

ORDINANCE NUMBER 262

BENTON COUNTY, MINNESOTA

WHEREAS, the Benton County Planning Commission on its own motion instituted proceedings to amend Ordinance Number 185 (Benton County Development Code), and any other ordinance, if any, amending Ordinance Number 185, and

WHEREAS, on January 23, 1996, Notice of Public Hearings to Consider Amending the Benton County Development Code was published in the official newspaper and mailed to the governing bodies of all towns and municipalities located within Benton County; and

WHEREAS, on February 8, 1996, the planning commission held a public hearing thereon and recommended to the Benton County Board of Commissioners that said amendments be approved; and

WHEREAS, on February 20, 1996, the Board of County Commissioners held a public hearing thereon and approved the proposed amendments,

NOW, THEREFORE, THE BENTON COUNTY BOARD OF COMMISSIONERS ORDAINS:

Amend Section 9.7, Mining Operations, to read as follows:

9.7 Mining Operations
(Ordinance #198 adopted 9/18/90)

9.7.1 Definitions -- Unless the context clearly indicates otherwise, the following words as used in Section 9.7, et seq. shall have the meaning set forth herein:

- (a) Commercial -- involving the total amount of 500 cubic yards, or more, of rock, sand, gravel, clay, silt, soil, or any other like mineral(s) or combination thereof. (Note that this does not say

Ordinance 262
Adopted 02/20/96

500 cubic yards or more, per year.)

- (b) et seq. -- the cited section in addition to its subparts.
- (c) Excavation -- the digging, removal, filling with, or storage of any naturally occurring rock, sand, gravel, clay, silt, soil, or other like mineral(s) being conducted within the unincorporated areas of Benton County. See Section 9.7.3 below for exceptions.
- (d) Minerals -- the non-metallic materials found naturally in the earth including, but not limited to, rock, sand, gravel, clay, silt, and soil which may be covered by overburden.
- (e) Mining operation(s) -- the excavation and/or processing of rock, sand, gravel, clay, silt, soil or other like mineral(s) being conducted by an entity on a commercial basis.
- (f) Overburden -- those materials which lie between the surface of the earth and the mineral(s) to be excavated.
- (g) Permittee -- the recipient of Benton County's consent to conduct a mining operation at a specified site.
- (h) Pond -- Type 3, 4 or 5 wetland as defined in United States Fish and Wildlife Circular 39 (1971 edition) one (1) acre or larger in size.
- (i) Processing -- the crushing, screening, washing, compounding, or treatment of rock, sand, gravel, clay, silt, soil, or other like mineral(s) being conducted within the unincorporated areas of Benton County, including the production of asphalt compositions for pavement and the recycling of previously-used concrete and asphalt.
- (j) Rehabilitation -- to renew the land with the goal being to return it to a self-sustaining state where there is self-sustaining vegetation and its long-term use is compatible with contiguous land uses in accordance with the standards set forth in this section 9.7, et seq.
- (k) Topsoil -- that portion of the overburden which

Ordinance 262
Adopted 02/20/96

lies closest to the surface of the earth and which supports the growth of vegetation.

9.7.2 Permit Required

A permit shall be required for all mining operation(s).

A. Conditional Use Permits

Owners and operators of any mining operations commencing on or after December 31, 1995 shall obtain a conditional use permit. Said permit shall be valid for a five (5) year period, unless it is revoked, expires, or is otherwise terminated earlier. Said permit is not transferrable or assignable without the prior written consent of the Planning Commission.

B. Land Use Permits

Person, firms, partnerships, associations, corporations, or other entities that commenced mining operation(s) prior to December 31, 1995 shall not be required to obtain a conditional use permit for said mining operations, but rather shall obtain a land use permit from the Planning and Zoning Department. Both the owner and the operator of the mining site must sign the permit application. As a condition for the issuance of said permits, applicants must be informed of and abide by all requirements of section 9.7 et seq. of the Code. Applicants must provide all information required by § 9.7.5(a), 9.7.5(b), 9.7.5(c), 9.7.5(d) and 9.7.5(e) 1. and 3. of the Code.

