
How to be Successful with Zoning and Permitting: Aggregate Mining

Strategies and Techniques for Successful Rezoning and Permitting Under Community Land Use Regulations



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**HOW TO BE SUCCESSFUL WITH ZONING AND PERMITTING:
AGGREGATE MINING**

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UNDER COMMUNITY LAND USE REGULATIONS**

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HOW TO BE SUCCESSFUL WITH ZONING AND PERMITTING: AGGREGATE MINING

INTRODUCTION

Aggregate mining is becoming increasingly more regulated under county and municipal land use and zoning regulations. As a result, the review and approval of operating permits have become some of the most protracted, expensive, and frustrating processes in the aggregate mining industry.

In the past, local government was generally the only stakeholder involved in zoning regulation and the permit review process. However, adjacent land owners and residents, concerned about their quality of life and potential devaluation of their property, are now becoming more active in the permit review process relating to an existing or proposed mine operation. Because of multiple stakeholder involvement, the permit review process not only takes longer to accomplish, but is more expensive and can become divisive.

This manual outlines a process that will assist an applicant in working through zoning review and approval with government agencies, adjacent land owners and residents. Understanding this process is essential to an aggregate producer's success. The permit review process should be viewed as a learning experience during which the aggregate producer and community members come to understand one another better; express concerns, suggestions, and ideas, and work toward a resolution of conflicts generated by an application or a plan.

Planning approval does not need to become a situation in which someone wins and someone loses. While participants in the proposed planning and zoning application may appear to be opposed to one another, adjacent land owners, government officials, and owners of aggregate mine operations can be successful in achieving their respective goals. The permit approval process requires a great deal of understanding, hard work, patience and compromise. Obtaining approval for aggregate mining operations can be a learning process by which all of those involved can come to understand one another and move toward mitigating issues or concerns arising from the proposal.

Because of the increased significance of planning and zoning issues, local government can become overburdened by the review process. As a result, many city and county planning and zoning regulations are being changed to allow the planning/zoning staff greater latitude in reviewing proposed applications and plans. By making such changes, the planning/zoning staff has the ability to review proposals for compliance with planning goals and zoning ordinances.

This manual is not a prescription for every permit application since zoning ordinances and the approval processes may vary from state to state and community to community. While the processes described in this manual are broad enough for use in most cases, one should keep in mind that there may be special processes that must be followed in some jurisdictions when requesting aggregate mining permit approval. Regardless of where the permit approval is being requested, as Jensen (1984) pointed out the "most important and universal of these (strategies) is open communication with the community."

This manual provides ideas on effective communication and processes to assist aggregate producers in being successful with zoning and planning permit applications. Communication must begin immediately during the application process and continue until the final vote. Effective communication by itself will not ensure success for the applicant. The application and the proposal must be realistic, and the supporting plan must be thoughtfully and carefully developed to meet the needs of the operator and the community.

HOW TO BE SUCCESSFUL WITH ZONING AND PERMITTING: AGGREGATE MINING

1. PLANNING AND ZONING OVERVIEW

To put this entire discussion into context, it is important that one first understand why communities plan, what planning and zoning are, and what the roles and responsibilities of those involved in the permit approval process are.

WHY PLANNING?

Communities plan for a number of reasons: as a means to manage growth, to effectively utilize their limited resources, to enhance the quality of life of their citizens, or to articulate a "vision" of the future. Planning provides the public with reasonable expectations about how their community or neighborhood will grow or evolve in the future and as such, establishes guidelines for making decisions. When faced with strategic decisions, lenders, developers, neighborhood organizations, realtors and businesses, in addition to local elected officials, can all refer to the adopted plan. In other words, planning benefits the entire community in a number of important ways.

LAND USE PLANNING . . .

