

MINUTES
LANCASTER COUNTY BOARD OF COMMISSIONERS
TUESDAY, SEPTEMBER 28, 2021
IMMEDIATELY FOLLOWING THE LANCASTER COUNTY
BOARD OF COMMISSIONERS MEETING
COUNTY-CITY BUILDING, ROOM 112

COMMISSIONERS: Rick Vest, Chair; Deb Schorr, Vice Chair;
Roma Amundson, Sean Flowerday and Christa Yoakum

Advance public notice of the Board of Commissioners meeting was posted on the County-City Building bulletin board and the Lancaster County Nebraska website, emailed to the media and published in the Lincoln Journal Star print and digital editions on September 24, 2021.

Commissioners present: Rick Vest, Chair; Deb Schorr, Vice Chair; Roma Amundson, Sean Flowerday and Christa Yoakum

Others present: David Derbin, Chief Administrative Officer; Kristy Bauer, Deputy Chief Administrative Officer; Jen Holloway, Candace Berens and John Ward, Deputy County Attorneys; Dan Nolte, County Clerk; Cori Beattie, Deputy County Clerk; and Leslie Brestel and Meggan Reppert-Funke, County Clerk's Office

The meeting was called to order at 9:21 a.m. and the location of the Nebraska Open Meetings Act was announced.

1) NEW BUSINESS:

- A.** Resolution in the matter of an Appeal of Special Permit 17043A allowing soil mining and excavation on property generally located at SW 112th Street and W Van Dorn Street

Holloway clarified that if the Board approves the resolution, the special permit would be approved. If the resolution is denied, the special permit would be denied.

Schorr asked if any additional conditions were being added to the special permit. Holloway stated many concerns focused on haul routes and water. The road maintenance agreement associated with the special permit will detail the requirements. She stressed one of the County Engineer's main concerns was that the trucks will need to get to pavement as soon as possible. Holloway reviewed the haul routes, road maintenance, and dust control abatement measures as detailed in the special permit (Exhibit 1). Any changes to the haul routes would need to be discussed and approved by the County Engineer's office. The special permit would become enforceable by Building and Safety as well as the County Engineer's Office.

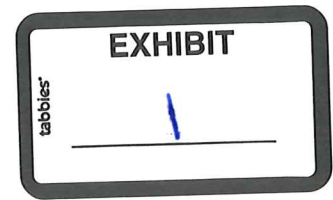
MOTION: Amundson moved and Flowerday seconded approval of the special permit as drafted by the County Attorney's Office. Schorr, Amundson, Yoakum, Flowerday and Vest. Motion carried 5-0.

2) ADJOURNMENT

MOTION: Amundson moved and Schorr seconded to adjourn at 9:32 a.m. Yoakum, Flowerday, Schorr, Amundson and Vest voted yes. Motion carried 5-0.


Dan Nolte
Lancaster County Clerk





BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

RESOLUTION IN THE MATTER OF COUNTY)
SPECIAL PERMIT NO. 17043A, EXCAVATION)
ON PROPERTY GENERALLY LOCATED AT) RESOLUTION NO. _____
SW 112TH ST AND WEST VAN DORN ST,)
LANCASTER COUNTY, NEBRASKA)

WHEREAS, Nate Burnett of REGA Engineering Group (“applicant”), on behalf of High Plains Enterprises, Inc. (“permittee”), and Dennis and Donna Borgman (“developer/owner”), requested approval of County Special Permit No. 17043A (“Special Permit”), for excavation under the provisions of Section 13.019 of the Lancaster County Zoning Resolution on property located at SW 112th Street and West Van Dorn Street, legally described as follows:

The North 1,000 feet of Lot 8 Irregular Tract located in the NE ¼ of Section 5, Township 9 North, Range 5 East, Lancaster County, NE (“Property”)

WHEREAS, the Lincoln-Lancaster County Planning Department (“Planning Department”) recommended conditional approval of said Special Permit, concluding that this application, with the conditions listed in the Planning Department’s report, meets the requirements for an excavation special permit in Lancaster County (“County”). In addition, a previous Special Permit (No. 17043) was approved on January 9, 2018 for soil excavation for the same area. There is a maximum time limit of three years for such permits. The prior permit is therefore expired. The applicant as part of this new proposal is requesting the same amount of cubic yards and same excavation area as the original Special Permit;

WHEREAS, on August 18, 2021, the Lincoln-Lancaster County Planning Commission (“Planning Commission”) conducted a public hearing on the Special Permit and voted 7-0 to conditionally approve the Special Permit;

