

AGENDA ITEM F. PUBLIC HEARINGS

- 3. Ordinance 2006-01 (Substitute); Repealing KPB Chapter 21.26 and Enacting KPB Chapter 21.29, Material Site Permits

Memorandum reviewed by Max Best

PC Meeting: 3/27/06

After serious review of the comments made during the public process regarding Ordinance 2006-01 and additional meetings with staff, I am proposing a substitute ordinance. The primary thrust of this substitute is to meet some concerns expressed about water protection and to alleviate some provisions in Ordinance 2006-01 that may present difficulty for material site operators. There are also some housekeeping items suggested by staff included. Below I detail the differences between this ordinance and the original Ordinance 2006-01.

A fifth whereas clauses is added that refers to Goal 7.1, Objectives 1 and 2, of the comprehensive plan, which addresses working with other agencies to protect the public health and environment within the borough. This provision in the comprehensive plan supports the requirement in proposed KPB 21.29 that the borough refer violations of federal and state laws and permits to the appropriate agency for action.

A sixth whereas clause is added which references Goal No. 1 of the Mining and Minerals Processing section of the Coastal Management Program, which recognizes both the protection of environmental quality and other resource users.

An eleventh whereas clause is added as a matter of housekeeping, which references that KPB 21.25 is the authority for the requirement of CLUP's in the rural district.

KPB 21.29.010(A)(1) is revised to require that the application include the KPB tax parcel ID number since this is how borough staff identifies parcels on the borough's mapping systems.

KPB 21.29.010(A)(2) is revised at staffs request to delete the reference to a phased development, and this provision is inserted in the site plan requirements at KPB 21.29.010(A)(9)(a) instead.

KPB 21.29.010(A)(5) is revised at staff's request to delete the estimated distance to groundwater, and the depth of groundwater is relocated to the site plan requirements under KPB 21.29.010(A)(9)(d).

KPB 21.29.010(A)(7) is inserted to require an alternate backup warning system for operators who intend to haul material between the hours of 10:00 p.m. and 6:00 a.m. It is important that operators be allowed to haul at night given our short construction season. Alternate non-audio warning systems, e.g., a warning person or strobe light are less intrusive to the adjacent property owners.

KPB 21.29.010(A)(9)(d), proposed depth of excavation, is deleted as it already appears in the narrative portion of the application. (See proposed KPB 21.29.010(A)(5).)

The depth of test holes and groundwater, if encountered, is added to the site plan at KPB 21.29.010(A)(9)(d).

KPB 21.29.010(A)(9)(m) requires that the applicant include surface water protection measures on their site plan.

KPB 21.29.010(B)(1) is revised at staff's request to allow material taken off site to a parcel under the same ownership as the parcel subject to the counter permit. Additionally, a provision is added that the planning director may require the applicant to provide site plans or similar information to support the commercial purpose justification for the counter permit. Additionally, a time frame of 12 months, with a possible 12-month extension, is placed on counter permits. These measures are added to assist the administration in ensuring that counter permits are appropriate, rather than a conditional use permit. The reference to a \$200 fee is deleted in favor of having the planning commission recommend a fee to the assembly for approval.

In KPB 21.29.010(B)(2), the reference to a \$300 fee is deleted in favor of having the planning commission recommend a fee to the assembly for approval.

UNAPPROVED MINUTES

Committee Lands

Page Number 91
02006-01 (SUB) 02006-01 (SUB)

KPB 21.29.010(C)(2), dewatered bar exemption, was revised to include the streams in the Seward-Bear Creek Flood Service Area outside Seward and the Snow River (which is not within the boundaries of the flood service area).

In KPB 21.29.030(A)(1)(a), a 2:1 slope is added to the six-foot earthen berm and six-foot fence buffers. The stabilizing effects of a 2:1 slope are just as important for an earthen berm or fence as a vegetative buffer in preventing the buffer from collapsing into the material site.

KPB 21.29.030(A)(1)(b) is revised to delete the provision that a buffer shall be at least ten feet high for parcels at least 20 acres in size if extraction is to be conducted within 300 feet of the parcel boundaries. This provision may be needlessly onerous on operators, and the planning commission retains flexibility in establishing the most appropriate buffer given site conditions.

KPB 21.29.030(A)(4) is revised to prohibit material extraction within 300 feet of an existing water source, as opposed to 100 feet.

17. KPB 21.29.030(A)(4)(d) is added, which requires that all CLUPs be issued with a condition that requires a two-foot vertical separation from the seasonal high water table.

