

FACTSHEET

TITLE: TEXT AMENDMENT NO. 14013
(Title 27 - 27.63.160 - Excavation and Stone Milling)

BOARD/COMMITTEE: Planning Commission

APPLICANT: Director of Planning

RECOMMENDATION: Approval (6-0: Sunderman, Harris, Beecham, Cornelius, Hove and Lust voting 'yes'; Weber, Scheer and Corr absent).

STAFF RECOMMENDATION: Approval

OTHER DEPARTMENTS AFFECTED: N/A

SPONSOR: Planning Department

OPPONENTS: None

REASON FOR LEGISLATION:

Text amendment to Section 27.63.160 of the Lincoln Municipal Code (Special Permits, Excavation and Stone Milling) to allow stone milling as an accessory use to excavation operations; to clarify the meaning of stone milling; and to clarify that pre-existing, long-term excavation sites may not be able to meet all of the conditions of the special permit section.

DISCUSSION / FINDINGS OF FACT:

1. This proposed text amendment was heard in association with the same amendment to the Lancaster County Zoning Resolution and Pre-Existing Special Permit No. 40A for excavation and stone milling at the northeast corner of South 54th Street and Wittstruck Road (Schwarck Quarry).
2. The staff recommendation to approve this text amendment is based upon the "Analysis" as set forth on p.2-3, concluding that the changes to the text are primarily to clarify terms and conditions and do not remove any of the conditions listed in the current text. The text change will strengthen the relationship between a stone milling operation and a permitted excavation operation. The staff presentation and discussion with the Commission is found on p.5-9.
3. Testimony in support by the representative of the applicant for the associated Pre-Existing Special Permit No. 40A is found on p.9.
4. There was no testimony in opposition.
5. On October 1, 2014, the Planning Commission agreed with the staff recommendation and voted 6-0 to recommend approval of this text amendment (Weber, Scheer and Corr absent).
6. On October 1, 2014, the Planning Commission also agreed with the staff recommendation and voted 6-0 to recommend approval of the same amendment to the Lancaster County Zoning Resolution, Text Amendment No. 14012, and voted 6-0 to adopt Resolution No. PC-01416, approving Pre-Existing Special Permit No. 40A, with conditions, as amended. Approval of this text amendment is a condition of approval of the pre-existing special permit. As of this date, the pre-existing special permit has not been appealed to the City Council.
7. The public hearing before the Lancaster County Board of Commissioners on the same amendment to the Lancaster County Zoning Resolution (Text Amendment No. 14012) will not be scheduled until the City Council has taken action on this text amendment.

FACTSHEET PREPARED BY: Jean Preister, Administrative Officer

DATE: October 13, 2014

REVIEWED BY: Marvin Krout, Director of Planning

DATE: October 13, 2014

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for October 1, 2014, PLANNING COMMISSION MEETING

PROJECT #: Text No. 14013

PROPOSAL: An amendment to the text of Section 27.63.160 of Lincoln Municipal Code, Special Permits, Excavation and Stone Milling, to allow stone milling as an accessory use to excavation operations, clarify the meaning of stone milling, and clarify that pre-existing, long term excavation sites may not be able to meet all of the conditions of the special permit.

CONCLUSION: The changes to the text are primarily to clarify terms and conditions and do not remove any of the conditions listed in the current text. The text change will strengthen the relationship between a stone milling operation and a permitted excavation operation.

RECOMMENDATION:	Approval
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GENERAL INFORMATION:

HISTORY:

1968 - 1979 Mining and processing of materials or minerals from any portion of the district allowed as a permitted use in the City AA District

1979 The Zoning update of 1979 reclassified "mining" as a specially permitted use in the AG Agricultural District (formerly the AA Rural and Public Use District) and the AGR Agricultural Residential districts; allowed "Extracting sand, gravel and soil" as a special permitted use in the R-3 Residential District, B-2 Planned Neighborhood Business District, H-2 Highway Business District, H-3 Highway Commercial District, H-4 General Commercial District, and I-1 Industrial District; allowed "Rock crusher, stone mill and quarry" as a special permitted use in the I-1 Industrial District; and allowed "mining, quarrying and stone milling" as a specially permitted use in the I-2 Industrial Park District and the I-4 Planned Industrial Reserve District (no longer exists).

Mar. 2009 Major revision to the conditions of the Excavation and Stone Milling special permit are approved by the County Board

ANALYSIS:

1. This amendment would clarify the meaning of "stone milling" which is currently not defined in the text. Stone milling would be allowed only when in association with, and as part of, an excavation special permit. This change would also acknowledge that in the case of long-term, pre-existing excavation sites, not all of the conditions of the special permit would apply.

