

MOTION NO. 883

A MOTION concurring with the recommendation of the Zoning and Subdivision Examiner to modify the Unclassified Use Permit granted by Ordinance No. 388 to H & H SAND AND GRAVEL, INC., under Department of Planning File No. P68-222.

THE KING COUNTY COUNCIL, by this Motion, does accept the report of the Zoning and Subdivision Examiner, filed with the Administrator-Clerk of the Council on July 24, 1972 and attached hereto, which recommends the modification of the Unclassified Use Permit granted by Ordinance No. 388 to H & H SAND AND GRAVEL, INC. under Department of Planning File No. P68-222; and the Council does concur with the recommendations contained therein.

PASSED at a regular meeting of the King County Council this 7<sup>th</sup> day of August, 1972.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

  
VICE Chairman

ATTEST:

  
ACTING Deputy Administrator-Clerk of the Council

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

It is the violation of these requirements that has brought N+H Sand & Gravel to the attention of the Zoning Examiner. The company is now engaged in appealing a 1972 Zoning Examiner ruling that the company correct existing permit violations.

The Zoning Examiner is aware of the letter of June 14<sup>th</sup> from the attorney for N+H Sand & Gravel. He has prepared a report for the Council. As of today, N+H is scheduled for Environmental Planning for July 5 and July 26. However, if N+H appeals, the July 26<sup>th</sup> agenda item will be rescheduled for a late August hearing before it goes to the Council. (A copy of the Zoning Examiner's recommendations is attached)

I have also spoken to Milton Lechelt, head of Housing and Zoning Division of the Building Department. He is reviewing the letter and the grading ordinance with Robert Kueger and Daniel Bastion, legal counsel to Hearing Examiner. He will contact me after this week's meeting. At present, the N+H claim does not appear to be valid. Lechelt will

The unclassified use permit will be a while in resolving.  
There is community interest in the action, especially  
since hazardous conditions are present.

Consider it

CONCLUSIONS:

1. The permit has been exercised contrary to the conditions of approval in the following ways:
  - a. As of January, 1972 portions of the site boundary had not been fenced.
  - b. The drainage ditches shown on the approved plans,

Exhibit - E, have not been constructed along the north boundary of the excavation.


- c. Natural screening has not been maintained between the drainage ditch and the south property boundary.
2. The steep banks at the site together with the lack of fencing on some portions of the site boundary is detrimental to the public safety.
3. The entire site should be fenced.
4. The "filling of the hole to County street grade" is a condition related to the rehabilitation of the site. It refers to the area shown on Exhibit E, "3 Year Plan" lying below the 360 foot contour in the west-central portion of the site. A specific contour level should be used in lieu of the County street grade because that grade changes from point to point adjacent to the site.
5. The drainage ditches shown on Exhibit - E "3 Year Plan", or an alternative system approved by the Hydraulics Division Department of Public Works should be constructed.
6. Trees and/or shrubs of sufficient height and density to provide a sight obscuring screen between the site and adjacent property should be planted and maintained at those points adjacent to the south property line at which the natural screening has not been maintained.
7. No excavation should occur within ten feet of any property line of the site as stipulated in Section 24.420.030 (2) of the Zoning Code (Resolution 25789, Par. 2102). If that section of the code has been violated, the terrain should be restored to establish the required set back.
8. Fencing, signing and maximum slope requirements for the site should be coordinated in a manner which protects the general public and operators working at the site. The permit holder should be given the option of (1) maintaining maximum operating slopes of 2 feet horizontal to one foot vertical together with a four strand barbed wire fence around the perimeter of the site or (2) maintaining any degree of slopes which a licensed professional engineer, qualified and experienced in the field of soils engineering shall certify to be stable under the conditions which exist at the site, together with wire mesh fencing around the perimeter of the site and signs at intervals around the perimeter warning of steep banks.
9. That portion of the bottom of settling ponds within ten feet of the perimeter of the ponds should have a maximum slope of three feet horizontal to one foot vertical.
10. The permit holder should either obtain authorization from the appropriate County agency to maintain the berm and scales within the right-of-way of Van Brocklin Road or relocate these facilities off of the right-of-way.