Planning is the process of establishing a vision for the community. That vision, essentially a "story" of what the community wants to become in the future, should include strategies for achieving that vision. The plan, or vision, may simply address land use or be much more comprehensive and include such issues as housing, education, health care, social services, economic development, and transportation. This vision of the future should be a *collective* vision, that is, one embraced by the entire community and not created by just the planning/zoning staff or by the local governmental officials who decide zoning issues.

Planning is also a product: typically it is a published document containing written policies and strategies to achieve the vision. It may also include a plan map that identifies areas of the community for future growth and development, agricultural land protection, or natural resource protection.

ZONING . . .

Zoning, then, is a "tool" to implement the plan. While planning establishes general goals and patterns for development, zoning provides the specifics for development to occur. Zoning regulates the type of use that may occur on a property; provides minimum standards for lot size; building setbacks, parking and other site planning elements; may establish specific design criteria for buildings and signs; and may contain requirements for landscaping and other site amenities.

Zoning, like planning, is also a document. A zoning ordinance will contain written regulations, standards, tables, and other information specific to each zoning district. The ordinance will be supplemented by a zoning map that establishes the geographic location of the various zoning districts within a community.

CLASSIFICATIONS OF USES RELEVANT TO AGGREGATE MINING OPERATIONS

"Traditional" zoning ordinances generally follow a common format. For each zoning district, a statement of intent will briefly describe the intended uses, or land use goals. A list of principal permitted uses, which includes uses that are permitted within the district, will be provided. If a use is not specifically listed as a principal permitted use, it is generally interpreted to be prohibited within that district. The regulations will also include a list of accessory uses (those generally considered to be subordinate to principal uses) and will contain the bulk regulations (minimum lot size and building setbacks, maximum height, and so forth) for the district. The ordinance may also specify those uses that are subject to a conditional or special use permit and will establish the processes for development approval.

Mining operations may be listed as a permitted use in certain zoning districts or may be allowed as a conditional (or special) use, subject to certain conditions imposed as part of the approval process. Some communities may even have a special "mining district" intended only for mines and related uses. It is important to understand what the specific zoning requirements are for the community in which one wishes to operate.

APPROVAL PROCESS

Principal Permitted Use

If aggregate mines are listed as a principal permitted use in a particular zoning district, the approval process should be fairly straight forward. A permit application may be required, along with a site plan showing the location of mine cell(s), type of buildings, plant equipment, stockpiles, landscaping, driveway entrances, and so forth. The ordinance may also contain operation standards for plant sites and/or restoration standards for aggregate mines. Provided that all county or municipal requirements are met, approval in such cases is typically granted administratively by the zoning administrator or the building official.

Rezoning

If the proposed location is in a zoning district that does not permit aggregate mines or if a special zoning district for such uses is required, a rezoning will be necessary. (Of course, if the proposed location is not properly zoned, the operator has the choice of trying to find a site that is properly zoned. The problem with the latter situation is that aggregate, as a fixed resource, rarely follows zoning boundaries.)

Prior to initiating any rezoning, one should consult with the county or municipal planning/zoning department. The proposal should be discussed, the adopted land use plan examined, and a "feel" for the chance for success of rezoning developed. Obviously the planning/zoning staff cannot provide any guarantee of success or failure; however, they can identify strengths of the proposal and provide suggestions for improvement or let the applicant know just what obstacles he or she will be facing and how likely they are to be overcome.

If rezoning is feasible (or the only option available), it will probably involve several steps. The planning/zoning staff should review the request for conformance to the adopted plan and standards of the proposed district and prepare a written report and recommendation. The report will be provided to the local Planning and Zoning Commission to review the request at a public hearing ("zoning hearing"). The Zoning Board/Commission will then recommend approval, approval with modification, or denial of the request to the body of local elected officials who govern your county or municipality (such as the county board or city council). Again, the decision will be made at a public hearing. It may require two or more considerations, or hearings, by this body of local elected officials prior to adoption, and the rezoning would be effective (if approved) upon publication in a local newspaper.