18. KPB 21.29.010(A)(5) is added to clarify the circumstances when excavation would be allowed into the water table. Excavation into the water table will require certification by an engineer or hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources, and water monitoring tubes will be required in order to measure groundwater elevation, flow direction, and flow rate, which will be measured in three-month intervals for at least one year prior to application to excavate in the groundwater.

KPB 21.29.030(A)(8) has been revised regarding wetlands as it is too difficult for staff to determine the extent of all wetlands which are already regulated by U.S. Army Corps of Engineers. In an effort to protect anadromous streams as much as possible, a setback from riparian wetlands is included. Riparian wetlands are identifiable by available mapping. Each permit must contain a condition based on a planning department staff site visit regarding surface water diversion. Additionally, in order to prevent erosion, an additional setback from lakes, rivers, and anadromous streams may be required. This condition must also be based on findings supported by a staff site visit.

KPB 21.29.030(A)(11) is revised to allow hauling of material between the hours of 10:00 p.m. and 6:00 a.m. as long as the operator has an alternative warning system to the reverse-activated signal alarm. This accommodates operators who must haul at night in order to meet deadlines mandated by our short construction season while reducing the intrusiveness of the noise in the pit to adjacent properties.

KPB 21.29.030(A)(13) is amended to include habitat protection regulations and MSHA regulations in the list of permits and other laws to which an applicant must adhere.

KPB 21.29.070, voluntary permit termination, is revised at staff's request to note that a permittee may request termination of their permit and that a site inspection will be conducted by the planning department to ensure code compliance and site reclamation prior to granting the termination. This revision is made to avoid an operator unilaterally terminating his permit without complying with reclamation and other provisions of the code.

The violation provisions are revised in order to make them more effective. KPB 21.29.100 is added to cross-reference the penalties and remedies chapter codified at KPB 21.24. Additionally, the fine for failing to obtain a land use permit is increased to \$300, and a fine for violation of permit conditions is proposed. The administrative fine charged in KPB 21.24.070 is raised to \$300 per day.

Proposed KPB 21.29.100(B) provides that any owner or operator who has been cited for three material site violations (KPB 21.24, 21.25, or 21.29) within a three-year period may be required to post bonding in a form and amount adequate to protect the borough's interest as determined by the planning director. This revision is made to curtail repeat offenders who are willing to violate the code and pay the penalty rather than comply with the regulations.

STAFF RECOMMENDATION: Open public hearing, take testimony and continue public hearing to the April 10, 2006.

END OF MEMORANDUM & STAFF REPORT

Chairman Bryson opened the meeting for public comment.

1. Terry Cowart, Kasilof

Mr. Cowart expressed concern about the trickle down effect of the regulations that are being applied to large gravel pits as are applied to the small property owners and small operations. By small operations, he meant mostly on-site activities such as driveways, site improvements, septic, and roads on parcels.

Mr. Cowart has gone through a counter permit process. By doing so, he became aware of the problems in interpreting the Code. Everyone realizes there are problems with the design and with how it is administered. Mr. Cowart is finding out that there are major concerns in the gravel pits and they are not looking at small operations or not really trying to regulate the small operations. It is just the way the proposal is designed and constructed, it is going to trickle down to the little guy. There are 30,000 parcels outside the City limits with 400-500 activities that occur that have site improvements. The Planning Department could easily go from 50 permits over three years to who knows what. Mr. Cowart's purpose is to provide a lot of comment since it affects him as a small developer. Through this process he became more aware that it would be more helpful to submit specific changes to the Code.

Mr. Cowart's purpose at this meeting was to point out his six-page submittal showing the problems with the structure of the ordinance and with the way it is designed and the way the information flows from Chapter 25 to 26. All of these create interpretation problems for everybody as well as management. He doesn't think anyone in the Borough realizes the effects of the new proposal.

Mr. Cowart requested that the Planning Commission hold another public hearing or multiple hearings to give the public an opportunity to address the issues and concerns. There is no way a person can express concerns and suggestions in five minutes. He could spend five or ten minutes on everyone one of the issues he submitted. Mr. Cowart appealed to the commission to have a meeting for public input where there would be give and take discussion.

The other thing Mr. Cowart addressed was strategy and how things are working. It would be foolish if the Planning Commission didn't take this opportunity and look at the way this Code is structured and how it flows as far as interpretation by the public or legal entity. The way the new Code is written is quite worse than the way the old Code was written because there are so many activities that are at the end that should be at the beginning.