11. The condition related to brushing of the road should be made explicit so that the road will be brushed immediately after any materials extracted from the site are spilled there on and once each day at the termination of the day's operation.

RECOMMENDATIONS:

1. Direct H & H Sand and Gravel, Inc. to prepare revised plans which incorporate the conditions stipulated in Conclusions No. 3 through No. 11 above. Six copies of such plans shall be submitted to the King County Department of Planning within 30 days from the date of Council action on this recommendation.
2. Request the Department of Planning to distribute copies of the revised plans to the appropriate County agencies for review, modification and approval. A copy of the approved plans shall be returned to the applicant within 45 days of the date of Council action on this recommendation.
3. Request the Department of Planning to prepare an ordinance amending Ordinance No. 388 by modifying the conditions and plans contained there in accordance with conclusions No. 3 through No. 11 above.
4. Direct H & H Sand and Gravel to comply with the operating conditions contained in conclusions No. 3 through No. 11 above and as shall be shown on the approved revised plans, within 90 days from the date of Council action on this recommendation.
5. Notify H & H Sand and Gravel, Inc. that if the permit holder does not comply with recommendation No. 1 or with recommendation No. 4 above, the unclassified use permit granted by Ordinance No. 388 will be revoked.

ORDERED THIS 20th day of June, 1972.

  
Bruce C. Laing  
ZONING & SUBDIVISION EXAMINER

TRANSMITTED this 20th day of June, 1972 by certified mail, to the parties of record:

James Hart  
Ted Thayer  
Ted Marston  
Philip A. Haberl  
Mr. Hanselmann  
H.H. Oleson  
Mr. Richard Bauer

CARL A. JONSON  
ATTORNEY AT LAW

CARL A. JONSON  
GERALD A. TROY  
CHI-000H(SKIP) LI

TELEPHONE (206) MAIN 4-2521  
400 CENTRAL BUILDING  
SEATTLE, WASHINGTON 98104

Director, Dept. of Building  
King County  
King County Administration Bldg.  
Seattle, Washington 98104

June 14, 1972

Re: H & H Sand & Gravel Grading Permit Application -  
#1133

Gentlemen:

We represent H & H Sand & Gravel, Inc., applicant for a grading permit to which you have assigned No. 1133. Enclosed is a copy of what I understand to be the grading permit which you propose to issue.

I have reviewed the grading permit resolution No. 70-361. No. 00525, amending Chapter 70 of the Uniform Building Code, 1967 Addn., relating to grading and filling under which you purport to issue the grading permit in question. The resolution does not grant authority to the Department of Building or to the Director, Department of Public Works, to impose conditions of the nature which you have set forth in the proposed permit with several exceptions.

The Director, Department of Building and of Public Works have authority to prescribe certain conditions only under two sections of the resolution. The Director, Department of Building, has limited authority under the resolution. In respect to those applicable to the grading permit at hand, Section 7004 gives some authority to require construction of retaining walls or cribbing of approved design where necessary for lateral stability, and which authority is taken away if the applicant supplies an affidavit from an accredited soils engineer stating that in his opinion the lateral stability of the slope would be maintained. The Director also has limited authority under Section 7006 to require a topographic map showing the present contours of the land and the proposed contours after completion of the proposed grading if deemed necessary to fully describe the nature and extent of the work. Similar authority is granted in respect to an application requiring referral under Section 7007 which relates to grading in a residential zone, which is not the case here. Section 7008 requires the Director, Department of Building, to issue the grading permit if the application and plans comply with other provisions of the chapter in question, or are so corrected or amended so as to comply. Other provisions would include sections such as 7012 relating to bond, Section 7009 relating to fees, and Section 7005 relating to drainage. In respect



Director, Dept. of Building  
Page Two  
June 14, 1972

to this latter provision, the Director, Department of Public Works, is granted authority to approve a drainage plan.