Conditional/Special Use Permit

A conditional or special use permit is so named because it allows for conditions to be attached to any permit approval. The zoning ordinance will usually contain standards for approval that must be met in order for a conditional use permit to be granted. A conditional use process may allow for greater flexibility in the zoning districts within which an aggregate mine may be located. For instance, an aggregate mine may be listed as a conditional use in agricultural, industrial, or other zoning districts if it complies with the standards for approval. Again, there are usually multiple steps in the approval process, including staff recommendations, review and recommendation by the Zoning Board/Commission and final action by the appropriate government body. Final action on a conditional use permit is usually by the Zoning Board of Adjustment, an appointed board, and not by the elected governing body. Typically, if it has been demonstrated that all standards for approval have been met, the ordinance will stipulate that the conditional use permit must be granted. Conditions of approval may include requirements for screening or buffering objectionable elements of the mine operation from adjoining properties; restrictions on the hours of operation; reclamation; lighting; noise; or other operational elements of the mine; a periodic review of the operation, and other conditions relating to operation of the aggregate mine or use of the property. Regardless of the type of approval process, it is imperative that the mine operator become familiar with and understand local planning and zoning procedures.

WHAT TO EXPECT FROM THE PLANNING AND ZONING PROCESS

As can be seen, the planning and zoning process may involve unfamiliar terms and concepts. Because permit approval often occurs in a public hearing process, one should also expect the involvement of several groups: the planning/zoning staff, the Zoning Board/Commission, the body of local elected officials who decide zoning issues and, of course, the public.

As often happens when one is dealing with land use issues, emotions may also enter into the process. It is critical to keep emotions under control. The next sections of the manual will demonstrate the importance of communication and a well-prepared operations plan. By understanding local planning issues, conducting a thorough site analysis, preparing a sound operations plan and maintaining effective communication throughout the permit process, one will increase the chance for success.

HOW TO BE SUCCESSFUL WITH ZONING AND PERMITTING: AGGREGATE MINING

2. SITE ANALYSIS

ENVIRONMENTAL FACTORS

A site analysis provides a listing of the features (opportunities and limitations) affecting the use of a site. A comprehensive site analysis should include a mapping of the location or distribution of environmental factors, with a corresponding narrative regarding the opportunities and limitations that each presents for the aggregate mining operation. A well-reasoned site analysis can form the basis for developing site, and even operational, requirements of the operation. Typical environmental factors to be evaluated as part of the site analysis may include:

Topography	Access
Soils	Utilities
Vegetation	Geology (including the deposit)
Slopes	Cultural and historic features
Views	Adjacent and surrounding land uses
Drainage	Adjacent and surrounding zoning

These features are important to understanding the opportunities and limitations of a site for production of aggregate. Depending upon the site, there may be other features to be considered and analyzed. In addition to the physical features which must be examined, one must also investigate the sociopolitical features. Those issues will be discussed in the next section.

The opportunities and limitations revealed during the site analysis can provide guiding principles which the mine operator may use in developing operation plans. Typical concerns of local government, adjacent property owners, and neighbors are these:

COMPATIBILITY OF THE PROPOSED OPERATION WITH THE SURROUNDING LAND USES

In addition to the issues listed below, such factors as the hours of operation, lighting, and proposed signage must be taken into account. Ways to mitigate incompatibilities may be identified during the site analysis process.

VISUAL IMPACTS

The need for a transition, or "buffer," between the operation and surrounding land uses may be identified during the site analysis. Landscaping, progressive site rehabilitation and the location of stockpiles and equipment may be strategically planned to mitigate visual impacts.

ENVIRONMENTAL IMPACTS

Environmental concerns typically include noise, vibration, dust, ground water, surface drainage, odor, and erosion/sedimentation control.

TRAFFIC IMPACTS

Traffic issues may include safety (heavy truck traffic volume, turning movements at intersections, acceleration/deceleration), road maintenance, and dust control.