Mr. Cowart felt that if the Planning Commission made a process and helped Ms. Martin to present a document that had a lot of the administrative problems worked out then it wouldn't become such a mess when it got to the Assembly.

Chairman Bryson asked if there were questions for Mr. Cowart.

Commissioner Johnson asked how long Mr. Cowart had been working on reviewing the proposed code. Mr. Cowart replied about 2 or 3 weeks.

Commissioner Johnson asked if Mr. Cowart could give the Planning Commission an overview of his conversations with other Boroughs regarding specifications they had in their Material Site Code. Mr. Cowart stated that it was easy to call other Boroughs to find out about their Material Site Code. His main concern is that he doesn't think the Borough should regulate on-site extraction and use except for a few exceptions. Mr. Cowart felt that most of the complaints come from the buffer and working within the aquifer. He was curious to find out how other Boroughs do it so he called the Mat Su Borough Code Compliance Officer and the Fairbanks Compliance Officer. Both code officers talked with him extensively and said it was not a problem. These Officers found out that there are so many multiple uses on site, which would be impossible to enforce so they do not regulate any on-site activity. The way they define it is that it becomes a

permitted activity once gravel or material is extracted and transported. They do not feel there is enough volume that a person would use on site to warrant a permit.

Commissioner Clark asked Mr. Cowart to expand on his theory on counter permits. Mr. Cowart replied that he gave three or four examples of what to do with counter permits in his written comments. He suggested, *"a counter permit may be issued by the planning director without notice or planning commission requirements specified in KPB 21.25.050 . . . but may require partial application of the standards or permit conditions."* Mr. Cowart asked if public input was needed or not needed because there are always exceptions. He proposed requiring a CLUP for gravel that was removed off site. Mr. Cowart asked if a person would need to go through the CLUP process when he has a mound on his site and wants to get rid 300-400 yards or 1,000 yards of gravel. He felt the problem with the existing code is that there are no quantity exceptions so it is too arbitrary. The idea is that there has to be some reasonableness in the Code.

Mr. Cowart suggested that a counter permit be required if a person moves less than 2,000 yards of gravel off site. It would be at that time the Planning Department could apply buffer standards, aquifer or any standards that are applicable to that particular permit. Mr. Cowart gave another example of excavating below 2 feet. He stated what is not addressed in the existing code and the new one is the depth of excavation. The problem is that on most sites, there is a lot of talk about nothing occurring in a 50-foot buffer up to the property line. Mr. Cowart felt that it really didn't mean 50 feet to the property line but 50 feet to a neighbor's property line. The idea would be to require a counter permit if someone went below 2 feet within the buffer zone. That would allow Planning to make sure that it is not going into the aquifer or disturbing the neighbor. The 2 feet is really important because most properties remove 2 feet of overburden for just normal site work. The way the Code is written right now, someone cannot remove 2 feet off the top of the property without getting a permit.

Commissioner Clark asked if Mr. Cowart's theory on counter permits allow for the transfer across property lines. Mr. Cowart stated his theory was if someone was working on site on contiguous parcels and the activity is not within 300 feet of a neighbor's well and not within 50 feet of a neighbor's property line then no permit would be required. However, if someone transports over 2,000 yards down the road then a counter permit would be required.

Commissioner Foster commended Mr. Cowart for changing the words from *"riparian wetland"* to *"any wetland."* He asked if he meant to change it at 21.29.030 as well. Mr. Cowart asked Commissioner Foster to repeat his question. Commissioner Foster replied that the 030 is the setback. He asked if 21.29.030 would also have the change of being identified from riparian wetland to any identified wetland. Mr. Cowart thought so. Commissioner Foster read what was in the proposed code. It is as follows, *"An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands . . ."* Mr. Cowart replied that what was being said throughout this proposed code is that activity can't be next to any water source. The problem is that there are a lot of circumstances on properties where people are different distances away from where the activity takes place. He felt that activity that is being done away from a neighbor should not be under the same regulation as activity that is being done next to the neighbor.

Commissioner Johnson asked if a permit would be required if the next contiguous lot belonged to someone else and material was being sold to them. Mr. Cowart asked all references to commercial be removed. It doesn't make any difference if a load of gravel is being sold, bartered or for personal use if gravel comes out of a hole onto a road. It is still a truck full of gravel creating dust going down the road. He stated that 21.25 under definitions refer to commercial uses, which implies that all non-commercial uses are not applicable which is wrong. The fact is the intent and a purpose of the code is for land use.

