

3-13-2006

Phil Bryson, Chairman
KPB Planning Commission Members

Ron Long, President
KPB Assembly Members

Re: KPB Ordinance 2006-01 (Martin Substitute)

I have lived and developed property in the borough for 35 years, not as a developer, but small parcels as an investment. Last year, I developed a 9-lot subdivision, which had some peat on the property. I called planning and asked if a permit was required to excavate 30" of peat, use the material for landscaping in the subdivision and backfill the excavation with overburden from around the site. I got different opinions from two different persons in planning, and eventually was forced to get an over the counter permit. The peat area is not in the wetlands, is in the middle of 100 plus acres and a ¼ mile from any houses. I learned several things: First, I was not aware of any permit requirements; Second, I should never have asked the question, as nobody was affected by my operations. Furthermore, I discussed my situation with many landowners and contractors who unanimously thought the regulations were for commercial gravel operations or thought they were ridiculous and unenforceable.

Since I expect to do improvements to some of the individual lots, all under my ownership, I submitted 5 pages of comments to planning and the assembly on 3-7-06. I have since reviewed the latest proposal and want to make additional comments on how new and existing regulations are affecting small on-site operations.

I have two major observations: One is that the main focus of the regulations dealing with commercially run gravel pits is being applied to small on-site operations using materials on one or contiguous sites. **Second, I am not seeing any substantiation or public usefulness for on site regulation.**

One of the "WHEREAS'S" in the proposed regulations states: **the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public and staff.** The new proposal is still as vague and ill defined as the existing code and therefore does little to serve the public's interest.

The main problem is not recognizing that small operations, both commercial and non-commercial, do not require the same oversight as gravel pits exporting material offsite. I have researched the 98 task forces notes, read agendas and meeting minutes and have not found any quantifiable justification or data supplied by planning supporting regulating on-site extraction and use of material. I do not think it's a problem. However, there are lots of comments relating to commercial gravel pit operations as far as deep pits, road damage, noise and water table affects from the deep excavation.

Per the attached summary of researching other boroughs codes, both the Fairbanks North Star Borough and MatSu Borough do not regulate any on site use. So why is the KPB different? Where is the need or justification to burden both the public and the planning department with a complicated permitting process? It is a well-understood fact, that compliance with the current code is primarily complaint driven with voluntary compliance other than commercial gravel pit operations for offsite sales. Furthermore, planning has neither the manpower, expertise or enforcement personnel to administer a more complicated review process and site inspections.


The new ordinance also does not improve the definitions section regarding commercial vs non-commercial. **The current definition in 21.25 states: commercial means any use for income.....including all activities directly subsidiary.** Per planning, this includes sub-division development, so therefore the code requires a permit. Under this broad interpretation, you could be either a business entity or private party developing 2 or more parcels, since either entity could sell a parcel. In the current code the confusion starts in the “small quantity exemption” clause where “quantity” and “land” uses are not well defined. I have pointed out numerous problems with this provision in the letter given to the assembly on March 7th.

The new code exemption clause is now called the “Personal use exemption” This clause would limit exemptions to only one class of owner; **“ones own residential site”**. But, also require the land owner to submit a site plan prepared by a surveyor., This provision is suspiciously vague on whether planning can impose all the standards and permit conditions placed on commercial gravel pit operations. There is no quantity limitation, so any quantity falls under this clause. It is impossible to believe that anybody not living next door to a planning department employee would voluntary go through this permit process. I am amazed that planning is redefining the code to ensure every person sticking a shovel in the dirt has to apply for a permit.

There are several other onerous provisions proposed including: a site plan be submitted with every application which including fees could exceed a \$1000. There are also various engineering and monitoring requirements, which could be arbitrarily imposed on any application. None of these provisions will promote more voluntary compliance from small operations.

I strongly urge the assembly to apply the regulations where justification has been quantified and delete revisions, which add more onerous layers of regulation to a code, never intended to burden small on-site operations. The KPB needs to recognize, that like Fairbanks and MatSu, fewer regulations are required for low-density regions and larger parcels.

The simplest solution is **to not** require a permit for any on site extraction and use of material on site including contiguous parcels. I would further redefine “commercial” as only material extracted and removed off site for sale.