C. Small Scale Mining Operations

In lieu of a conditional use permit, persons, firms, partnerships, associations, corporations or other entities may secure a land use permit from the Planning and Zoning Department providing the following conditions are met:

1. A maximum of 10,000 cubic yards of material shall be removed from, and/or processed in, the mining operation;
2. The mining operation will be commenced, completed and rehabilitated within a twelve (12) month period;
3. Only one (1) land use mining permit may be issued

in each quarter-quarter section of land in perpetuity;

4. All other requirements of Section 9.7 of the Benton County Development Code, as amended, shall apply to the permittee.

Failure to comply with this section shall be a violation of the Benton County Development Code, as amended.

Persons requesting a permit shall submit the prescribed fee to the Benton County Zoning Administrator, together with all information required in Section 9.7.5 below. The applicant shall provide three (3) copies of the required information.

The Planning Commission, in determining whether to grant a conditional use permit pursuant to § 9.7.2(A), shall apply the criteria for granting conditional use permits set forth in Section 11.6, 9.7.5, 9.7.6 and 9.7.8 of the Benton County Development Code, as amended.

If the request for a permit is denied, no reapplication shall be made for a period of six (6) months.

9.7.3 Exceptions

A permit described in Section 9.7.2 shall not be required for any of the following:

- (a) Excavation for the purpose of the foundation, cellar, or basement of some immediately-pending structure to be erected, built, or placed thereon contemporaneously with or immediately following such excavation, provided that a land use permit for that structure has first been issued.
- (b) All normal and customary agricultural practices.
- (c) Excavation required for completion of a septic system and drain field(s), provided that a land use permit for the septic system and/or drain field(s) has first been issued.
- (d) Excavation for the creation of ponds, wetlands, livestock ponds or other structures for wildlife habitat improvement.

9.7.4 Expiration/Revocation of Permit

Ordinance 262
Adopted 02/20/96

Conditional use mining operation(s) permits expire automatically five years after issuance.

The Planning Commission may revoke a mining operation(s) permit for violation of Section 9.7, et seq. of the Benton County Development Code, as amended; for violation of a condition of the permit; or for other cause.

To revoke a permit the Zoning Administrator shall give notice by U.S. Mail (first class mail addressed to the permittee at the address of the permittee on file in the office of the Planning and Zoning Administrator for Benton County) of the violation or other cause for revocation, along with the directive of the Planning Commission that the condition be remedied. If the condition has not been repaired, corrected, or otherwise remedied within thirty (30) days, the Planning Commission shall determine, at its next scheduled meeting, whether the mining operation(s) permit should be revoked.

Mining operation(s) shall be discontinued immediately if the permit is revoked or expires pursuant to this Section; however, such revocation or expiration shall not nullify the obligation of the permittee to undertake rehabilitation under this Section 9.7, et seq. of the Benton County Development Code, as amended.

9.7.5 Information Required

- (a) The name and address of applicant(s) requesting the mining operation(s) permit and/or the name and address of owner(s) of the land upon which the mining operation is proposed to be located.
- (b) The legal description and acreage of the proposed mining operation(s) site, together with proof of applicant(s)' ownership or leasehold interest.
- (c) The purpose of the proposed mining operation(s).
- (d) The estimated duration of the mining operation(s).
- (e) Specifications, using appropriate maps and surveys, revealing:
 1. Site property boundaries and location of all structures on or within five hundred (500) feet of the operation and the purpose for which each structure and adjoining land is used.

2. Contours of the affected land at intervals no greater than ten (10) feet.
 3. The location and names of all streams, lakes, and roads on or within five hundred (500) feet of the site.
 4. Boundaries of previous excavations on the site, and the location and description of boundary stakes for the site.
 5. A permanent benchmark that shall be the reference point for all mining specifications, maps, surveys or drawings.
 6. The site specifications, maps, surveys or drawings shall be at a scale of one (1) inch = two hundred (200) feet. Specifications, maps, surveys or drawings detailing information off the mining site may be submitted at a scale of one (1) inch = six hundred and sixty (660) feet.
 7. General information such as vegetation, depth of topsoil, and screening, etc. of the site.
- (f) A detailed soil erosion and sediment control plan.
- (g) A site plan and description of all phases of the proposed mining operation(s), to include and approximate the amount of excavating to take place as well as the plan of operation, including processing, if any, the nature of the processing and equipment, location of the processing plant, source of water, disposal of water, reuse of water, location of storage areas, haulways and the use of explosives. The site plan must conform to the specifications found in Section 9.7.5(e) of the Benton County Development Code, as amended. If necessary, the plan should illustrate temporary erosion control measures.
- (h) A comprehensive rehabilitation plan showing suitable provisions for rehabilitation of the mining operation(s) site to a condition compatible with the adjacent land such that it will not become a health or safety hazard or nuisance:
1. A site plan showing final slope angles, high wall reduction, benching, terracing, other

stabilization measures and water impoundments. The plan must conform to the specifications found in Section 9.7.5(e) of the Benton County Development Code as amended.