Commissioner Johnson stated that Mr. Cowart based it all on quantity. If someone goes over a certain quantity no matter what is being done with it then it is a permit. If someone goes under the certain quantity then they can do what they want under certain guidelines. Mr. Cowart replied in some aspects of it. Wherever there is a reasonable exception then require the counter permit which gives the Planning Department an opportunity to give the standards and permit conditions without going through a CLUP.

Commissioner Clark clarified that Mr. Cowart meant a three-phase approach. One would be on site with no permit; two would be on site but includes off site over 2,000 and requires a counter permit; and three would be the CLUP. Mr.

Cowart replied that he only identified a couple of examples. With his knowledge, he could only see two real counter permit conditions. His concern is that counter permits become a catch all for items that they don't know what to do with. Mr. Cowart felt it would be a lot easier for the Planning Department to administer the Code if they did the best job in identifying all the strange things that require a counter permit and not require public input.

There being no further questions, the public hearing continued.

2. Earl Breyfogle, Box 496, Anchor Point

Mr. Breyfogle testified at a previous meeting that he felt Ordinance 2006-1 was an improvement over the current Ordinance but the substitute Ordinance has stepped back from that. He explained to the Assembly that the word "riparian" was added to the definition of wetlands. Mr. Breyfogle suggested that word be taken out. He explained that the wetlands are part of the ecosystem and provide water and a buffer for the water that feeds the Anadromous Fish Streams. It is an important resource that he doesn't want destroyed since it would be difficult to replace. This particular item would go a long way to curb cumulative effects if the wetlands are retained. Mr. Breyfogle suggested the word "riparian" be removed from the following areas.

1. 21.29.010 – Application Procedures
9.f. location of any water body on the parcel, including the location of any riparian wetland as determined by the US Army Corp of Engineer.
2. 21.29.030 – Permit Conditions
8.a. Waterbodies. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities.
3. *8.c. In order to prevent erosion, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required, based on findings made following a planning department staff site visit.*
4. *Definitions: Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.*

Mr. Breyfogle expressed concern regarding 21.29.050(C)(7) - "Ponding may be used as a reclamation method as approved by the planning commission." He suggested adding language that read "no backfilling within the water is allowed and that the reclamation should include consideration for wildlife habitat." He would like this definition to be expanded so that if ponding does happen then it would provide habitat and not be backfilled with junk cars, tree stumps and topsoil. Mr. Breyfogle doesn't want to change the aquifer by dumping material that doesn't belong there.

Chairman Bryson asked if there were questions for Mr. Breyfogle.

Commissioner Johnson expressed appreciation to Mr. Breyfogle for the time and effort given as a citizen to the issue. He agreed with Mr. Breyfogle in avoiding steep banks on the ponds because human life is the most important thing. He doesn't want people drowning since it has happened before. Commissioner Johnson referred to a letter from Dibble Creek that said to date there has been no documented evidence of water well damage from gravel pits. He would like to establish at this meeting if that is true. A number of years ago there was a man named Jim Pastro who claimed his water wells were ruined due to pits being developed. Commissioner Johnson asked if Mr. Breyfogle was aware of that. Mr. Breyfogle replied it would be hear say at this point. He gave some other examples. Mr. Breyfogle stated there is a case that hasn't been documented but is in court at this time. The point that is being made is that there has never been a case proven. He commented that the Anchor Point Village Safe well was moved. There was a gravel operation that removed gravel from the aquifer to the north of the Village Safe water well but this was not approached as that being the cause. Mr. Breyfogle commented that Bill Simple's well went dry and sold his property. His property was adjacent to a

pit that dewatered the property. On the other hand, the Schafer's who own the property now states that is not true. There is a lot of hear say regarding this issue. There is no documented evidence regarding wells being destroyed.

Commissioner Johnson had hoped that life was easier than that and was more black and white. It is probably true but is not documented. He asked if Mr. Breyfogle had engineer qualifications. Mr. Breyfogle stated he has a background in engineering and hydrology but does not classify himself as an engineer or hydrologist.

Commissioner Foster asked if the letter was referring to verified documentation in Alaska or anywhere. Mr. Breyfogle assumed this area. He felt there is someone somewhere who had a well go dry because of a gravel pit. His concern is that things keep going until there is a proven case where a fish run was destroyed.