WHEREAS, on August 23, 2021, an appeal of the Planning Commission's action to the Lancaster County Board of County Commissioners ("County Board") was filed with the Lancaster County Clerk's Office;

WHEREAS, on September 21, 2021, the County Board conducted a public hearing on the Special Permit, voting _____ to APPROVE said Special Permit; and

WHEREAS, the following findings of fact were based on the application, staff report, evidence, and testimony before the County Board;

1. The application is consistent with the Lancaster County Comprehensive Development Plan, future land use map, and Article 13.019 of the County zoning regulations;
2. The Property is zoned agricultural;
3. The proposed use of the Property is a use for which a special permit may be granted in an Agricultural district;
4. The information/evidence submitted by the Applicant meets the criteria for the granting of a special permit in that:
 - a. This request is for soil excavation which includes 7.47 acres in the area of disturbance under the provisions of Article 13.019 Excavation in the "AG" District. Special Permit 17043 was approved on January 9, 2018 for soil excavation on the same area. Per Article 13.019 a Special Permit for soil excavation may be approved for a maximum of three years. This request is therefore for a new Special Permit as the prior one has expired.
 - b. This application involves the excavation/mining of soil to be used for fill in and around Lincoln, Nebraska. Cuts are expected to range up to eighteen feet

with an estimated volume of excavation of 110,260 cubic yards. Since the first permit was approved, approximately 25,000 cubic yards has been excavated leaving 85,260 cubic yards remaining.

- c. During the soil mining process, the landowner(s) will be responsible for controlling off-site dust emissions in accordance with Lincoln-Lancaster County Air Pollution Regulations and Standards Article 2 Section 32. Dust control measures shall include, but are not limited to, application of water or other dust suppression chemicals.
- d. A groundwater report is required when there are wells within 1,000 feet of the proposed mining operation. There are 2 wells within 1,000 feet of this site. The report shows that the soil mining operation will not negatively impact the nearby wells.
- e. Lincoln-Lancaster County Health Department has no objections to this special permit.
- f. As a condition of approval, the County Engineer is requiring revisions to the existing Road Maintenance Agreement; and

WHEREAS, all requirements of the Lancaster County Zoning Resolution have been met;

NOW, THEREFORE, BE IT RESOLVED, by the County Board that the Special Permit on the Property is hereby APPROVED subject to the following conditions:

Site Specific Conditions:

1. Before initiating excavation operations the permittee shall cause to be prepared and submitted to the Planning Department a reproducible final plot plan including 3 copies.
2. Before beginning the excavation operations,

- 2.1 The Permittee shall have:
- 2.1.1 Received review and permits, in required for the Federal NPDES and 404 Permits.
 - 2.1.2 Post performance bond in the amount of \$10,500.00 (\$525.00 per acre) intended to be disturbed to assure compliance with the final reclamation plan, including but not limited to regrading, topsoil conditioning, and re-vegetation. A registered professional engineer must certify at closure of operations that grading and final reclamation has been completed in accordance with the approved plans before the bond may be released.
 - 2.1.3 Upon completion of all terms, conditions and requirements of the special permit that are to be completed before beginning operations, the Permittee shall request the Director of Building and Safety to issue a certificate of operation. Permittee shall not begin operation until it has received said certificate of operation.
 - 2.1.4 Applicant shall make access permit application with Lancaster County Engineering Department for the construction entrance to this borrow pit site. Note: Access to borrow pit site is limited to only one driveway to West Van Dorn Street.
 - 2.1.5 Applicant to submit traffic impact information regarding anticipated use of County roads along with proposed hauling routes.
 - 2.1.6 Applicant shall enter into a revised "Road Maintenance Agreement" with Lancaster County for West Van Dorn Street throughout the operation of the permit. The Road Maintenance Agreement shall include, but is not limited to the following requirements:
 - 2.1.6.1 Permittee shall provide prior written notice to the County Engineer if Applicant will have four (4) or more loaded trucks leaving the pit in one (1) day.
 - 2.1.6.2 The Permittee agrees to be on call by County Engineer for maintenance needs related to materials tracked onto the portion of the county roads located on West Van Dorn Street between SW 112th Street and SW 126th Street for the Permittee's soil extraction area located on the Property. Permittee also agrees to replace road materials when the conditions on said roads are determined necessary by the County Engineer from excessive use by Permittee's Contractors or Customers. Should Permittee fail to comply with each request for maintenance or gravel and/or rock, the

County Engineer is hereby given the explicit authority to shut down operations authorized by the Special Permit on the Property until such compliance is met. The Permittee shall not receive compensation of any kind from County Engineer for the required maintenance on the county roads contained herein.