2. Cross-sectional drawings of any water impoundments, high wall reductions, benching, terracing or other conservation practices.

Where the Planning Commission deems practical and necessary, such plans shall also include adjoining related areas where excavations have previously been made which remain under the control of the applicant or the owner(s) of the land on which the excavation or processing is proposed.

- (i) Any other information requested by the Zoning Administrator or Planning Commission.

9.7.6 Use Restrictions

Mining operation(s) may be conducted only in areas zoned agricultural district "A-1", agricultural district "A-2", light industrial district "I-1", or heavy industrial district "I-2".

9.7.7 Performance Standards

- (a) General Provisions. Weeds and any other unsightly or noxious vegetation shall be cut or trimmed as may be necessary to preserve a reasonably neat appearance, to prevent seeding on adjoining property, and to comply with the requirements of Minnesota Statutes Section 18.191, et seq.

All equipment used for mining operation(s) shall be kept operational and shall be maintained and operated in such a manner as to minimize as far as is practicable noises and vibrations. The mining operation shall conform to all noise standards contained in Minnesota Rules, Chapter 7030.

Abandoned machinery and rubbish shall be removed from the mining operation(s) site and shall not be allowed to accumulate.

- (b) Water Resources. The mining operation(s) shall not be allowed to interfere with surface

water drainage beyond the boundaries of the mining operation(s) site.

Surface water originating outside and passing through the mining site shall, at its point of departure from the mining site, be of equal quality to the water at the point where it enters the mining site. The permittee shall perform any water treatment necessary to comply with this provision and shall, at a minimum, meet the requirements specified in subparagraph (k) hereof.

(c) Safety Fencing. Any mining operation(s) adjacent to a residential zone, or within three hundred (300) feet of four (4) or more residential structures, shall adhere to the following standards:

- i. Where collections of water occur that are one and one-half (1-1/2) feet, or more, in depth, exist for any period of greater than seven (7) consecutive days and occupy an area of seven hundred (700) square feet or more, all access to such collections of water shall be barred by a fence or similarly effective barrier of at least four (4) feet in height with support posts spaced no farther apart than ten (10) feet.
- ii. In locations where slopes occur that are steeper than one (1) foot vertical to three (3) feet horizontal existing for a period of seven (7) days or more, access to such slopes shall be barred by a fence or some similarly effective barrier at least four (4) feet in height with support posts spaced no farther apart than ten (10) feet.
- iii. As an alternative to the fencing requirements of Section 9.7.7(c) i. and ii., the entire perimeter of the property on which a mining operation is located may be fenced or protected by some other similarly effective barrier at least four (4) feet in height with support posts spaced no farther than ten (10) feet.

(d) Mining Access Roads. The intersection of mining access roads with any public roads shall be located in such a manner that traffic on the access roads will have a sufficient length of the public road in

view so that any turns onto the public road can be completed safely.

- (e) Screening Barrier. The permittee shall not cause trees and ground cover existing at the time of issuance of the initial permit and present within the depth of the roadside setback to be harmed or destroyed, except where traffic safety requires that said trees and/or ground cover be cut and/or trimmed or except where alteration or destruction of the trees and/or ground cover is necessary for a rehabilitation plan approved by the Planning Commission.
- (f) Setback. All mining operations shall be conducted within the confines of the site described in the permit.

Processing shall not be conducted closer than one hundred (100) feet to the property line, nor closer than three hundred (300) feet to any residential or commercial structures existing prior to the commencement of mining operation(s) without the written consent of all owners and residents of said structures. A photocopy of said consent(s) shall be filed by the permittee with the Zoning Administrator.

Excavation shall not be conducted closer than thirty (30) feet to the boundary line of any zone where mining operation(s) are not allowed, nor shall such excavation be conducted closer than thirty (30) feet to the boundary of an adjoining property line, unless the written consent of each of the owners in fee simple of such adjoining property is first secured in writing and filed by the permittee with the Zoning Administrator.