Chairman Bryson asked if there were further questions for Mr. Breyfogle. Hearing none, the public hearing continued.

3. Helen Schwert, Anchor Point

Ms. Schwert agreed with Mr. Cowart in that you can't do too much in five minutes. There is a lot of things the ordinance needs yet there has been a lot of good work done on the ordinance. She turned in a thirteen-page document to the Assembly and haven't seen anything from that come through to the proposed ordinance. Some of it might be considered controversial but some of it is simply changes that need to be made because they are in the wrong place. Her document includes ways to get revenue that might be of interest to the Planning Commission. It would come from different size pits or try to get available experts at a free cost but if that didn't work then the applicant would be responsible for bringing in the expert.

Ms. Schwert felt the planning commission needs more flexibility than what they have had in the past in handling these applications. She doesn't feel that they will get it from the ordinance as it is written. There is a lot of work still to do.

Ms. Schwert stated that wetlands have provided an extremely important role than just providing gravel for projects that people want to build. She thought that the gravel is needed to filter and to protect the rivers. There should be standards that are aimed towards so that the standard can be met.

Ms. Schwert commented on the following statement, "*Hauling may be conducted between 10:00 p.m. and 6:00 a.m. provided the permittee dos not use an automatic reverse activated signal alarm.*" She found this interesting that it was in the proposed ordinance. It is nice not to have the beep, beep, beep but she doesn't know of any gentle way to put gravel in a gravel truck that isn't going to be noisy. The neighbors are going to hear that and if that can go all night then it could become a serious problem between the neighbors and the operators. Ms. Schwert thought that other alternative language needed to be drafted so that the neighbors are compensated while the operators are working. She was disappointed to see that appear without any real rationale.

Ms. Schwert felt that a lot of things needed to be done and addressed. She doesn't have a problem with operators hauling at night but would like to see some noise standards in the ordinance. Then, if the operators meet the noise standard then let them haul at night. Ms. Schwert felt there needed to be a different process so that a better ordinance could be drafted.

Chairman Bryson asked if there were questions for Ms. Schwert.

Commissioner Massion thought that locking a group of people in a room and letting them build this document would be a way to go. Everyone seems to have valid concerns. He asked what Ms. Schwert meant by a different process. Ms. Schwert replied that she doesn't understand the process because none of her suggestions were included in the proposed ordinance.

Commissioner Isham asked staff to clarify the hours of operation; "*Operations shall not be conducted between 10 p.m. and 6 a.m.*" and "*Hauling may be conducted between the hours of 10:00 p.m. and 6:00 a.m.*" He stated that hauling is not operations; to him it is just driving the equipment not loading the gravel in the trucks. Ms. Hippchen replied that

hauling referenced there also includes the loading of the material. It is basically the loading of stockpiled material into the trucks and hauling. It was something that was discussed a couple of times at Advisory Planning Commission meetings and was discussed with the sponsor of the ordinance. Ms. Hippchen had a conversation with the MSHA (Mine Safety Health Administration) to ask if they had any alternatives to the back up signal. Discussion was held at the Assembly on a suggestion that an operator could make sure there is an alternate back up signal that hauling including the loading of trucks between those hours could be done. There are sometimes emergency situations such as flooding or road projects, where operators need to be on call so they can get the material during hours after what was stipulated.

Chairman Bryson asked if there were further questions. Hearing none, the public hearing continued. Hearing no one else wishing to testify, Chairman Bryson closed the public hearing and opened discussion among the commission.

Chairman Bryson commented that as the ordinance evolves it seems to be a moving target for comments. He asked if there have been semiformal meetings that are open to the public where the public can provide comments in a work session format. Mr. Best replied that there have not been any work sessions. There have been committee meetings at the Assembly level. Originally with the 2006-01, there was a committee of Assembly people that drafted that particular ordinance. Mr. Best stated that it wasn't up to staff at this point to include Ms. Schwert's comments; it was Ms. Martin's ordinance and it is her decision as to what gets changed or what doesn't get changed. There will be an hour and half of open discussion on this at the April 4, 2006 Assembly committee meeting.

