out onto Branched Oak Road and is also required to maintain Branched Oak Road.

Strand confirmed that there is already a turn lane that is in existence on Hwy 77 to the access point to this site. Hunzeker agreed. It is a left turn into the site.

Esseks referred to the final grading maps included in the staff report. Last time the Commission looked at these grading maps, someone pointed out that it was designed in such a way that you could have a drag strip there. Hunzeker acknowledged that grading maps for the drag strip were shown the first time. That application was withdrawn and the applicant came back with a plan virtually identical to this one. However, it might have provided for more excavation further to the north. The grading maintains the flow of water in the same direction and probably results in a slightly slower flow. It will adequately protect erosion from the site with sediment ponds, the silt fence, etc., that goes with the NPDES permit.

### Opposition

**1. Tom Keep**, 8601 Davey Road, a professional registered engineer, testified in opposition. He has looked at nine sites that have received mining permits and have been active since 2004 to determine the enforcement of the conditions placed on the applications. His research indicates that the implementation of the conditions by the operators has been very poor. Only two of the nine permits have complied with the requirement to have a grading plan. One site has been mined 16' deeper than approved. Three sites have finished contours significantly different than approved. None of the five sites with the provision that the site will be mined in phases have been mined according to that provision. Three of the permits required the posting of a \$5,000 bond but Keep has been unable to verify that the bonds were posted or released. Six of the nine sites have not had the topsoil replaced. Only three of the nine permits have complied with the standard provision that the mined areas will be seeded after completion. Only four of the nine permits have complied with the NRD erosion control plan and NPDES permit provisions. Seven of the nine sites have complied with the provision regarding the maximum steepness of finished slopes.



Keep stated that the residents impacted by these activities request:

1. That a moratorium be placed on recommendation for approval of new soil mining permits until a mechanism is in place to review mining operations to assure compliance with the conditions contained in the permits.
2. That a Soil Mining Task Force be convened to assist the Planning Department in determining what conditions should be placed in soil mining special permits to assure the safety of residents and to protect them from off-site damages to their property and the Lancaster County environment.

**2. John Baumgartner, 6030 Davey Road**, who lives directly north of this proposed soil mining site, testified in opposition. He does not oppose properly monitored soil mining in Lancaster County, but the trust he has in the system is lower than it should be. “You’ve got a black eye. You are getting beat up right here because compliance to conditions of the special permits is not happening.” He is opposed to the carte blanche approach to soil mining that the Planning Department and Planning Commission have recommended on applications in the past. We need to have the brakes set and do some evaluation of soil mining practices and controls. We need quality control. The Planning Commission should insist upon it. The existing soil mining sites need to be closed and cleaned up before granting the next one.

This particular application is very, very disturbing. The applicant suggests that there is interest in this soil for the I-80 widening project. Baumgartner’s research found that City doesn’t need anything at the old landfill. The Department of Roads (NDOR) says it will have excess soil in the next phase of the I-80 widening project. Basically, this means there is no immediate demand and the existing open soil mining sites can handle the existing demand. If there is a big need, why aren’t there four or five contractors or developers up here telling you of their desperate need for soil? They are not here because there is no great need. It will take years to move the soil at this site.

“Let’s face it - soil mining has a black eye.” The Planning Commission needs to say “no”. These permits need to be monitored – it’s as simple as getting a spreadsheet. We can do better than rubber stamp a proposal. We need to make an attempt to properly plan soil mining in the County.

Larson wanted to know who is responsible for enforcement of the permit. Baumgartner believes that is a good question. Who do you call? It is a problem. What do we do if we have a complaint? The rules have been violated. You need to stop and evaluate the process.

