

City of Columbus
Public Hearing – Excavation Ordinance Amendments – Chapters 7A and 9
(PC-16-127)
December 7, 2016

The December 7, 2016 Public Hearing to receive testimony regarding amendments to the City Code pertaining to clarifications for mining permits and grading permits, including amendments to Chapter 7A to define mineral extraction, allow for mineral extraction as an interim use in various zoning districts, and establish performance standards for mineral extractions; and amendments to Chapter 9 to eliminate mineral extraction provisions, and clarify permit requirements and performance standards for excavation, grading and filling was called to order at 7:03 p.m. by Chair Garth Sternberg at the City Hall. Present were Commission members Jim Watson, Pam Wolowski, Jesse Preiner, and Jody Krebs; City Administrator Elizabeth Mursko, Planner Dean Johnson, and Recording Secretary Karen Boland.

Also in attendance were Emmy Robinson and Rick Robinson.

Sternberg: Public Hearing and discussion, Excavation Ordinance, pages 1 through 11. And, at this time, I'd like to ask the recording secretary to read the notice as published.

Notice was read at this time by the recording secretary.

Sternberg: Thank you, Karen. So, I suppose, Dean?

Johnson: That was a good summary.

Sternberg: It was.

Johnson: Uh, I don't know how detailed you want me to get. How about seeing if the audience would like an explanation of all this.

Emmy Robinson (18334 Tulane Street): Well, we've been trying to follow it. Um, I guess some of the questions in my mind are, um, you know, how this is, uh, how's this, how do these proposed changes prevent, you know, like a site like Haluptzok's next to John's Black Dirt from happening again? And, um, you know is the collector road thing been cleared up for collector road, you know, in the ordinance versus collector road used, um, for road paving? And I, I understand that if you're road paving for this ordinance—or not road paving, but, um, this ordinance is based on the Comprehensive Plan?

Johnson: Right.

Robinson: So, I guess, just kind of a general (unintelligible).

Johnson: Let, let me give you that, I'll give you that quick clarification if that's okay. First of all, I think it's important in the purpose statement, um, the, the City has chosen to provide, and it

reads: “allow limited opportunities for mineral extraction.” That’s qualified twice by saying in special circumstances and under specific conditions that minimize impacts on neighboring properties, public streets, and minimize the loss of buildable upland acreage in the City. So, the purpose is pretty clear. It’s just not a mining community—it really isn’t. Somebody’s really going to have to have a creative proposal to have mining that doesn’t result in a loss of upland acreage. It, it’s almost wetland mining. Then, you say, ‘Well, gee, that’s John’s Black Dirt.’ The restrictions are two-fold. You touched on one. All mineral extraction, regardless of the particular zoning district it is allowed by interim use, must have direct access to what’s described in the Comprehensive Plan—not what we might describe here at a meeting that, ‘Well, you’re straight as a collector street.’ The Comprehensive Plan in the transportation section is very clear what a minor arterial and a collector is. They’re all County roads. So, this requires direct access to a County road. So, you’re, you’re minimizing properties very rapidly on what would even be eligible. So a location like John’s Black Dirt will never get another mining permit, ever. The permits are issued for a 12-month period of time. There is an option for a maximum one-year extension by the City Council. After that, there’s no mining allowed on the same property. We are, the ordinance prevents us from accepting an application on the same property within five years. So, if someone had a unique circumstance, and, I’ve tried to envision what that might be, and it could be that, um, there were inaccessible upland acreages on, on a particular property. So, from a development standpoint, you would not be able to develop them. Uh, they are entirely surrounded by wetlands, and, through this type of activity, it’s not inconceivable that someone could even do a, a replacement action where they are taking wetlands and improving them for better development purposes and allowing mineral extraction to occur on isolated upland areas surrounded by wetlands. You can also do mining in wetlands as a wetland enhancement project. But—and that’s what John’s Black Dirt or Forest Lake Contracting is basically doing. Uh, in a one-year timeframe people are going to be awfully desperate to attempt to accomplish something like that. And so, the ordinance was constructed based upon existing application requirements and performance standards from many different communities. I work with several that are heavily into mineral extraction, but this is tailored completely to minimizing your own road impact, impacts on residential areas themselves, and not losing any upland acreage. So that’s very clear, and that’s the amendment to the zoning ordinance or Chapter 7A of the Code. The second part of this ordinance deals with eliminating the confusion that existed with the original excavation mining and filling ordinance, which, I think, at one time did not even have direct mining references, and may have been amended to add mining into them. And it got a little confusing. Where most grading and excavation or filling activities can be done administratively, mining typically never is. And so the issue was to pull mining entirely out of Chapter 9 and make it a complete administrative function. And, in that, it also created a 200-cubic-yard threshold for residents to do something without obtaining a permit or doing any kind of drainage study or anything else, provided they stay 20 feet from their property line. And that’s about the essence of that section. It really eliminated more than it added, and, uh, tried to simplify it. So, when we get a new home, when we get a new business, they all have some sort of grading and excavation included in them. In that permit review--like a conditional use permit for Blake Well Drilling down on Lake Drive, right now--as a part of that process, their grading plan’s approved. So they don’t have a, they don’t have an extra one. It was incorporated into that conditional use permit, and this, these amendments clarify that. And so, there are instances where the City Administrator may, uh, authorize or approve these directly. The Administrator may do it upon consultation or