2. Stone milling has not previously been defined. It is difficult to find a common definition of stone milling. However, milling when associated with some sort of extractive process is generally accepted to mean grinding or crushing rock in order to extract ore, or the specific machining of a material. The proposed text change would describe stone milling as “the crushing, cutting, grinding or otherwise processing of minerals.” In the context of the zoning regulations, this would further be limited to being an accessory use to an excavation operation. Excavation operations are located where the specific mineral resources are found. A stone milling operation could be free-standing on any property regardless of the mineral resources available on site. By making stone milling an accessory to an excavation operation, there is a relationship created between the milling of materials (processing) and the extraction of those materials from the site.
3. Uses which were legally existing within the district prior to change in the zoning ordinance that would designate them as Specially Permitted Uses are deemed to have received a special permit. In practice, when those uses request a change to the property they are assigned a “pre-existing special permit” number. In many cases the conditions of the special permit which were adopted with the change to the resolution may not describe these pre-existing uses. Such pre-existing uses are not expected to meet these conditions fully.
4. The Excavation and Stone Milling special permit language was drafted in 2009 with the assistance of a community task force with a broad participation. At that time there was concern over the environmental effects of the soil mining operations in the County. Construction of the Interstate 80 widening project in particular was prompting many of these applications. There were several different extractive services special permits in the City zoning code. Changes to the extractive services uses in the zoning ordinance consolidated several of the uses into one larger group “Excavation and Stone Milling”. Since two of the previous special permit sections referred to the third for a list of conditions, this was a logical change.

The conditions written at that time better address the operations associated with short term construction needs, commonly for fill dirt associated with leveling sites, which describe the majority of applications made. However, these conditions do not all describe some of the long term, pre-existing extraction uses which legally exist. For example, the conditions of a 3 year limit to the permit, required bonding for return to agricultural use, stockpiling of topsoil on site, annual reporting and inspection, and other requirements that are applicable to the typical soil mining permit may not apply to quarry sites that have been operating for several decades and are likely to continue operating into the foreseeable future.

5. The proposed change would acknowledge that there are existing, legal, long-term excavation operations which may not be able to meet the conditions of the current special permit language.
6. The proposed changes to the special permit language do not change the substance of the conditions of approval but rather clarify and acknowledge the breadth of excavation operations that may be found in Lancaster County. This change is recommended for approval.

Prepared by:

Sara S. Hartzell, Planner

DATE: August 18, 2014

APPLICANT: Marvin Krout, Director
Lincoln and Lancaster County Planning Department
555 S. 10th Street, Suite 213
Lincoln, NE 68508

**COUNTY TEXT AMENDMENT NO. 14012;
CITY TEXT AMENDMENT NO. 14013;
and
PRE-EXISTING SPECIAL PERMIT NO. 40A,**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 1, 2014

Members present: Sunderman, Harris, Beecham, Cornelius, Hove and Lust; Weber, Scheer and Corr absent.

Staff recommendation: Approval of the text amendments and conditional approval of the pre-existing special permit, with amendments.

There were no ex parte communications disclosed.

Staff presentation: **Sara Hartzell of Planning staff** first reviewed the proposed text amendments to the County Zoning Resolution and Title 27 of the Lincoln Municipal Code (the Zoning Ordinance).

Prior to the 1979 update, excavation was an allowed use in both the city and the county. No special or conditional use permit was required in the AG district and none of the county districts had excavation uses. You could excavate, process, and store materials or minerals that were mined from any portion within the district. In 1979, mining in the county shows up in the AG district, and in the city jurisdiction it shows up in several other districts under various names and terms, i.e., mining, excavation of soil, rock crusher, stone mills, etc. In 2009, there was a citizens group brought together to review these uses because there had been concern about road projects and soil mines opening up with insufficient controls for closing. The task force came up with language that is very similar in the city and county. The city collapsed some of the various terms into a single special permit, now called "excavation and stone milling."

Hartzell then explained that these two text amendments are basically for clarification purposes. "Stone milling" is not defined in the code and it is not even described in the special permit section. It means cutting, grinding, and processing materials that are mined from the earth in some way. One of the changes in the text amendments is to actually put in a description of stone milling as, "crushing, cutting, grinding or otherwise processing of minerals when associated with an excavation operation".

The issue is that stone milling could mean rock crushing, and if it is allowed as a separate special use, it is possible that we could have a rock crusher on some property with no connection to the use of the property. By clarifying that stone milling is supposed to be associated with the excavation permit, we have the nexus of uses, and we make sure that it goes through the same evaluation as the excavation permit. These amendments provide that stone milling would be associated with and accessory to the excavation special permit.