**3. Phil Pfeiffer, 15400 N. 56<sup>th</sup> Street**, directly across the road from the proposed site, testified in opposition and in favor of a moratorium on new mining permits until existing violations are resolved. He wants a chart posted at the site listing who to contact for any

type of violations. He will be the beneficiary of the soil erosion at this site. You have seen how much soil can run off a City lot having construction take place. A city lot measures 100 x 87 feet. Five of those would fit on one acre. If you expose an area of 20 acres – that is 100 city lots. How much soil equivalent to 100 city lots will run off on my property? I want to know who to call when there is a two-inch rain for the sediment on my property. All of his silt is going to run down on my drainages and on my property. We need a procedure to deal with this. The applicant has no contracts for the soil, there is no interest, there is no demand and there is no urgency to approve this special permit. He wants to see some accountability and some compliance.

Esseks inquired whether Mr. Pfeiffer has been able to identify people to call. Pfeiffer indicated that some of his neighbors have called and have been told to send a letter or contact another department, but they need something concrete.

**4. Carol Sherman**, 6305 Agnew Road, Ceresco, testified in opposition. She is not in favor of any soil being removed from a farm. If this application is approved, there really needs to be a flow chart for accountability – a process for inspection to check for compliance with the conditions of approval. Her issues are:

a) Inspection and Taxes – she has not been able to find any type of inspection process to verify the total amount of soil that has been extracted. The Nebraska Revenue Act requires that sales tax be collected on all retail sales of soil and that income taxes paid. Has the sales tax been received on the soil that has already been mined in Lancaster County? This would be significant. If there is no inspection process, how can there be any check to insure that the proper amount of taxes has been collected?

b) Reclamation: all of the topsoil must be replaced.

c) The area being mined at any one time should be limited to one watershed at a time - 7 or 8 acres. The area must be seeded and inspected for compliance before soil mining begins on another watershed.

d) Ground cover - the soil needs to be seeded to prevent erosion from wind or rain.

e) Performance Bond – it is essential to require a performance bond for at least 10% of the value of the soil being mined to allow funds for reclamation if it is not done.

f) Safety - the traffic on Hwy 77 is very heavy. Ingress and egress onto the land has to be a site where visibility to the south and to the north is the longest. Branched Oak Road access is not safe. There also must be some stipulation that the dirt carried onto Hwy 77 will be removed.

g) There is no need for the dirt.

Please do not approve this special permit until there is something in place for inspection and verification, but if the permit is approved, Sherman urged the Commission to place the above conditions on the permit.

Strand inquired as to how much of the land surrounding this site is currently being farmed. Sherman stated that all of the area around this site is farm ground that is being used. Strand then inquired whether the farm trucks use Hwy 77. Sherman acknowledged that they do see farm equipment on Hwy 77 at times.

**5. Gary Sherman**, 6305 Agnew Road, Ceresco, testified in opposition. He reiterated the previous testimony. Farm equipment does use Hwy 77 to some degree but most farmers are going to haul their grain to their bins or to other methods. The trucks are not one right after the other. The mining trucks will follow each other. The whole area is agricultural. The times of removing the crops are in the fall for a few days. With the speed of the combines that can handle the grain, it does not take them hardly any time to cover 80 acres. Therefore, it is quite different than what there is when there are mining trucks, one following the other. A loaded truck cannot get to 60 mph very fast. The trucks coming off this road going uphill are not going to stop at the stop sign. Vehicles coming over the hill have a very short time to react to the slower trucks.

**6. Marlene Tracy**, 17500 N. 84<sup>th</sup> Street, testified in opposition. Her concerns are safety, warning process, visibility and spillage. She showed a photograph of Branched Oak Road looking west off Hwy 77. The visibility to the north is only 10 seconds to see the car coming over the hill. She agreed with the applicant that the middle access would be much better. She referred to a letter written by Marvin Krout to Ron Schlautman at NDOR on the previous application, suggesting that this would be a very large scale operation and the truck traffic should be of some concern of NDOR. She also noted that the Lancaster County Engineer report dated May 26, 2007, on Special Permit No. 06035 stated that they would prefer access limited to Hwy 77. Tracy suggested that visibility is poor because of the dust picked up by the trucks going into the site. Silt gets spilled onto the road and is a concern and becomes a traffic hazard.