additional information submitted by the City Engineer, but it takes out Planning Commission and City Council in every instance. And, so, that's really the nature of the amendments to that.

Mursko: Okay, and then just for further clarification, the Public Works advisory board did look at, uh, collector streets for the blacktop policy, and the only road they came back with that's in the policy is 165th. So they have determined that's the only collector road that is classified only for the blacktop policy, and it's within the blacktop policy.

Johnson: Yeah, and I think, again, the City Attorney and I talked about the whole issue of how we regard this mining ordinance. It's, it's safe to use the Comprehensive Plan. It's, it's an official document. Um, and the reference to roads in the Comprehensive Plan is safe, because it generally is gonna be updated every ten years, and not much change is going to occur. You're never going to have any local streets—I shouldn't say never—um, not in my lifetime will I see City streets that have become collector or minor arterials per the classification of the Metropolitan Council, which is what we're relying on. And that simplified this. We didn't want to come out and say, 'You can only mine on County roads.' That seems kind of discriminate or overly pushing the burden on, uh, another jurisdiction. And, so, using the classification that we have to do for other reasons, they get State-aid funds for those roads anyway, that's where big trucks belong. So, um, I think, I hope that that clarifies that issue, because Elizabeth raised the same question with me - there's discussion on street policies regarding collector roads. And I simply said, 'It doesn't have anything to do with it.' But, it's something we may have to explain every now and then.

Robinson: May I ask another question? Um, this probably goes way out beyond . . . but, I can think of a couple of spots where somebody, there's, you know, big properties, um, that aren't too far from a County road. What prevents someone from building an access road from the property to the County road?

Johnson: I think the issue is going to be what the determination of direct access—it doesn't say it has to directly abut. Could somebody get an easement from somebody and have that direct access? I think so. Um, the issue becomes: What mining project results in a no net loss of upland acreage? I, it's not going to happen. This is not a mine town. But, I think the message in our original work session was, 'We don't want to eliminate it; we just want to highly regulate it, so it doesn't cause any problems.' And this isn't going to prevent someone from doing it, but, you've got to go almost to the west end of Anoka County to get where sand and gravel resources are plentiful, and that's where mining ought to occur. It's just that it's 15 extra miles to get over here, and people are always looking to cut corners and save money, and I appreciate that, but, when you don't have any upland here, this is a valid policy for you to have that governs the actions you have. And so, I just don't think it's going to happen.

Robinson: Okay.

Johnson: Now, don't hold me accountable when it does.

Robinson: Right. Right.

Johnson: It can happen. It just isn't likely. A 12-month permit, and all the other restrictions do not make this attractive to mining.

Sternberg: And, Dean, even if her concerns, you know, as she's talking about them, these parcels of land that she sees, and building an access, there's a whole lot of other stuff in here that would restrict it. You know, high-density residential neighborhoods, you know, it'd be pretty much a no go, correct?

Johnson: Well.

Sternberg: 'Cause it's not just the roads. It's, I mean the roads limits a certain amount of the property in Columbus, then there's the, you know, neighbor, residential neighborhoods adjacent to the property. That eliminates quite a few of them.

Johnson: Ummmm . . .

Sternberg: There's a lot of restrictions in here that are gonna make it hard.

Johnson: You have very specific performance standards which talk about setbacks. Uh, you're basically 150 feet from an adjacent residence or 50 feet from any property line. It doesn't pay regard to how many neighbors are there, so, if, if someone has a piece of property—and we allow this in every zoning district except suburban residential, maybe that's what you're referring to with high density. It's not allowed in that district, but it would be allowed next to a suburban residential if you have one, because it's allowed in all the other commercial areas.