Hartzell further explained that a property that was in a particular use prior to the change in the code is granted a "pre-existing" special permit. In this case, the property was being mined prior to a mine needing a special permit. There are now conditions written into the process and code for

excavation permits. On a pre-existing special permit, sometimes those conditions do not apply or it may not be necessary to require those conditions. For example, Hartzell referred to the separation requirements for alcohol sales. In this case, the proposed text amendments recommend that a single sentence be added to clarify that the lengthy conditions for mining permits or excavation permits may not always apply to a pre-existing special permit, i.e. "Not all of the conditions will apply to pre-existing, long-term excavation sites." Hartzell indicated that this is the practice that has been followed for quite some time.

Lust pondered that not all of the conditions referred to in the code will apply to the pre-existing, long-term excavation sites. She wondered whether some of them will apply. Hartzell explained that whatever conditions are reasonable and can be met will be applied to the pre-existing, long-term special permits. For example, the condition that an excavation site be closed within three years would not apply in this case.

Lust wondered who has the discretion on requiring the conditions. Hartzell stated that each application would be evaluated on a case-by-case basis as it comes forward. The staff would make the recommendation and the Planning Commission makes the decision.

Harris inquired whether "pre-existing" means before 2009. Hartzell responded that some conditions did change in 2009, so if it was a legal use in 2009, then yes. In this case, however, this use was pre-existing prior to the requirement for a special permit at all.

Beecham questioned the broadness of the language regarding the conditions not having to be met. Hartzell again explained that this would apply only to pre-existing uses. For example, if a legal use that has been in existence becomes a specially permitted use, then it is a special permit, even though the new conditions were written subsequent to the existence of the pre-existing special permit.

Hove inquired how the conditions that apply and those that do not apply are documented. Hartzell stated that the conditions that do apply would be in the resolution, on the site plan and in the notes on the site plan; however, the conditions which do not apply are not normally listed but may be included in the analysis in the staff report.

Lust still does not understand what this language adds to the situation. She wondered if it is even necessary, i.e. what does this language do that we cannot already do? Hartzell suggested that it is just formalizing that statement, which is not formalized in all the other special permit situations.

Beecham wondered whether the Commission could choose to waive the conditions that do not apply. Hartzell pointed out that the Planning Commission already has the ability to say what conditions are not applicable and may not be able to be met. It would be on a case-by-case basis, but it would not require any waivers.

Cornelius also suggested that if this language does not appear in all special permit situations, maybe the language is not necessary. To clarify, hypothetically, Cornelius observed that there exists a stone milling operation or soil mine or whatever, which existed before any kind of requirement for special permit. Regardless of whether or not it meets the lengthy conditions, once the requirement for special permit is put in place, it is assumed to have a special permit. All we are saying is that that assumption is made regardless of whether or not all of the requirements are met.

Lust then wondered why the language is only being added in this particular situation. Doesn't that imply that those other pre-existing special permits are going to be treated somehow differently? **Marvin Krout, Director of Planning**, approached and suggested that the pre-existing special permit is not the question. The real question is what authority the Planning Commission has when it comes to conditions. There are some, e.g. alcohol sales, where the Planning Commission has no discretion to change the conditions, such as the 100' rule. There are others that specifically state that only the City Council can waive or modify those conditions, such as reducing the front yard setback in a residential district for a parking lot. Then there are others where the ordinance provides that the Planning Commission can waive or modify the conditions. The purpose here is to clarify that this is a special permit where the Planning Commission has authority to waive or modify the conditions. The conditions were drafted to deal with the soil mining issue and contemplated the rock and stone excavation. Here we are saying that the standards that were drafted mainly for soil mining do not all necessarily apply to this other kind of excavation operation. The Planning Commission has the flexibility on a case-by-case basis to make modifications to those conditions.

Lust wondered whether the language only applies to the stone milling permit. Krout advised that it would apply to a pre-existing special permit for soil excavation, including the stone milling.

Beecham stated that she is still uncomfortable not specifically stating that it is at the discretion of the Planning Commission. It just seems very broad. If we are clarifying that the Planning Commission has the ability to waive or modify, perhaps that is the wording that should be used. Krout explained that there are very few pre-existing special permits in the county. We do have other special permit provisions where the Planning Commission has that kind of flexibility. Krout also pointed out that the Planning Commission approves the special permit subject to appeal to the City Council or County Board.