Tracy's bottom line was that the Planning Commission should hold off on this application. She believes that a soil mining task force might be in order. She has talked to many people who have tried to find out who to talk to and where to go. The only answer she has gotten is to talk to Building & Safety, and she has not gotten a lot of response back from them.

Tracy also believes that there is a need to consider the hours of operation. There are children in school buses, and traffic from commuters coming from Omaha, Davey, Ceresco and Wahoo. She suggested that the applicant be required to resubmit this plan and go for the center access and forget about the Branched Oak Road access.

**7. Karen Kurbis**, 17500 N 84<sup>th</sup> Street, testified in opposition and agreed that the hours of operation should be restricted from rush hour traffic. She is opposed to anything about soil

mining until regulations are in place. The residents believe that Lincoln and Lancaster County is in violation of the State of Nebraska greenbelt laws. It is the duty of the County Assessor to verify that all property listed continues to qualify for greenbelt status. Once you issue a soil mining permit in this county, it is a free for all. We don't follow through with the conditions. The Planning Department responsibility appears to end with approval. It does not appear that the permittee is filing the Letter of Acceptance with the Register of Deeds on a consistent basis. Land being mined is not eligible for greenbelt. There is no process to inform the assessor's office, thus there is no way for them to change the valuation status. It is not only a conflict of greenbelt law, but there is some revenue that could be coming in. Last year, Mike DeKalb told the residents that Building & Safety is the point agency for compliance and monitoring. There does not appear to be a notification process for Building & Safety. From Hwy 77 you can tell there is soil mining activity going on there and no one bothered to do anything about it and it is still in greenbelt status. Northwest. 40<sup>th</sup> and West Vine is actively being mined and it is still in greenbelt status. No bond was posted. 134<sup>th</sup> & Pine Lake Road started mining without a permit, closed it down, got a permit, and the bond was not posted. There does not seem to be any kind of compliance. An inspector would be involved on a complaint basis only. There is no follow-through anywhere in the system. There is continuous failure to notify the County Assessor or Building & Safety. Kurbis urged that the Commission not issue any more permits until there are some regulations in place for compliance. A lot of counties throughout the nation require annual inspection fees.

**8. Teresa Tvrdy**, 6495 Little Salt Road, testified in opposition. Last summer this same permit was denied. She is concerned about the motives for this permit and highly suspects that it is a smokescreen to pave the way for the applicant's true intention of building a drag strip. Once the soil is mined, he's halfway there. She requested that a moratorium be declared based on the fact that currently there are inadequate regulations in place with regard to monitoring compliance. Accountability is needed for hours of operation, dust control, untarped loads, unsafe loads, erosion control, mud on the roads, environmental detriment to nearby property owners, noise, reclamation of the land and ingress and egress. The staff report states that there is a sedimentation pond for erosion control but there is no pond on the grading plan. Who do we contact? What are our legal remedies as nearby property owners? The land will not produce the same crop yields once mined. The community is surrounded by agricultural land. Once mined, it will be an eyesore to the neighborhood. The land will be more suitable for commercial or industrial development in an area not yet slated for that purpose. The Department of Roads and the City landfill have no need for soil at this point in time.

**9. Jeri Johnson**, 6333 Rock Creek Road, testified in opposition. If this permit is approved, she requested that it be required to be renewed annually.

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Staff response

Mike DeKalb indicated that the staff would have no objection to removing Condition #2.1.2 if the applicant shows the access on the plan. The applicant had not shown the access point on the plan, thus the need for the condition.

DeKalb acknowledged that the reference in the staff report to the pond to catch sediment was an error. That comment referred to the previous application.