Sternberg: I guess, I guess what I'm trying to say is, you know, John's Black Dirt would not happen today, under this ordinance.

Johnson: And, and that doesn't have anything to do with where the homes are; it is the type of streets that require access. But, using Emmy's example question . . .

Sternberg: And the--

Johnson: . . . if you have a piece of property that's one parcel away from a County Road—we'll pick Broadway—and that particular property owner that separated that direct access said, 'Yeah, I'm willing to sell a driveway access for 12 months. What's the harm in that?' That could happen, very easily. But, the density of homes around a piece of property will be a non-factor in these performance standards. We don't say, 'Mining isn't allowed if you have more than 30 homes within a half a mile of your boundary.' There, there's no screen like that. So, if it meets the test of having direct access to a road, so you're not creating road impacts, then the others that are going to apply to this regard: dust, noise, other operational factors, and a 12-month permit. Worst case, if someone's capable of meeting this, including the no net loss, you're going to have them there for a year—one season. And a year in Minnesota is usually eight months, not 12 months.

Sternberg: So we have to approve the permit.

Johnson: We're not going to be able to discriminate on the basis of the reaction of the neighbors by, if somebody came in. If they can meet these, it's in the proper zoning district, and they have that access, you'll have to approve it or you'll be subject to a lawsuit.

Mursko: But, it goes to the Planning Commission and goes to Council.

Johnson: Yes.

Preiner: Mr. Chair. And also Dean, nobody's, very few people would do anything, because the year is really six months: May, June, July, August, September, October, maybe November. So, you're not going to build a – you'd have to build a thing off the road, a turn lane for 50-60 thousand bucks, plus you can only haul for eight hours a day, and not on Sunday, and not on Saturday. It's not worth it.

Johnson: If you could envision somebody that had an appreciable amount of material and had a job to do this, first of all they've got to scramble when they're bidding on a job, and go through that permit process without having been awarded that job.

Preiner: Right.

Johnson: On all of these variables, I don't, I just don't ever see this happening. I mean . . . But, we did our best to allow an opportunity for it to occur. The worst case is, somebody could be operating a facility for 12 months, from a practical standpoint that ends up being seven or eight months. Uh, and it's 7 a.m. to 7 p.m. Monday through Friday. So, no weekends, no holidays. You've got it for eight months out of the year. And, if it becomes a problem, the Council's not likely to give that one-year extension. That's a Council privilege, it's not up to the Planning Commission. So, if you got a bunch of complaints, I don't see that happening either. And then their mine plan has to include the reclamation within that same one-year, 12-month permit period. And the only reason I could see an extension: somebody's gonna mine right up until Thanksgiving, and then, 'Oops, we didn't get our stuff done. Will you extend the permit so we can do restoration?' Well, you might be holding a bond or some form of surety that guarantees their performance; you're going to have to grant that, that they come in for 60 days in the spring and do the—that's very common for permit extensions. It's not limited to mining. I don't want to say it'll never happen, but the likelihood is pretty . . . I mean, short of simply coming out and saying we're not going to allow mining, that would have been the only way to tighten this up. And nobody wanted to do that when we started this process.

Preiner: But you've effectively done it.

Johnson: I'm sorry?

Preiner: I said, but it has been effectively done.

Johnson: Yup.

Preiner: I mean . . .

Johnson: The, the study – Elizabeth has created a summary of everything we’ve done since this moratorium was put in place earlier in the year. Um, effectively that study was done November 9th, when—at the last Council meeting—when they ordered this hearing. I’m merely going to take what Elizabeth put together, send them a memo indicating what your recommendation tonight is, and then attach what Elizabeth prepared, to identify, ‘This was our study. It’s done. You can lift the moratorium and you can approve the ordinance.’ Who gets to present this? Jim? You’re up?

Krebs: No, it’s Garth.

Mursko: It’s Garth.

Johnson: Is it?

Preiner: Mr. Chair.

Krebs: Mr. Chair.

Johnson: Ah, good.

Sternberg: Okay. Any further discussion? Okay, at this time I’d like to open the hearing to the public. Anyone from the public? Okay, I’m going to close the hearing with the right to reopen.

Hearing closed at 7:21 p.m.

Respectfully Submitted:

Karen Boland, Recording Secretary