Lust was still not convinced that the language is necessary because she believes the Planning Commission already has the authority to waive conditions to pre-existing special permits. Krout clarified that the Planning Commission does not always have that authority.

Harris asked staff to explain why stone milling is being made an accessory use. Hartzell explained that the original language talks about the mining and processing of materials. It has always been implied that those pieces go together as a single use, i.e. mining and processing. With this amendment, we are making sure that it is clear that if there is some kind of stone milling operation involved, that it is associated with a mining operation.

Harris inquired if there are existing stone milling operations that are not connected to an excavation permit. Hartzell replied that there are a couple of rock crusher permits in the industrial districts, and there are temporary rock crushers associated with demolition projects. In the AG district in the county, there are not any free-standing rock crusher uses. Harris asked if existing rock crushers would be considered pre-existing permits. Hartzell replied that they would be. However, if they had been in operation prior to 1979, they would be pre-existing.
(As amended, at the request of Commissioner Harris**)**

Hartzell then addressed Pre-Existing Special Permit No. 40A, which is the Schwarck Quarry facility on S. 54th Street and Wittstruck Road, about 1 ½ mile south of Saltillo Road. This site has been in operation certainly since 1971, and possibly as far back as the 1930's. At one time

it was on both sides of 54th Street, the one side now being a residential use. There is a community unit plan nearby with several houses and a few vacant lots. The quarry is broken up into four lots, with a stone cutting business on the north; the quarrying activity is to the south. There is a crushing operation for limestone and a scale house in place.

Hartzell further pointed out that the conditions of approval in the staff report and resolution contain the conditions which the applicant is able to meet. Most of the conditions not being recommending have to do with closure of the mine in a relatively short period of time. The operator believes that this facility could be operating 25-30-35 years before the operation is mined out. The conditions do require some kind of site plan showing that there is some potential in the future to have a residential use on this property. The area of the special permit stops short of the Roca jurisdiction. The mining is going on in the Roca jurisdiction, so this special permit is tied to that area of land. That area will be managed in a way that is complementary and tied to the rest of the special permit.

Hartzell stated that screening is provided by safety fencing; there is some evergreen screening and some natural screening because of topography. They will make sure the visual screening applies.

Hartzell also noted that the County Engineer has requested information on the traffic and how this operation will affect the roads. A paved road runs adjacent to the property.

The conditions do put some limitations on the hours of operation. The rock crusher may only operate Monday through Friday, 8:00 a.m. to 5:00 p.m. The staff is amending Condition #2.4 regarding the hours of operation. The applicant does maintenance on the off hours.

- 2.4 Amend Note 7 to read "Hours of operation for the rock crusher shall be 8 am to 5 pm Monday through Friday. Excavation ~~activities are allowed~~ of soil, limestone and other minerals on-site is limited to during daylight hours Monday through Saturday; however, additional maintenance activities associated with excavation may occur during nighttime hours. The rock crusher operations shall be limited to the area shown on the site plan."

The staff is also recommending the addition of Condition #2.13 that no explosives will be used in the mining operation. This applicant has no intention of using any explosives, including dynamite.

Beecham inquired about the groundwater report questions. Are there residential wells within the area? Hartzell stated that the Brush Creek Addition immediately to the east was done with rural water. Hartzell did not have a lot of information on the development on the west side in the Roca jurisdiction, but she would assume they also have rural water. There is no particular concern about individual wells. The excavation activity is to the south and drainage is toward the north. There is a pond on the property which has been in place for quite some time, which drains on to the tributary to Salt Creek. It appears that the drainage would most likely increase into this quarry area but it is unlikely that the drainage will increase out to adjacent properties. There are Watershed Management requirements for drainage onto adjacent properties in the conditions. They will also be required to comply with the floodplain development rules.

Beecham wondered about an annual inspection. Hartzell acknowledged that annual inspections could be required, but this is not an operation that is working toward a near future closure, so we are not looking at returning grades for future use. We are looking at more of a long term. This is a different kind of operation than a soil mining operation.

Beecham observed that this operation is changing the topography. What if the runoff accidentally switches direction when we are not doing an annual inspection? How does that change get detected? Hartzell suggested that just like a lot of other special permits, issues with runoff, noise, light, etc., would be handled on a complaint type basis with the Building & Safety Department. The surface water issue would most likely go to Watershed Management to address any problem.

Proponents

1. DaNay Kalkowski of Seacrest and Kalkowski appeared on behalf **Gana Trucking and Excavating, Inc.**, the applicant. Gana is a local excavation company, which was actually started in Lancaster County in 1994 by Craig and Laurie Gana, and has grown to over 160 employees. Gana purchased the Schwarck Quarry part in 2008 and the other part in 2012. Prior to that, they did a lot of business with the Quarry. Gana owns approximately the south 86 acres, and Ring Holding owns the north 28 acres.