From the environmental standpoint, DeKalb stated that he is not aware of much of an issue, specifically on sediment and soil mining excavation sites. There have been very few complaints. The County Board did call together all regulatory agencies – NDEQ, Corps of Engineers, NRD, County Engineer and others, to go over who is regulating what. The bottom line is that it is on a complaint basis, it depends on what is being done and the agencies do try to determine if there is a violation. NDEQ and County Engineer have issued some penalties. They found that the bigger issue is not soil mining excavation, but construction sites in the City. In the County, the sediment runoff has primarily been from agricultural land where the ditches get full of mud. When that does happen, the County Engineer requires the property owners to clean it up. NDOR indicates that if there were traffic issues or turning movement issues, they would handle it by putting in conditions for turn lanes, etc. Building & Safety is the primary contact and has the obligation to enforce conditions of special permits.

As far as agencies to call, DeKalb reiterated that Building & Safety is the point of contact for the special permit, the County Engineer for County roads, NDOR on the highway, and NDEQ and Lower Platte South NRD for erosion and sediment problems.

DeKalb suggested that the primary issue is not the topsoil or depth of the topsoil. The primary issue is usually compaction of the subsoil. He also advised that there is another soil excavation permit on the next Planning Commission agenda.

As far as putting land back into agricultural use after excavation, DeKalb suggested that many permit sites have gone back to farming after the excavation.

Strand wondered about not allowing operations on football Saturdays. DeKalb pointed out that the conditions of approval do restrict the hours of operation to daylight hours only, Monday through Friday.

The soil compaction issue is covered by Condition #2.1.6.

Esseks commented that these citizens have spent a great deal of effort and mobilized a lot of talent to come up with some rather disturbing findings regarding implementation. Implementation of regulations is a problem and the agencies don't have enough resources to hire sufficiently trained people. On the face of it, either we have a real problem or we have a public relations problem. We need to deal with it. He asked staff to give some assurance that a moratorium is not necessary; that citizens living close to a property like

this can get real satisfaction for their complaints. If that assurance cannot be provided, Esseks believes it is a problem and it would be wrong for the Commission to approve something that cannot be carried out. DeKalb believes that for most of the issues raised by the opposition, there are agencies responsible. The County Board will need to consider what level of enforcement they want. DeKalb submitted that the issue of soil mining in Lancaster County has been a non-issue as far as complaints. But, he agreed that the County Board needs to be aware and act on the issue of implementation, taxation, moratorium, etc.

Esseks asked whether there is any agency that can issue a cease and desist order, either at the County or City level. DeKalb stated that it depends on the circumstances and who is doing it. Building & Safety would refer a violation to the County Attorney. Or the County Board could act to cease a special permit for not meeting the requirements. Building & Safety does not have the authority to go out and issue a citation. Esseks then clarified that if the citizen complaint is found to be valid, then Building & Safety could ask the County Attorney or the County Board to take action. DeKalb concurred, but it is not a fast process. If there are complaints, Building & Safety investigates the complaint; tries to work with the applicant to correct the problem; when they can't get it corrected, then they refer it to the County Attorney, who again sends a letter to try to correct the violation, and if it is not resolved, it goes to Court.

Strand noted that bonds are required in subdivisions in the city for sidewalks, street trees, etc. DeKalb indicated that performance bonds have not been required in the County; however, they have been required in the City on several of the excavation permits.

Taylor commented that if we don't do something, it will not encourage compliance. He is going to be hard pressed to send this forward at all until he has some assurances that there are going to be some changes made.

Carlson noted that there are about ten soil mining permits outside the city limits. He believes that the County Board would be the policy changers and he wondered whether the Commission could encourage the County Board to require some kind of an annual or biannual inspection. We have a lot of these permits that are complaint based and it works pretty well. But it would be hard pressed for the layman to figure out the 16' cut, 3-to-1 grade, etc. It would be hard for someone to complain about this. Has the County Board considered implementing an inspection fee, etc.? DeKalb's response was that there have been no issues, problems or complaints. Carlson suggested that maybe it would be good for the County Board to think about whether they should send an engineer out to take a look rather than wait for complaints.