2.1.6.3 If County Engineer maintenance effort is increased to more than three (3) maintenance motor patrols in two (2) weeks due to the hauling operations by Permittee and/or Permittee's Contractors or Customers, Permittee agrees to be responsible for the cost of the County Engineer's additional maintenance motor patrols. The County Engineer shall invoice Permittee for the cost of labor and equipment use. The cost of labor and equipment use fees will be determined using the cost of labor and equipment use fees as of the date of the invoice. The Permittee shall make payment to County Engineer within thirty (30) days of the date of the invoice.

2.1.7 Access and use under the Special Permit shall be via one (1) driveway connecting to West Van Dorn Street.

2.2 After beginning the excavation operations, the Permittee shall have:

2.2.1 Erosion controls, including retention and sediment basins shall be provided during excavation in conformance with state and federal standards and City land erosion and sediment control regulations to prevent a change in the character of runoff onto adjacent land.

2.2.2 No more than twenty (20) acres of the site shall be open for operations at any one time. The surface shall be maintained in such a manner that surface waters do not collect and pond, unless specifically approved by the City. Underground drainage may be supplied if it connects to an existing drainage facility and is satisfactory to the City.

2.2.3 Topsoil shall be collected and stored for redistribution on the site at the termination of the operation or termination of each phase.

2.2.4 Excavation shall be conducted in such a way as not to constitute a hazard to any person, not to the adjoining properties. Dust shall be controlled on-site to meet Lincoln-Lancaster County Air Pollution Control program Regulations. In addition, the Health Department may require dust control on unpaved perimeter roads.

2.2.5 Operating hours shall be limited to daylight hours, Monday through Saturday.

2.2.6 A sign shall be posted and maintained at the entrance to the site. The sign shall be:

2.2.6.1 Clearly visible from the adjacent road;

2.2.6.2 At least 32 square feet in area;

2.2.6.3 Lettering shall be at least two inches in heights, black on a white background;

2.2.6.4 The sign shall list:

- (a) The approved Special Permit Number;
- (b) The name, contact phone and email address for the land owner;
- (c) The name, contact phone and email address for the operator/contractor;
- (d) The Building and Safety Department contact number.

2.2.7 Permittee shall maintain the entrances onto public rights-of-way in a condition which will prevent tracking or flow of material on the public rights-of-way. Maintenance practices and sediment control circumstances are subject to review and approval by County Engineer and may require additional efforts be taken to ensure compliance with roadway protection. Upon review, the County Engineer may require the construction of the following mitigation Best Management Practices:

2.2.7.1 Rock or stone vehicle tracking pad.

2.2.7.2 Shaker Rack and/or.

2.2.7.3 Wheel washer/wash rack.

2.2.8 The Permittee shall use dust control abatement measures such as water application or other approved measures whenever more than ten (10) loaded trucks a day are leaving the pit. Dust control abatement is not required when the Property and/or haul routes have received at least a half-inch (1/2) of precipitation within the last forty-eight (48) hours. When required, dust control abatement measures, such as water application, should be applied every two (2) hours throughout the day on any gravel haul roads. Other measures will need to be approved by County Engineer in advance of use. Gravel haul routes will be defined as follows:

2.2.8.1 From the barrow pit west on West Van Dorn Street to SW 140th Street then north to the intersection HWY 34 and SW 140th Street.

2.2.8.2 From the barrow pit east on West Van Dorn Street to the intersection of SW 84th and West Van Dorn Street.

2.2.8.3 From the barrow pit east on West Van Dorn to SW 112th then south to the intersection of West Denton Road and SW 112th.

2.2.9 The Permittee shall provide prior written notice to the County Engineer regarding any deletions, additions, and/or modifications to the haul routes provided below:

2.2.9.1 From the barrow pit west on West Van Dorn to SW 140th then north to HWY 34.

2.2.9.2 From the barrow pit east on West Van Dorn to SW 84th then north to HWY 34.

2.2.9.3 From the barrow pit east on West Van Dorn to SW 84th continuing east.

2.2.9.4 From the barrow pit east on West Van Dorn to SW 84th then south to West Denton Road.

2.2.9.5 From the barrow pit east on West Van Dorn to SW 112th then south to West Denton Road.

2.2.10 Operations shall commence within one (1) year from the date the special permit is approved or the special permit will automatically terminate and be considered null and void. All existing certificates of operation shall automatically terminate on the same date.

2.2.11 Within nine (9) months after the completion of excavation on any portion of the site, all cuts shall be returned to a slope of less than three to one, the topography and soils shall be restored and stabilized, and the land shall be graded, seeded, and sodded so as to prevent erosion and siltation, and to protect the health, safety, and general welfare of the public.