RESTORATION/POST MINING LAND USE

This would include concerns for progressive site rehabilitation, safety (including slope gradients above and below the water line), and posting of financial assurances for reclamation.

Given the nature of these concerns, one can easily see the relationship between successful operations and reclamation plans and a strong, well-conceived site analysis.

SOURCES OF INFORMATION

Gathering information for site analysis will take time; but if one knows where to look, the search will be made easier. Here are some common sources of information:

NRCS (Natural Resources Conservation Service, formerly the Soil Conservation Service): A good source of soil information, through its published soil surveys. Soil survey reports contain maps of soil distribution and corresponding tables of information regarding soil properties and characteristics.

USGS (United States Geological Survey): This is a good source for general topographic (usually 10 foot contour intervals) and other environmental characteristics.

Local Government Departments (Public Works, Engineering, Planning & Zoning): Many times the local city hall or courthouse is a "one stop" repository for utility information, traffic counts, detailed topographic surveys, aerial photos, basemaps (including parcel boundaries), land use, zoning and flood hazard maps, and property owner information, including neighborhood organizations.

One must be aware, however, that once the information is gathered it must be put together. Most likely the various sources of map data will be at different scales and levels of accuracy. It is no small task to compile this information into a common scale for mapping and presentation purposes. With the increasing use of CAD and GIS technology at all levels of government, one may be able to acquire this information in digital form. This, of course, will present a whole new set of issues such as data format (for both graphic and attribute data), data standards (data type, naming standards), and database design (layer conventions, symbology, line type). Digital data, however, also provides significant new opportunities for combining, viewing, and analyzing data as part of the site analysis process. Policies (and costs) for providing digital data will vary widely, so it is necessary to ask about these. Also, the Internet is increasingly a source for digital geographic data, especially through federal and state agencies.

SOCIOPOLITICAL FEATURES

Just as the above features described above provide opportunities and limitations, so to do the area's sociopolitical factors. The planning and the application process should not begin until the following questions are carefully considered:

Is aggregate mining a new industry in the area?

Is the existing or proposed aggregate mining operation different from adjacent land uses?

What, if any, adverse impact will adjacent land uses and property owners have on approval of this proposal?

How is the subject property currently zoned, and will it allow for the proposed use?

Rezoning can be difficult to obtain--is it necessary, and can it be achieved?

Is a conditional/special use or similar permit required for aggregate mine operations? Can it be obtained?

Are and federal, state, or other local permits required?

Have any applications like this been submitted to this Zoning Board/Commission in the past?

Why have similar applications been either approved or denied?

Does the county or municipality have a comprehensive land use plan?

Were any recommendations for the post-mining use of the property considered in this application?

Are adjacent land owners/residents represented by any association or group? How likely are they to become involved in the review process?

Will the neighbors support or oppose the application and its approval?

Who are the elected officials that represent the community, the neighborhood or special interest groups perceived to be affected by your proposal?

How can local government assist in one's efforts and how can they hurt?

Have alternative mine locations been identified and examined?

Obtaining answers to these questions starts in the local planning/zoning office. Planning/zoning staff will generally be very knowledgeable about citizen concerns relating to land use issues, including aggregate mining. Staff can also provide an applicant with insights into local politics, information on previous application approvals or denials and up-to-date copies of planning and zoning ordinances along with their interpretation.

PLANNING/ZONING DEPARTMENT

The planning/zoning department has a great deal of public information which can assist in the application process. Examples of this information are:

- Current zoning ordinances and land use plans.
- Applications and other data submitted by past applicants.
- Rezoning and special/conditional use permit applications from past proposals, concerns expressed by citizens, and recommendations made by those reviewing the application.
- Minutes from previous public hearings of the Zoning Board/Commission and the body of local elected officials who decide zoning issues. (These are a helpful way to learn about concerns raised by other applications or proposals and the reasons for approval or denial.)

Meet with others who have applied for rezoning or conditional use permits. They will be able to suggest the processes and individuals who can assist with the application and identify those who may not.