Terry Cowart
ASSEMBLY

3-13-06

Re: 2006-01 Substitute

By: Terry Cowart

REGULATION/ PERMITTING IN OTHER BOROUGHSON SITE USE

To determine how other boroughs have been dealing with “**on site material extraction regulations**”, I placed calls to the MOA, Mat-Su and Fairbanks boroughs

Anchorage has very strict requirements dealing with on site material excavation. Regulation is through the Zoning ordinances and restricts non-permitted uses to very small quantities of extraction or affected areas. Per the compliance officer, they have been grappling with regulations for the past 9 years. He stated that regulations within municipalities are typically tighter than borough requirements due to the small lot sizes and population densities.

The MatSu-borough (www.matsugov.us) has ordinances under their “interim material district as defined in title 17.125010. The code defines “extraction as material taken to offsite locations. Two conversations with the code compliance division (745-9853) confirmed that the borough does not regulate any material extracted for on-site use whether commercial or non-commercial. Complaints or requests to regulate on site use have not been an issue as the parcels and quantities extracted are insignificant to warrant oversight.

The Fairbanks North Star borough (www.co.fairbanks.ak.us) has ordinances under numerous locations for various sub-districts requiring conditional use permits as defined in Title 18, Zoning. A call to there zoning office (459-1260), confirmed that the borough does not regulate any on site uses similar to the rationale provided above by the Mat-Su official. There was no demand for regulation or problems with complaints.

21.50 } CLUT
4/5 } DEFINITIONS

CITY STANDARDS

21.15.030

ANCHORAGE MUNICIPAL CODE

pertaining to uses involving the sale of alcoholic beverages, an otherwise lawful conditional use permit shall expire if:

- a. For any reason the conditional use is abandoned in its entirety for a period of one year or longer; or
- b. The property owner notifies the planning and zoning commission of the abandonment of the conditional use permit. A conditional use shall not be abandoned under this subsection if the result of the abandonment is the creation of a nonconforming land use.

2. A conditional use granted by the assembly under section 21.50.160, pertaining to uses involving the sale of alcoholic beverages, shall expire 120 days after the removal of the license to sell alcoholic beverages from the premises, unless there is an application on file with the alcoholic beverage control board to transfer or install a new license on the premises.

(GAAB 21.05.060, 21.05.080; AO No. 77-355; AO No. 78-231; AO No. 79-34; AO No. 79-214; AO No. 82-22(S); AO No. 82-49; AO No. 84-70; AO No. 85-21; AO No. 85-72; AO No. 85-91, 10-1-85; AO No. 86-19; AO No. 86-155; AO No. 87-121, 11-27-87; AO No. 88-5(S); AO No. 94-62, § 1, 4-12-94; AO No. 95-129, § 5, 3-12-96; AO No. 2004-6, § 1, 10-1-03; AO No. 2004-108(S), § 1, 10-26-04; AO No. 2005-19, § 1, 3-1-05)

21.15.040 Procedure for obtaining sign permit.

Procedures for obtaining a sign permit shall be as set forth in chapter 3 of the Uniform Sign Code. (GAAB 21.05.060)

21.15.050 Land use permit.

A. Permit required for certain activities. In the area of the municipality that is not subject to the Uniform Building Code under section 23.05.030, no person may:

1. Construct a building whose floor area is 100 square feet or greater;

2. Excavate more than 300 cubic feet on any lot or tract;
3. Fill or grade more than 900 cubic feet on any lot or tract; or
4. Change the principal use of a building;

without obtaining a land use permit therefor in accordance with this section. The issuance of a land use permit may also be subject to the improvement requirements in section 21.15.150.

B. Application. An application for a land use permit shall be submitted to the administrative official. The application shall include:

1. The written application form provided by the administrative official, which shall include:
 - a. The legal description and dimensions of the property;
 - b. The zoning of the property;
 - c. The name and address of the owner of the property; and
 - d. A description of the use or structure that is the subject of the application.
2. The following information, and any additional information which the administrative official shall require as applicable to determine whether the permit should be issued:
 - a. A lot survey certified by a professional land surveyor registered in the state, showing:
 - (1) Lot dimensions.
 - (2) Dimensions of proposed and existing structures, including projections.
 - (3) The names and widths of the rights-of-way adjacent to the property.
 - (4) Site drainage, including creeks, major drainages and other water bodies on or adjacent to the property.
 - (5) Easements.
 - (6) Parking areas.