2.2.12 Permittee shall prepare and submit an annual report to the Director of Building and Safety addressing the status and extent of operations and each condition of the special permit. Failure to submit the annual report shall constitute just cause for the City Council to revoke the special permit.

2.2.13 Permittee shall be subject to an annual site inspection by the Director of Building and Safety. The cost of such inspection shall be paid for by the applicant. Cost shall be based upon the Department of Building and Safety's hourly rate in effect on the date of the application. Building and Safety shall:

2.2.13.1 Inspect the site to determine whether terms, special conditions and requirements imposed by the City in the approval of the special permit have been met and complied with; and

2.2.13.2 Review all complaints from public and other departments/agencies and report to the Planning Director.

3. At the conclusion of the operation, the permittee shall provide to the Building & Safety Department a certificate from an engineer stating that the final grading substantially reflects the finish contours shown on the approved site plan and request a release of the performance bond.

Standard Conditions:

4. The following conditions are applicable to all requests:
- 4.1 Before starting the operation all development and construction shall substantially comply with the approved plans.
 - 4.2 The physical location of all setbacks and yards, buildings, parking and circulation elements, and similar matters be in substantial compliance with the location of said items as shown on the approved site plan.
 - 4.3 The terms, conditions, and requirements of this resolution shall run with the land and be binding upon the Permittee, its successors and assigns.
 - 4.4 The applicant shall sign and return the letter of acceptance to the County Clerk. This step should be completed within 60 days following the approval of the special permit. The Permittee shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds. Building permits will not be issued unless the letter of acceptance has been filed.

DATED this ___ day of _____, 2021, at the County-City Building, Lincoln,
Lancaster County, Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this ___ day of _____, 2021.

Deputy County Attorney
for PAT CONDON
Lancaster County Attorney

LETTER OF ACCEPTANCE

Nate Burnett of REGA Engineering Group (“applicant”), on behalf of High Plains Enterprises, Inc. (“permittee”), and Dennis and Donna Borgman (“owner”), hereby agree to all of the conditions of County Special Permit No. 17043A, for excavation under the provisions of Section 13.019 of the Lancaster County Zoning Resolution on property located at SW 112th Street and West Van Dorn Street, legally described as follows:

The North 1,000 feet of Lot 8 Irregular Tract located in the NE ¼ of Section 5, Township 9 North, Range 5 East, Lancaster County, NE; granted by the Lincoln-Lancaster County Planning Commission, and embodied in Resolution No. _____, all costs which permittee hereby represents have been paid and that this agreement shall be binding upon REGA Engineering Group, and its respective heirs, successors, and assigns, High Plains Enterprises, Inc., and its respective heirs, successors, and assigns, and Dennis and Donna Borgman, and their heirs, successors, and assigns, and shall run with the land.

DATED this ____ day of _____, 20____, in Lancaster County, Nebraska.

Owner

BY: _____

Dennis Borgman

BY: _____

Donna Borgman

STATE OF NEBRASKA)
)
County of Lancaster) ss.

On this ____ day of _____, 2021, before me, the undersigned, a notary public, duly commissioned, qualified for and residing in said County, personally came _____, known to be the identical person whose name is affixed to this agreement, and acknowledged execution of the same to be his voluntary act and deed.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2021.

Notary Public

STATE OF NEBRASKA)
)
County of Lancaster) ss.

On this ____ day of _____, 2021, before me, the undersigned, a notary public, duly commissioned, qualified for and residing in said County, personally came _____, known to be the identical person whose name is affixed to this agreement, and acknowledged execution of the same to be his voluntary act and deed.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2021.

Notary Public

Permittee- High Plains Enterprises

BY: _____

NAME: _____

TITLE: _____

STATE OF NEBRASKA)
)
County of Lancaster) ss.

On this ____ day of _____, 2021, before me, the undersigned, a notary public, duly commissioned, qualified for and residing in said County, personally came _____, known to be the identical person whose name is affixed to this agreement, and acknowledged execution of the same to be his voluntary act and deed.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2021.

Notary Public

Applicant- REGA Engineering Group

BY: _____

NAME: Nate Burnett

TITLE: _____

STATE OF NEBRASKA)
) ss.
County of Lancaster)

On this ____ day of _____, 2021, before me, the undersigned, a notary public, duly commissioned, qualified for and residing in said County, personally came _____, known to be the identical person whose name is affixed to this agreement, and acknowledged execution of the same to be his voluntary act and deed.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2021.

Notary Public