Kalkowski pointed out that both of these properties are already covered by a pre-existing special permit since the activities were already occurring on the site before a special permit was required. This application is an amendment to the pre-existing special permit which adds a 5,000 sq. ft. office building for future use as part of the excavation business, leaving opportunities for expansion in the future. Because of this amendment to expand the use, the applicant is also trying to comply with as many of the conditions as possible. This application also further clarifies the existing and the permitted uses and adds restrictions and additional information to the site plan to bring it more into compliance with the current special permit conditions. For example, this application limits the location of stone milling (rock crusher) on the site and limits the hours of operation of the stone crusher and the hours of actual excavation. Screening is being added along South 54th Street and the applicant agrees to stay out of the 100' rear yard setback. This gives the neighbors some additional protections.

Kalkowski also noted that the applicant and Steve Henrichsen of Planning staff met with the neighbors back on August 5th, prior to making this submittal. There were over 11 properties represented at the meeting, including some from the east, south and west. It really was a very positive meeting. The majority felt that Gana had been a good neighbor and had done a lot of cleanup on the site; the neighbors acknowledged that at the time their homes were built, the quarry was already in existence; the largest concern was the hours of operation for the rock crusher, thus there is an agreement to limit those hours of operation.

Kalkowski stated that the applicant also supports the proposed text amendments, which provide better clarification with the definition of stone milling and make the conditions more relevant to dealing with a pre-existing special permit. They need that flexibility to work through those conditions.

Kalkowski stated that the applicant is accepting all staff conditions and the amendments submitted today. This application and the zoning text amendments are the result of a lot of

meetings and collaboration with city and county staff. This amendment provides some potential opportunities for growth for a nice local company and puts some protection for the neighbors in place. It is a win-win.

Beecham referred to the condition which limits the operation to daylight hours but allows additional maintenance activities during nighttime hours. She was curious about loud trucks or other things that are noisy. Kalkowski believes that the stone crusher was the main issue. They do truck maintenance on the site now so there is a little bit of noise in the evening. The neighbors do recognize that is part of having a business operation like this. Such a business is not going to do that maintenance during business hours. They will, however, be able to enclose some of it in the maintenance building which may help with some of the noise. The other noise issue was the trucks braking as they are coming down 54th Street. Gana Trucking can control and has controlled its trucks but they cannot control all trucks. The neighbors acknowledge that there is noise from truck usage on the road, which would be during the daylight.

There was no testimony in opposition.

Hartzell reappeared to report a conversation had with the applicant about eventually closing the use, and the applicant has agreed to a condition of approval being added, "to provide a site plan showing a future residential layout after the excavation operation is complete, to the satisfaction of the Planning Director." This will demonstrate that there is a future use for this property.

COUNTY TEXT AMENDMENT NO. 14012

ACTION BY PLANNING COMMISSION:

October 1, 2014

Hove moved approval, seconded by Sunderman.

After today's discussion, Lust now believes the text amendment is appropriate.

Motion for approval carried 6-0: Sunderman, Harris, Beecham, Cornelius, Hove and Lust voting 'yes; Weber, Scheer and Corr absent. This is a recommendation to the Lancaster County Board of Commissioners.

CITY TEXT AMENDMENT NO. 14013

ACTION BY PLANNING COMMISSION:

October 1, 2014

Hove moved approval, seconded by Harris and carried 6-0: Sunderman, Harris, Beecham, Cornelius, Hove and Lust voting 'yes; Weber, Scheer and Corr absent. This is a recommendation to the City Council.

PRE-EXISTING SPECIAL PERMIT NO. 40A

ACTION BY PLANNING COMMISSION:

October 1, 2014

Cornelius moved to approve the staff recommendation of conditional approval, as amended today, seconded by Hove.

Cornelius suggested that this is a balancing act between providing opportunity for local business to grow and protecting the neighbors. The neighbors were not there when the

operation began and they are familiar with the operation. It appears that many of the concerns of the neighbors have been addressed by the compromises made by the applicant.

Lust stated that she will support this amendment. It is nice to see the neighbors and applicants working together and, in this case, to move forward with a good business for Lancaster County.

Motion for conditional approval, as amended, carried 6-0: Sunderman, Harris, Beecham, Cornelius, Hove and Lust voting 'yes; Weber, Scheer and Corr absent. This is final action, unless appealed to the City Council within 14 days.