Among the various conditions which are contained in the proposed permit which are clearly not provided for in the grading permit are those relating to public liability insurance policy, modifying Chapter 24.42, and requiring minimum slope of 2:1, among others.

Specifically, the following paragraphs and portions of the proposed permit are beyond the authority of the Director, Department of Building, to prescribe:

1. To the extent that the operation of the grading permit and its continued existence depends upon compliance with the various unauthorized conditions hereafter mentioned, this condition is without authority.
2. There is no authority to modify Chapter 24.42 of the King County Zoning Code.
4. There is no authority to limit the hours of operation. Parenthetically, I know of no serious objection as such to the hours proposed since H & H Sand & Gravel operates within the hours as stated. However, the limitation on hours of operation may be appropriate in connection with the granting of a special use permit under Chapter 24.44, which is granted by the King County Council, but the Director, Department of Building, has no authority to impose such conditions.
5. There is no authority authorizing this condition. Again, this may be a reasonable condition imposed in a special use permit granted under Chapter 24.44, but the Director, Department of Building, has no such authority.
6. There is no authority for this condition. Again, a condition of this kind may be appropriate in connection with a special permit issued under Chapter 24.44, but the Director, Department of Building, has no authority to impose such a condition.
7. The same comment as in respect to Para. 6 in the preceding paragraphs mentioned above.
8. The same comment as mentioned in preceding Para. 6, 7, etc. The Director, Department of Building, is not designated an enforcement officer for the Puget Sound Air

Pollution Control agency. If an applicant or permit holder violates the law and/or rules and regulations in respect to the Puget Sound Air Pollution Control agency, that agency has jurisdiction of such violation. Nothing in the grading permit resolution authorizes such a condition.

9. It is possible that this condition might fall within the provisions of Section 24.42.080, but if it is intended that that section apply, then the wording should so state. The condition as stated is ambiguous, to say the least. Obviously, sediment may leave the fill-excavation site in the dump body of the truck. Other than falling under a condition in Chapter 24.42, the Director, Department of Building, has no authority to impose such a condition.

10. The same comment as in respect to Para. 6, 7, etc. This is completely beyond the authority of the Director, Department of Building. This is an appropriate condition in connection with the issuance of special use permit under Chapter 24.44, and is quite a common one as a general proposition in respect to special use permits. The King County Council has not granted the Director, Department of Building, any authority to impose this condition or any of the other conditions mentioned above in the grading permit resolution.

11. The same comment as in respect to Para. 5, 6, 7, 10, etc. In addition, this condition is ambiguous. There is no definition in the grading permit resolution of "hazardous conditions", nor is there any general accepted set of facts or conditions which could constitute a "hazardous condition", and furthermore there are many, many different conditions which could be "hazardous". Therefore, the attempted enforcement of this condition would be a matter of personal opinion of a particular inspector. Such a condition is vague and ambiguous and is not proper.

12. The same comment is made in respect to Para. 5, 6, 7, 10, etc.

13. This condition may be appropriate under Chapter 24.42, Section 24.42.030(1), if there is a determination by an appropriate authority that "hazardous conditions" exist, and if then the "hazardous conditions" attempted to be warned of are defined. The condition as stated is ambiguous and a permit holder would not be able to know what sort of hazardous conditions should be warned of nor what wording to place on the sign. Furthermore, there is no finding made that such "hazardous conditions", in fact, exist.

Director, Dept. of Building  
Page Four  
June 14, 1972

Condition 14 appears to be appropriate under Section 7005 of the grading permit ordinance relating to drainage.

We request that the proposed permit be revised and the objectionable and unauthorized conditions be deleted. If it is desired that there be some warning of conditions regarded as "hazardous", and that a sign be posted to warn of such conditions, the permit condition must describe the "hazardous conditions" to be warned of.