ATTENDING MEETINGS

Another way to evaluate the sociopolitical climate of any proposed aggregate mining operation is to attend and observe zoning hearings as well as hearings before the elected county and municipal officials who review zoning issues. It is informative and helpful to observe the review and deliberation processes they use. These meetings can help the applicant:

identify homeowner and interest groups; collect data on the issues which are raised, and learn how they present their concerns and objections.

understand positions, personalities and priorities of the elected and appointed officials.

collect data to prepare for the time when the application will be considered by this same board.

understand the plans, attitudes and concerns of the citizens. An evaluation of citizen concerns will help develop the processes for communicating the proposal to the reviewing agency and concerned citizens.

become active in the permit review and community planning process.

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3. COMMUNICATIONS--PROCESS

If the applicant's risk assessment indicates that the prospects for approval fall within the range of acceptability, determining the most appropriate and effective communication strategy is next. Generally, there are three groups affected by an application who must be contacted:

Planning/zoning staff (and other review agencies)

Local elected officials

Adjacent property owners /residents

As the process develops, communication with all three groups will take place at the same time. However, each group, with its own concerns, agenda and personality must be dealt with separately.

PLANNING/ZONING STAFF

To begin the permitting process, the operator must take his/her well developed, preliminary operational plan to the planning/zoning staff. A number of city or county agencies will evaluate a project; however, the planning/zoning staff is normally the lead agency and is therefore the proper place to begin. A pre-submittal conference to review the plan and identify issues followed by a second pre-submittal conference is recommended.

Planning/zoning staff with expertise or experience relating to the aggregate mining industry should be sought out. They will be familiar with the general concerns and issues of the county or municipality as well as the other governmental agencies involved in the review process. Because the planning/zoning staff members represent county or municipal government, they cannot be expected to support or speak on behalf of the applicant; and, as a rule, the planning/zoning staff will not speculate on approval or denial of an application/permit. This is due to the technical role of this staff in the review process and political sensitivity of some decisions. Staff can, however, point out obvious (and not so obvious) concerns as well as technical requirements and limitations.

During the review process the planning/zoning staff, who ultimately make recommendations to the Zoning Board/Commission or others, may make suggestions or recommendations to the applicant. It is vital that the applicant respond, when possible, to staff suggestions or recommendations by incorporating the appropriate changes into the proposal. If suggested modifications are too restrictive or not technically possible, the applicant should notify the planning/zoning staff and the Zoning Board/Commission immediately and explain his/her position. Generally, there is sufficient time to address and mitigate most problems and concerns prior to the planning/zoning staff making their final recommendations. Mitigation or elimination of potential problems prior to the zoning hearing should be a goal of the applicant and is a benefit of pre-submittal conferences. Resolving some problems or concerns ahead of time then allows the participants time to focus on any remaining, potentially critical, issues or concerns.

The role of the planning/zoning staff varies from community to community. In some communities the planning/zoning staff has a very strong leadership role in the process, while in others it may play a more supporting role. It is important to understand the relationship between staff and the Zoning Board/Commission, as it may be a critical element in the permit approval process.

Staff recommendations are formed from evaluation of the applicant's plan, input received from other governmental agencies, and the proposal's compliance with current planning and zoning ordinances. When completed, their recommendations are forwarded to the county or municipal Zoning Board/Commission. Rarely does a Zoning Board/Commission vote to approve a proposal if the staff indicates that it should be denied. Therefore, it is imperative to be as responsive as possible to the comments and concerns of the planning/zoning staff. A strong, positive recommendation from the staff to the Zoning Board/Commission will have more effect than one which is soft or weak. Obtaining staff support is perhaps one of the most important steps in the permitting process.

Aggregate mine operators should try to inform the planning/zoning staff about special problems and conditions peculiar to the aggregate industry, the specific site, and problem mitigation proposed by the operator.