Mining operations shall not be conducted closer than thirty (30) feet to the right-of-way line of any existing or platted street, road or highway, or any other right-of-way except that excavation, if not otherwise prohibited, may be conducted within such limits in order to reduce the elevation thereof in conformity to the existing or platted street, road or highway or other right-of-way.

Mining operations shall not be conducted closer than 150 feet from the ordinary high water mark of any stream, river, lake or pond, as defined in the Benton County Development Code, as amended.

(g) Appearance. All buildings, structures, and plants used for mining operation(s) shall be maintained in such a manner as is practicable, and according to acceptable and industrial practice, so as to assure that such buildings, structures, and plants will not become dangerously dilapidated.

(h) Dust and Dirt. Permittees shall use all practical means to reduce the amount of fugitive dust generated by mining operation(s). In any event, the amount of dust or other particulate matter generated by the mining operation(s) shall not exceed air pollution control standards established by the Minnesota Pollution Control Agency, including those set forth in Minnesota Rules, Chapters 7005, 7009, 7011, 7017 and 7023.

All access roads from mining operation(s) to public highways, roads, or streets, or to adjoining property shall be maintained to minimize dust conditions.

(i) Noise. Maximum noise level at the site shall comply with the limits or standards established by the Minnesota Pollution Control Agency, including those set forth in Minnesota Rules, Chapter 7030.

(j) Hours. No mining operation(s) shall be conducted during restricted hours specified in the applicable mining operation(s) permit.

(k) Water Pollution. Permittees shall comply with all applicable Minnesota Pollution Control Agency regulations, including those set forth in Minnesota Rules, Chapters 7001, 7050, and 7060; Department of Natural Resources regulations, including those set forth in Minnesota Statutes Sections 105.41 and 105.42, et seq., as well as Minnesota Rules 6115.0600, et seq.; and all applicable United States Environmental Protection Agency Regulations for the protection of water quality. In addition, no waste products or processed residue shall be deposited in any public (i.e. protected) waters or wetlands in Benton County (as designated by the Minnesota Department of Natural Resources pursuant to Minn. Stat. Section 105.391, Subd. 1 or Minnesota Rules Chapter 8420).

(l) Topsoil Preservation. Sufficient topsoil shall be retained at the excavation site to ensure

completion of rehabilitation in accordance with the rehabilitation plan. Mining operators/owners are prohibited from removing topsoil from the mining site unless sufficient topsoil is retained to cover the entire site to a minimum depth of three (3) inches.

- (m) Slopes During Mining Operation(s). During the entire period of operation(s), all excavation other than the working face shall be sloped on all sides to a maximum ratio of one (1) foot horizontal to one (1) foot vertical, unless a steeper slope is approved by the county; or, in the alternative, the permittee shall install an effective barrier enclosing the site, the barrier to be no less than a four (4) strand wire fence four (4) feet in height with support posts spaced no farther apart than ten (10) feet. In any event, where excavations are adjacent to a public roadway or other right-of-way, the terrain shall have a maximum slope of four (4) feet horizontal to one (1) foot vertical. Slopes adjacent to waterways shall not exceed four (4) feet horizontal to one (1) foot vertical.
- (n) Reports. The permittee shall comply with the reporting requirements, if applicable, mandated in Minnesota Statutes Section 298.75, Subd. 3, as the statute shall prescribe at the time of reporting.
- (o) Investigations. In order to ensure compliance with the performance standards set forth above, the Planning Commission, after being presented with information alleging the permittee's violation of this section of the ordinance, may require the permittee to have completed such investigations and tests as may be required to show adherence to the performance standards. Such investigation and tests as are required to be made shall be carried out by an independent testing organization as may be selected by the Zoning Administrator.
- (p) Surety Bond. The permittee shall post a surety bond executed by a corporate surety company acceptable to the county and authorized to do business in the State of Minnesota, or cash escrow, in the sum of \$3,000 for each mining operation conducted by the permittee. A permittee conducting five (5) to ten (10) mining operations shall be required to post one \$15,000 bond that guarantees compliance with this ordinance in all operations.

A permittee conducting eleven (11) to twenty (20) mining operations shall post one \$30,000 bond guaranteeing compliance in all operations. A permittee conducting twenty-one (21) to thirty (30) mining operations shall post one \$45,000 bond guaranteeing compliance in all operations. If the operator has more than thirty (30) mining operations, the Planning Commission shall set the bond amount; the minimum amount shall be \$50,000.

