

Zoning Code Sections

This document goes into the Zoning Code Sections that the Zoning Administrator, Tony Phillips, says pertains to “frack sand issues and current regulation”.

Listed are the issue, zoning code section, and current regulation that allows-denies-or-limits, and [my comments].

I will type in those sections and then my response will be [bracketed]. Many of the issues listed refer to the same zoning code section.

Increased truck traffic; 505.1(1), 505.1(7), 505.2; the use will not create an excessive burden on existing infrastructure systems including...highway and roads and other public facilities and utilities which serve or are proposed to service the area; the use will not cause traffic hazard or congestion; the commission may, in addition to requirements specified...recommend additional conditions necessary to protect the best interest of area or county in whole (paraphrased).

[This gets to two general issues that will keep coming up as the sections are discussed. First, this is basically self-regulation. The company says we’ll need so many trucks per day/week/month to do this job. The Board then says, okay, we’ll put that in the Conditional Use Permit. The zoning language is not really regulatory in nature, it is enabling language. It is written to allow what the industry needs. And, in many cases, it is written by the company asking for asking for the permit; an example, “a plan for dust and noise control (is a requirement of the proposal).”

Second, the P&Z and the Supervisors are citizen boards. Who on the P&Z or the Supervisors has the requisite expertise and knowledge to know how the “health, safety, and general welfare of occupants of surrounding lands” – catch all phrase, section 505.1 – would be affected by increased traffic or any of the other issues considered “externalities” by the mining companies? Or, what that traffic would do to roads and bridges? What is the expertise behind these Conditional Use Permit regulations? I will return to this in section 505.1.]

Hours of operation; 711.3(6)(a); all operations shall be conducted between 6am and 10pm...505.2; the commission may, in addition to requirements specified...recommend additional conditions necessary to protect the best interest of area or county in whole (paraphrased).

Dust; 711.2(4); a plan for dust and noise control (is a requirement of the proposal). [This is self-regulation/enabling language. It is written by the company asking for asking for the permit.]

711.2(4) Iowa Department of Natural Resources regulates air quality. [The DNR does not permit non-point sources of fugitive dust. There are DNR rules about fugitive dust but, because of staffing issues, the DNR depends on neighbors to call in complaints to know about these issues. If the DNR waits for citizen complaints, the pollution events are already ongoing. What is the requisite expertise and knowledge that neighbors must have

to know that they may be subject to health problems due to these fugitive dust events? Do citizens know that they are to be the ones regulating industry? Where is the regulation in this? The county should ask for an Environmental Impact Statement on air quality and the possible health risks due to silica dust during a moratorium period.]

Noise; 711.2(4); a plan for dust and noise control (is a requirement of the proposal). [As in the dust section above, this is self-regulation/enabling language. It is written by the company asking for asking for the permit. Who has the expertise and knowledge to know what noise does to particular people? Where is the regulation in this?]

Water Usage; 711.1(2); the crushing, washing, refining, or processing other than the initial removal of material shall be considered a conditional use. [Self-regulation/enabling language. It is written by the company asking for asking for the permit.]

711.3(1)(b); the work being done shall not adversely affect the quality of surface or subsurface water. [This is self-regulation/enabling. The DNR says that given the fact that groundwater levels rise and fall depending on area rainfall, water withdrawal wells and their associated cones of depression, etc, claims that a given mine will remain above groundwater by a certain depth, are probably not possible. If that is so, how does the county or the DNR make sure that adjacent wells and springs are not compromised? As above, the DNR relies on the general public to be cognizant of what is going on, and contact them if a problem exists. Again, if noticed, that means the problem has been ongoing. Where is the regulation here?]

505.4(4); the commission may require a review...by Winneshiek County Dept of Health (environmental). [So, this seems to say that an Environmental Impact Statement can be requested of the County Health Dept so that the possible health and environmental problems would be known prior to issuing a Conditional Use Permit. The County Dept of Health should be asked to conduct an Environmental Impact Statement during the two year moratorium.]

505.4(4); Iowa Department of Natural Resources regulates groundwater. [See above; how is the DNR to know there is an issue with groundwater? How do they regulate something that has already happened? If the DNR can regulate groundwater, why are most private wells in Iowa polluted with Atrazine?]

Water Pollution; 711.1(2); the crushing, washing, refining, or processing other than the initial removal of material shall be considered a conditional use. [As above, this is self-regulation/enabling language.]