LOCAL ELECTED OFFICIALS

After researching and understanding the community's zoning and decision making processes, an aggregate mine operator can develop a communication strategy for use with the county or municipal elected officials who will make the zoning decision. It is often an advantage, when appropriate and allowed, to establish communication with them prior to filing the application for a permit; and it is most important to communicate one's intentions before the final plan is prepared and submitted for review to the planning/zoning staff. This advance notice can be accomplished by advising the decision makers, by letter, of the intentions to apply for a permit in the area they represent. Personal contact should be avoided.

Local elected officials responses will often include issues and concerns voiced by the citizens they represent. These issues should be noted and addressed in the aggregate mine operation and mitigation plan and in any communication with elected officials. Elected officials are often able to provide information on neighborhood or special interest groups who they feel may be affected by approval of this permit and suggest ways to effectively establish communication with them.

Several states or communities require that planning applications, such as rezoning and/or special use permits, be resolved in quasi-judicial proceedings. Therefore, county board or city council members cannot discuss the application with the applicant after it has been filed, except during public hearings. Moreover, elected officials, in the absence of other elected officials, are reluctant to discuss an application with the applicant in order to avoid the appearance of any conflict of interest.

Being sensitive to the position of public officials is essential. Even if permit approval is ultimately granted, it could be overturned if it is challenged in court because ex-parte communication has occurred. Permit approval in controversial matters will be based on the applicant's ability to communicate the merits of the proposal, the quality of the proposed operation plan, and the integrity of the local elected officials.

ADJACENT PROPERTY OWNERS / RESIDENTS

In developing a strategy for obtaining approval for a zoning change and/or conditional use permit, the concerns of adjacent property owners and neighbors must be considered. Individual citizens, home owner groups, special interest groups, and ad hoc committees are asking for and being given more input in the review of aggregate mining proposals and permitting. Some of these groups are achieving more credibility because of the quality of data they are obtaining to oppose zoning or conditional use permit applications. Information on the Internet and other sources can affect the outcome of permit applications.

Even though it may take a good deal of time, community review of permit applications is an important part of the process and must be considered very carefully. Even if one thinks the proposal is not controversial, it is suggested that he/she notify adjacent property owners as an act of good will. The following should be considered very carefully:

Adjacent property owners/residents are voters

Local elected officials and planning/zoning staff pay attention to voters

Adjacent property owners/residents may exercise strong influence on the zoning decision

Aggregate mine operators may use this opportunity to establish communication with adjacent property owners/residents

There are various ways to identify neighborhood or special interest groups and establish communication with them. The city or the county planning/zoning staff usually knows of or maintains a file on these groups. The staff can identify the leaders or spokespersons, provide information on the positions they have taken in the past, list their concerns about the proposal, and describe the attitudes of the groups. Elected officials may also be sources of this information if the planning/zoning staff does not have it. If this data is not available from these sources, door-to-door meetings with adjacent property owners/residents need to be conducted. This strategy will provide an opportunity to communicate the merits of the proposal and identify potential opponents and issues. Consideration might be given to developing a "fact sheet" describing the proposal which can be distributed in the neighborhood, given to local elected officials, and provided to other concerned citizens or groups.

It is important to communicate with both the immediate neighbors and any neighborhood organizations. These two groups may not have exactly the same concerns and positions, and there are times when they may be in direct opposition to each other. Immediate neighbors may be relatively unconcerned, whereas the neighborhood group may oppose the proposal; or their positions could be just the reverse. Successful application approval depends on how effectively residents' concerns are addressed, no matter how complicated or difficult that task may be.

One should be prepared for give and take in discussions with the neighbors. Remaining flexible, and patient, and trying to meet them on their own terms is important. On matters such as landscaping, fencing, lights, hours of operations, blasting, traffic, dust suppression, visual intrusion, odors and noise, one must listen carefully to their concerns and try to incorporate mitigation measures in the planning.