Commissioner Massion asked if it was possible for the Planning & Zoning commission to sponsor a workshop and ask people to volunteer one day's time. Chairman Bryson replied that at this point this is an Assembly document. Mr. Best stated there could be a workshop where recommendations could be made to the ordinance. Ms. Hippchen stated that the Anchor Point Advisory Planning Commission discussed this at their last meeting. This has been worked on for over a year. She commented that comments start coming in when things start to get close to it being adopted. There was an eighteen-month taskforce the first time 21.26 was adopted. This was discussed at the Advisory Planning Commission level where a suggestion was made to have a 90-day taskforce made up of residents, operators and concerned individuals so they are allowed to participate. Ms. Hippchen expressed concern that there isn't any guarantee that everyone would be satisfied if there was just a one-day workshop.

Commissioner Foster stated there needed to be language for special provision hauling. Ms. Hippchen stated there are a couple of references in the ordinance where additional language could be drafted. She stated there is always the variance option for any kind of land use permit. They were trying to help Ms. Martin create a type of ordinance where people didn't have to apply for a variance for every type of condition that they wanted to vary from. There might be some flexibility within the conditions to circumvent the need for a variance.

MOTION: Commissioner Clark moved, seconded by Commissioner Foster to recommend adoption of Ordinance 2006-01 (Substitute) with the intention of moving later to a continuance.

Commissioner Foster stated there has to be a leeway where the ball is in the Borough's lap where they can decide whether it happens or not. Ms. Hippchen asked if it would be required in the application to provide which came first, the gravel pit or the house.

Commissioner Clark referred to the fine of \$300 if an operator is in violation of conditions yet the State charges \$10,000 a day if they are required to run at night. The operator would probably pay the \$300 fine and go anyway. There is not much that is going to stop the operator. There is a unique situation where there are grandfathered permits, initial CLUPs, and future CLUPs. Commissioner Clark expressed concern in placing conditions that aren't equal across the board.

Commissioner Hohl stated that the Planning Commission needs time to go through this and develop a recommendation to the Assembly. She is not sure what the format should be. Chairman Bryson commented that this is the third edition and they have no ability to create the document. This document is created in the Assembly. The Planning Commission can comment on it but it would be nice if it were the last draft.

Commissioner Clark commented that the provision that included structures whether they are permanent or temporary is very broad and vast. He felt it could put the Borough in the business of issuing building permits, reviewing plans and

deciding what can be. He asked if the Borough really wanted to be in this situation. Mr. Best asked for clarification. Commissioner Clark referred to the following statement, *"surface water protection measures for adjacent properties, including the use of diversion channels, . . . provide designs for substantial structures; indicate which structures will remain as permanent features at the conclusion of operations, if any."* Mr. Best replied that is in reference to ditches, berms, etc as in structures.

Commissioner Johnson asked if the current material site workload has been stressing staff time. Mr. Best replied that it wasn't until it they started to rewrite it. There has been additional permitting due to the possible ordinance change.

Commissioner Clark asked where the 5-year permit timeframe came from, if it is included in the substitute ordinance and how does the Borough justify the 5-year period. Ms. Hippchen replied that the 5-year period was a 25.26 carryover. The current permits that are issued are on a 5-year basis where applicants need to reapply every 5 years.

Commissioner Clark understood that if there were not any permit violations then it would be reissued under the same permit conditions in which the permit was originally issued not under conditions that are enacted in the future. Ms. Hippchen commented that was discussed with Ms. Martin. There is a concern about someone having a large plan and are granted a permit under certain conditions which could be conceived a psuedo contract. The language that is currently in 2006-01 is *"Renewals of permits shall be subject to the law in place at the time of renewal application."* Ms. Hippchen thought it was Ms. Martin's intention to strike that.

Commissioner Hohl felt the dewater bar exemption is too broad. These should be a counter permit or some other kind of permit.

Commissioner Johnson tried to address the people's need to have a work session but couldn't come up with a solution. He asked why the following statement was in the ordinance, *"Expected life span of the material site."* Mr. Best believed that it came back to the point where if the permit is to be conditioned. It would be for something that normally wouldn't be allowed with a continuous 5-year permit to do. That is the only way this information could be utilized.

Chairman Bryson asked if there were further questions or comments.

MOTION: Commissioner Clark moved, seconded by Commissioner Johnson to continue the public hearing to the next Planning Commission meeting.

VOTE: The motion passed by unanimous consent.

BRYSON YES	CLARK YES	FOSTER YES	GROSS ABSENT	HEIMBUCH YES	HOHL YES	HUTCHINSON ABSENT
ISHAM YES	JOHNSON YES	MARTIN YES	MASSION YES	PETERSEN ABSENT	TAURIAINEN YES	10 YES 3 ABSENT