711.3(1)(b); the work being done shall not adversely affect the quality of surface or subsurface water. [Self-regulation/enabling language. See above under Water Usage.]

711.3(1)(c); surface water passing through mining site shall be of equal quality at entry and exit points (paraphrased). [Self-regulation/enabling language. How that is done is left up to the company.]

711.2(7); required information can include “any information requested by the commission or Board. Could include listing of chemical’s MSDS.

Iowa Department of Natural Resources regulates surface water. [Same as above. Who tells the DNR there is a problem? Complaint basis only. Pollution event has already happened before it is reported. And, if the DNR regulates surface water, why are there 628 surface water bodies on the impaired waters list?]

Water Aquifer Protection; 711.1(2); the crushing, washing, refining, or processing other than the initial removal of material shall be considered a conditional use. [As above, this is self-regulation/enabling language.]

711.3(1)(b); the work being done shall not adversely affect the quality of surface or subsurface water. [Self-regulation/enabling language. See above under Water Usage.]

505.4(4); the commission may require a review...by Winneshiek County Dept of Health (environmental). [See above Water Usage. The Board of Health can be asked to perform an Environmental Impact Statement on all these issues. They should be asked to do this during the 24 month moratorium.]

711.2(3); required to give location of existing wells, and location and depth of proposed excavation. [As above, this is self-regulation/enabling. The DNR says that given the fact that groundwater levels rise and fall depending on area rainfall, water withdrawal wells and their associated cones of depression, etc, claims that a given mine will remain above groundwater by a certain depth, are probably not possible. If that is so, how does the county or the DNR make sure that adjacent wells and springs are not compromised? As above, the DNR relies on the general public to be cognizant of what is going on, and contact them if a problem exists. Again, if noticed, that means the problem has been ongoing. Where is the regulation here?]

711.2(7); required information can include “any information requested by the commission or Board. Could include environmental assessment. [Should use the moratorium to conduct an Environmental Impact Statement prior to granting any Conditional Use Permits.]

Iowa Department of Natural Resources regulates groundwater. [See Water Usage above. Because of budget constraints, the DNR relies on citizen diligence to spot and report pollution events. This is not regulation to make sure something doesn’t happen. This is “after the fact” regulation.]

Property Value; 505.1(2), 505.1(3); the use will be sufficiently compatible or separated by distance or screening from adjacent land so that existing properties will not be depreciated in value and there will be no deterrence to development of vacant land, the site shall have an appearance that will not have an adverse effect upon adjacent residential properties. [The removal of hills, bluffs, forests, and the filling of adjacent valleys with tailings is inconsistent with both the letter and the intent of these sections. Adjacent property values must be affected by an extractive enterprise of this nature. See Minnesota and Wisconsin.]

505.1(5); the use is consistent with the purposes of the zoning district in which the applicant intends to locate the proposed use. [Since we have no wording considering frack sand mining, we should have a moratorium to figure out what that zoning district and language describing that zoning should be.]

Reclamation; 711.1(1), 711.2(3), 711.4; the board may require a performance bond from the landowner, required reclamation plan presented with the proposal, all sites shall be rehabilitated...License, registration, and a bond are IDALS/ Mines and Minerals Bureau requirements prior to any operation. Mines and Minerals Bureau: a license for the company is required and a registration and bond is required for the mine site (Iowa Code 208). How you reclaim or rehabilitate a hill, bluff, forest, or valley after they have been removed are among those things that need to be discussed during a moratorium.]

Catch All Phrase; 505.1; in granting a conditional use permit, the County Board of Supervisors shall consider the advice and recommendation of the Commission and the affect of the proposed use upon the health, safety, and general welfare of occupants of surrounding lands. [The county should consider and regulate those things that are considered externalities by mining companies; ergo, neighbor's health; quality of life including noise, lights, and views; water table issues including groundwater, spring, and well contamination; hill and bluff removal; forest removal; the filling of adjacent valleys; roads, bridges and traffic; ability to enjoy your own property; ability to enjoy the environment through tourism and outdoor activities, etc. Both the Board and the Commission are citizen boards. As such, neither has the knowledge or requisite expertise to answer what these wholesale changes will do to neighbors, the neighborhood, and the county as a whole. We should have a moratorium so that we can figure out how we are going to handle this issue. We should ask the Board of Health to conduct an Environmental Impact Statement on all of these issues.]