The Planning Commission, at its discretion, may increase the bond amount if deemed necessary to protect the public health, safety, or welfare. Said bond shall run in favor of the county, and said bond shall remain in full force and effect for a minimum period of one (1) year after expiration or revocation of the permit, which bond shall guarantee the required rehabilitation as well as all other requirements of this section 9.7, et seq. and pay, up to its face value, all expense the county may incur by reason of having to do anything required of the permittee which the permittee has failed to do.

All bonds shall be renewed to the minimum required amount in the case of partial or total default.

- (q) Non-assignment. Permittee shall not allow any other person, firm, partnership, association, or corporation to conduct mining operation(s) at the site, other than hauling to or from the pit, without (1) obtaining the prior written consent of the Planning Commission and (2) receiving written acknowledgement of said other person, firm, partnership, association, or corporation that he/she/they/it agree(s) to be bound by the requirements of the mining operation(s) permit in effect, and has obtained a surety bond guaranteeing the other entity's performance as a permittee. Subcontractors to the permittee shall be allowed to perform mining operations under the direct supervision of the permittee. The subcontractor must follow all applicable rules, standards, laws, regulations or permit conditions pertaining to mining operations. The permittee shall be responsible for any violations of this ordinance caused or committed by any subcontractor.
- (r) Additional Requirements. The governing body may impose additional performance standards as part of the owner(s)' Conditional Use Permit.

9.7.8 Land Rehabilitation

The permittee shall reslope the mining operation(s) site annually at the end of the mining operation(s) season or, in the alternative, install an effective barrier enclosing the site, the barrier to be no less than a four (4) strand wire fence 4 feet in height with support posts spaced no farther apart than ten (10) feet. In addition, all sites shall be rehabilitated by the permittee immediately after mining operations cease pursuant to Section 9.7.4. Unless otherwise allowed in this Subsection 9.7.8, no resloped surface or rehabilitation slope shall be steeper than four (4) feet horizontal to one (1) foot vertical.

Within a period of three (3) months after the termination of mining operation(s), or immediately after abandonment of such operation(s) for a period of twelve (12) months, or within three (3) months after expiration or revocation of a permit, all buildings, structures, and plants incidental to such mining operation(s) shall be dismantled and removed by and at the expense of the permittee last utilizing such buildings, structures and plants.

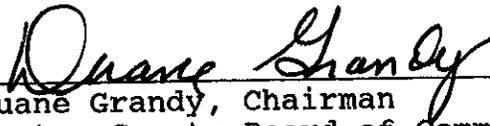
The peaks and depressions of the site shall be graded and backfilled to a surface which will result in a gently rolling topography in substantial conformity to the land area immediately surrounding and which will minimize erosion due to rainfall. Overall, the finished grade shall be such that it will not adversely affect the adjacent land and shall have slopes that do not exceed four (4) feet horizontal to one (1) foot vertical.

Reclaimed areas shall be surfaced with soil of quality at least equal to the topsoil of land areas immediately surrounding and to a depth of at least three (3) inches; provided, however, that the permittee need not import topsoil to supplement the topsoil existing at the site prior to the commencement of the mining operation(s). The finished reclaimed areas shall be planted with legumes and grassed upon all parts where revegetation is possible. Trees and shrubs may also be planted but not as a substitute for legumes and grasses. Such ground cover shall be sufficient to hold the topsoil in place and shall be tended by the permittee as necessary until ground cover is self-sustaining.

Excavations completed to a water producing depth need not be backfilled; however, banks shall be sloped to a grade no steeper than four (4) feet horizontal to one

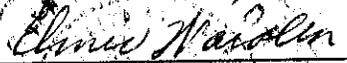
(1) foot vertical.

APPROVED AND ADOPTED by the Benton County Board of
Commissioners this 20th day of February, 1996.



Duane Grandy, Chairman
Benton County Board of Commissioners

ATTEST:



Clerk of the County Board

2 3 3 3 4 9

BENTON COUNTY RECORDER
BENTON COUNTY, MN
CERTIFIED TO BE FILED
AND/OR RECORDED ON

FEB 23 4 21 PM '96

ALICE C. ENGELMEYER
COUNTY RECORDER

BY  DEPUTY ✓

Ordinance 262
Adopted 02/20/96