

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

RESOLUTION IN THE MATTER OF COUNTY)
SPECIAL PERMIT NO. 17043, EXCAVATION)
ON PROPERTY GENERALLY LOCATED AT) RESOLUTION NO. R-18-0003
SW 112TH STREET AND WEST VAN DORN)
STREET, LANCASTER COUNTY, NEBRASKA)

WHEREAS, Nate Burnett of REGA Engineering Group (“applicant”), on behalf of High Plains Enterprises, Inc. (“permittee”), and Dennis and Donna Borgman (“owner”), requested approval of County Special Permit No. 17043 (“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”);

WHEREAS, on December 6, 2017, the Lincoln-Lancaster County Planning Commission (“Planning Commission”) conducted a public hearing on the Special Permit and voted 9-0 to conditionally approve the Special Permit;

WHEREAS, on December 13, 2017, 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 January 9, 2018, the County Board conducted a public hearing on the

Special Permit, voting _____ to _____ said Special Permit; 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 _____ subject to the following conditions:

Site Specific Conditions:

Per Section 13.019 of the Lancaster County Zoning Resolution this approval permits excavation on the Property for a period of three (3) years from the date of approval of this Special Permit.

1. Before initiating excavation operations the permittee shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including **3** copies with all required revisions and documents as listed below:
 - 1.1 Identify vehicle and equipment storage areas and entrance and exit locations to the operation area.
 - 1.2 Correct the spelling of Van Dorn in Note 10 on Sheet 1.
 - 1.3 Add the following note on Sheet 1, “The special permit is approved for three years from the date the special permit is approved.”
 - 1.4 Revise General Note 3 to read:
Proper erosion control and drainage shall be maintained at all times to prevent damage to West Van Dorn Street. The existing ditch shall be maintained for proper drainage through the existing 24-inch corrugated metal pipe (CMP) under the proposed construction entrance. Drainage shall also be maintained in the ditch from the CMP outlet east to the outlet of the concrete box culvert under West Van Dorn Street.
 - 1.5 Add a General note to re-iterate the statement in the letter dated November 8, 2017 to the Lincoln-Lancaster County Planning Department regarding the re-grading of the backslope of West Van Dorn Street:
Work done within County right-of-way will be completed in accordance with County design standards. The re-grading of the ditch on the south side of West Van Dorn Street will provide proper drainage, a minimum ditch depth of 24 inches, a minimum 8-foot flat bottom, and a maximum slope of 4:1 for the backslope.
 - 1.6 Add an additional General note and/or update the plan regarding the re-grading of the backslope of West Van Dorn Street to address the issue of erosion control

along the top of the backslope. The erosion control may be in the form of additional silt fence or a berm built using existing top soil which would later be redistributed at the conclusion of the project.

- 1.7 Revise SWPPP Note 7 to read:
Inlet protection devices and barriers shall be repaired or replaced if they show signs of undermining, or deterioration. Adequate drainage needs to be maintained in the existing 24-inch CMP under the proposed construction entrance.
 - 1.8 Revise General Note 9 to read:
Contractor shall post warning signs during hauling operations along West Van Dorn Street warning traffic of trucks entering.
 - 1.9 On the drawing, list the name, address and phone number of Project Engineer, Contractor and Landowner.
 - 1.10 In the legal description, insert “irregular tracts” after Lot 8.
 - 1.11 The bar scale shown on the drawing does not appear to correspond with site drawing. Please add dimensioning regarding road ROW width, construction driveway location, lot dimensioning, grading limits referenced to location within lot 8 irregular tracts, etc.
 - 1.12 Label adjacent lot west of proposed borrow site and identify the line between parcels.
 - 1.13 Show situation location sketch including labeling of nearest cross roads.
2. Before beginning the excavation operations,
- 2.1 The permittee shall:
 - 2.1.1 Have received review and permits, as 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, request the

Director of City of the Lincoln Building and Safety Department (“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 Make access permit application with Lancaster County Engineer’s Office (“County Engineer”) 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 Submit traffic impact information regarding anticipated use of County roads along with proposed hauling routes.

2.1.6 Enter into a “Road Maintenance Agreement” with the County for West Van Dorn Street throughout the operation of the Special Permit.

2.2 After beginning the excavation operations, the permittee shall comply with the following conditions:

2.2.1 Erosion controls, including retention and sediment basins shall be provided during excavation in conformance with state and federal standards and County 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 County. Underground drainage may be supplied if it connects to an existing drainage facility and is satisfactory to the County.

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, nor to the adjoining properties. Dust shall be controlled on-site to meet Lincoln-Lancaster County Air Pollution Control program Regulations. In addition, the Lincoln-Lancaster County 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 permittee;
- (d) The Building and Safety Department contact number.

2.2.7 The permittee shall take appropriate measures, such as street sweeping or “rumble bars” as specified by the County Engineer to minimize mud or dirt tracking onto streets and roads on a continuing (daily) basis during operation.

2.2.8 Operations shall commence within one 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.

2.2.9 Within nine 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.

2.2.10 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 Lancaster County Board of County Commissioners to revoke the Special Permit.

2.2.11 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 permittee. Cost shall be based upon Building and Safety’s hourly rate in effect on the date of the application for inspection. Building and Safety shall:

- 2.2.11.1 Inspect the site to determine whether terms, special conditions and requirements imposed by the County in the approval of the Special Permit have been met and complied with; and
 - 2.2.11.2 Review all complaints from public and other departments/agencies and report to the Director of the Planning Department.
- 3. At the conclusion of the operation, the permittee shall provide to Building & Safety a certificate from a registered professional 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 heirs, successors, and assigns, and the owner, and the owner's heirs, successors, and assigns.
 - 4.4 The permittee and owner 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 Lancaster County Register of Deeds. A certificate of operation will not be issued unless the resolution and the letter of acceptance have been filed.

DATED this 9th day of January, 2018, at the County-City Building, Lincoln, Lancaster County,

Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this 9th day of January, 2018.

Deputy County Attorney
for JOE KELLY
Lancaster County Attorney

ATTACHMENT A
LETTER OF ACCEPTANCE

High Plains Enterprises, Inc. (“permittee”), and Dennis and Donna Borgman (“owner”), hereby agree to all of the conditions of County Special Permit No. 17043, 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 Lancaster County Board of County Commissioners, and embodied in Resolution No. _____, all costs which permittee hereby represents have been paid and that this agreement shall be binding upon 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 _____, 2018, in Lancaster County, Nebraska.

Owner

BY: _____

Dennis Borgman

BY: _____

Donna Borgman

STATE OF NEBRASKA)
) ss.
County of Lancaster)

On this ____ day of _____, 2018, 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 _____, 2018.

Notary Public

STATE OF NEBRASKA)
) ss.

County of Lancaster)

On this _____ day of _____, 2018, 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 _____, 2018.

Notary Public

Permittee

BY: _____

NAME: _____

TITLE: _____

STATE OF NEBRASKA)
) ss.
County of Lancaster)

On this _____ day of _____, 2018, 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 _____, 2018.

Notary Public