Carroll wondered whether there is a requirement to put a sign on the site with a contact number. DeKalb suggested that it could be added as a condition of approval.

Response by the Applicant

Hunzeker reminded the Commission that this is the same application with basically the same conditions approved by the Planning Commission unanimously a year ago. The only issue is the condition about access. Hunzeker stated that the detention cells are not shown on this grading plan because it is not the final grading plan. It is not the NPDES permit application, which requires that such things be shown.

Hunzeker acknowledged that the County Board denied the application a year ago and considered creating a task force, but instead they called all the agencies together and determined that the problem is not as bad as they were hearing and that the enforcement system does not need to be changed. Hunzeker stated that he does have personal knowledge of at least one of the sites referred to by the opposition claimed to not be in compliance with the grading plan, etc. Hunzeker pointed out that construction grading is not the same as mining permit grading. Mining permits can be finished and then the construction grading changes the grade considerably, potentially leaving vertical cuts, possibly with anticipation of further cuts to be made such as along Interstate 80. He also cautioned that one cannot drive around and determine whether or not those permits are in compliance with the conditions of approval by looking through your windshield. He believes that possibly the problem is a little overstated.

Hunzeker also pointed out that only three of the nine people testifying live within one mile of this site. He also clarified that there are records kept of the amount of dirt that is removed – that's how the owner gets paid. The owner has a very strong incentive to be sure the owner knows how much dirt is removed from the site.

Hunzeker pointed out that there are sites that are within the city limits, or at least abutting the city limits, that are being excavated all the time that are much larger than the 20-acre segments into which this tract will be divided for purposes of removing dirt. These sites in the City jurisdiction fall under the same regulations. The city and NDEQ regulate those sites strenuously, and those same regulations apply to this site, or to any other site where a NPDES permit is required. NDEQ has the power to implement big fines and to issue orders to cease and desist.

**ACTION BY PLANNING COMMISSION:**

August 29, 2007

Cornelius moved to approve the staff recommendation of conditional approval with the following amendments:

Condition #1: change the period of the special permit to one year from date of approval.

Condition #2.1.9: Amend to read: The operating area shall not exceed 20 acres at any given time and shall be reclaimed as specified in Condition #2.1.6 after no more than 10 months of operation.

Access to the site will be limited to Hwy 77 (delete Condition #2.1.2),  
seconded by Esseks.

Esseks offered friendly amendments to the main motion as follows:

Condition #1: hours of operation amended to 9:00 a.m. to 4:00 p.m., Monday through Friday.

Require that a sign be posted on-site with the name and telephone number of a contact person.

Require a performance bond of \$5,000.

Cornelius accepted these as friendly amendments and they became part of the main motion.

Larson stated that he will vote in favor of the motion, as amended. He has had close observation of a soil mining site approved a few years ago removing dirt from 88<sup>th</sup> & A to 84<sup>th</sup> & Van Dorn, and the operator was very responsible and kept the area clean, restored the topsoil and now it is in agricultural production again. You cannot tell that it was an excavation site. He knows that it can work well if properly done. He suggested that the Planning Commission encourage some rule for annual inspection because he thinks that would take care of a lot of the problems cited in some of these other areas.

Carlson suggested that the County Board should consider an annual inspection of these mining sites.

Cornelius indicated that he had specified one year because there is no mechanism for extension. DeKalb suggested that the one year would require the applicant to apply for a new special permit at the end of one year if they were not done with the site. A term of three years with an annual renewal would allow a one-year checkoff administratively.

The main motion was amended to a three-year term with annual renewal requirement.

DeKalb also observed that the County does not have a mechanism to process bonds like the City. The County Board will have to make that decision.



Motion for conditional approval, as amended, carried 8-0: Sunderman, Larson, Carroll, Strand, Esseks, Taylor, Cornelius and Carlson voting 'yes'; Krieser absent. This is a recommendation to the Lancaster County Board.

There being no further business, the meeting was adjourned at 3:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 12, 2007.

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