We will expect that the grading permit be issued strictly in accordance with the provisions of Grading Permit Ordinance referred to above. We will be glad to discuss any or all of the matters set forth in this letter with your representative to the end that a permit with reasonable conditions as authorized by the Grading Permit Resolution can be issued. If such a discussion is desired on your part, I will appreciate your calling me or writing me.

This letter requesting elimination of the objectionable conditions is without prejudice to our right to assess the invalidity of the grading permit resolution in the event of court action. The validity of the resolution is questionable because it purports to apply to private property only and not to county gravel pits, among other things.

In the absence of receiving an appropriate response to this letter, H & H Sand & Gravel, Inc. will have no alternative but to take appropriate relief through court action.

Very truly yours.



Carl A. Jonson

CAJ/ma

cc: King County Council  
King County Planning Department  
Director of Public Works, King County  
Mr. Darrell Bastian, Attorney  
H & H Sand & Gravel, Inc.  
Mr. James Hart, Engineer

*Letter to H&H  
mailed 6/7-  
Hubert to come in  
read and sign*

DEPARTMENT OF BUILDING  
CONDITIONS FOR GRADING PERMIT

# 1133

Applicant's Name: H & H Sand & Gravel Expiration Date: March 1973

1. The operation allowed by the grading permit must be conducted in accord with the following conditions which the permittee in obtaining the permit accepts in full and agrees that failure to so comply with any condition shall be cause for the permit to be cancelled without notice or hearing and for immediate work stoppage.
2. The operating conditions and land rehabilitation requirements of Chapter 24.42, King County Zoning Code (Quarrying and Mining) shall apply in full to the permit except the minimum slopes shall be 2:1. Also, material shall not be removed which is within 10 feet from the property lines.
3. No signs other than signs required by Chapter 24.42, King County Zoning Code are authorized as a result of the permit.
4. Hours of operation shall be limited to 7:00 A.M. to 7:00 P.M.
5. Access roads shall be maintained and located to the satisfaction of the King County Department of Public Works to minimize problems of dust, mud and traffic circulation.
6. Fencing around complete working areas with lockable gates which must be closed and locked when not working the site. The fence must be no less than five (5) feet and the fence material shall have no opening larger than two (2) inches other than gates. This fence must be installed by August 20, 1972.
7. The permittee shall maintain a liability policy in the amount of \$100,000 per individual, \$300,000 per occurrence, and \$50,000 property damage and name of King County as an additional insured.
8. Abide by all the regulations of Puget Sound Air Pollution Control Agency.
9. Provisions must be made so that sediment will not leave fill/excavation site.
10. Installation of natural screening must be started so as to take advantage of this year's growing season. Screening must consist of Evergreen trees (at least three (3) feet high) must be planted in the ten (10) foot set-back on all the property lines. These trees must be planted five (5) feet apart in three (3) staggered rows. This work must be done by December 1, 1972. A berm, with screening, must be completed according to plans by August 20, 1972. The berm must be hydroseeded with a grass mixture and trees planted the same as on the other property lines.
11. The hazardous conditions, caused by the method of settling ponds being installed, must be corrected by August 20, 1972.
12. Referring to the plans submitted for a filling permit (plan 1972) in which the site is blocked off into areas designated 1 to 6; sloping of the vertical banks must commence immediately. The vertical banks in the area south of cross section E must be sloped by July 20, 1972. The balance of area 1 must be sloped by October 20, 1972, and the balance of the site by December 20, 1972.

- 13. Sign warning of hazardous conditions must be installed and maintained at the front gate on the fence at the north property line where N. E. 173rd Street and 155th Place N. E. runs adjacent to the property line and also on the south property line.
- 14. Seed ditch along south side of site and install a culvert where this ditch goes down the hill to the County road.

Grading Permit and attached Conditions received by:

Approval Date 5/31/72 \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Committee Approval:

Gary Prohler  
Department of Planning

James Gueh (Head) James Polk Co  
Department of Public Works

[Signature]  
Department of Building

[Signature] (Official)