It is necessary to be prepared to convincingly and effectively present the proposal and position. This is especially important for those concerns which one is unable to address effectively by eliminating or significantly mitigating the perceived adverse impacts.

An attempt should be made to resolve all issues at this level. Failure to do so will result in unresolved issues being raised and negotiated at the public hearing, a result that should be avoided. If the application and the plans are prepared properly, having to negotiate during the hearing process should be virtually eliminated.

Winning the trust and acceptance of neighbors is dependent upon one's skills to deal effectively with the issues and the concerns they raise. Effective communication is critical to this process.

It can sometimes be extremely effective to meet with a group's leaders initially. The operator can, by effective communication, establish trust based on rapport and credibility with key members of the organization before meeting with the larger group. These leaders can in turn discuss the proposal with their membership.

Various studies and experience have shown that neighbors and citizens may be concerned about a number of issues related to aggregate mining, processing and transportation. Some of these are listed below:

- | | |
|--|--|
| property values | noise |
| traffic | vibration |
| volume | dust |
| dust | environmental concerns |
| safety | erosion/sedimentation |
| vibration | revegetation |
| road maintenance | surface water and groundwater pollution |
| safety | groundwater drawdown |
| visual intrusion/pollution | air quality issues |
| unsightliness | wetlands |
| existing views removed/impacted | reclamation |
| removal of open space or farmland | blasting |

PRESENTATIONS AND COMMUNICATION

During the presentations and discussions, one must clearly communicate how the mining operation and mitigation plans were developed based upon the site and deposit characteristics, adjoining land uses and mining methods. It is essential to communicate effectively that issues raised by the neighbors and citizens are dealt with in the mining and mitigation plans. One needs to stress specific mitigation measures the plans provide.

When preparing to meet with adjacent landowners and concerned organizations, one should consider the following very carefully:

- | | |
|--------------------|--|
| TIMING | It should be early enough so that the proposal can be modified to address their concerns -- but not before one is prepared and can maintain control of the plan (subsequent to pre-submittal conference with staff, but prior to official submittal). |
| CONTACT | Maintaining close communication with concerned property owners and residents throughout the entire process is a necessity. |
| PREPARATION | One can expect that petitions will be filed and that neighbors may protest, but one should maintain composure and be professional at all times. An applicant's preparation and control can determine the success or failure of a project. |
| PROMISES | Only promises that can be kept should be made. Broken promises erode trust and destroy present and future possibilities of permit approval. |
| CONCERNS | Documentation of all issues and concerns raised by the neighbors is critical; they may be brought up in public hearings. |
| MEETINGS | Notes of neighborhood meetings or with concerned citizens should be kept and presented to the reviewing agency. All plan modifications that respond to issues and concerns raised by neighbors/groups need to be clearly identified. |
| CAUTION | One must never underestimate the power or the influence of adjacent property owners. Planning/zoning staff and the governmental bodies that decide zoning issues are sensitive to their concerns and will ensure they are addressed before an application is approved. |

HOW TO BE SUCCESSFUL WITH ZONING AND PERMITTING: AGGREGATE MINING

4. APPLICATION SUBMITTAL AND PUBLIC HEARING PROCESS

When an operator of an aggregate mine is comfortable that his or her lines of communication are open with planning/zoning staff, local elected officials and the neighbors, he/she should submit the rezoning or conditional use permit application. While zoning ordinances and requirements differ from community to community, the application forms are generally not difficult to complete. Any questions that may arise should be directed to the planning/zoning staff for clarification or resolution. Perhaps the most time consuming part of filing an application is developing the data and the plan required to support it.

The application and the plan for rezoning or a conditional use permit will be evaluated by the planning/zoning staff, other governmental agencies, and the neighbors. It is essential that communication be maintained constantly during the evaluation period so that any issues or problems which arise can be dealt with immediately and effectively.

Most city or county zoning regulations have a number of procedural and technical requirements which must be met. For example, they may require that the property under consideration in the application be "posted" or "public noticed" in the newspaper prior to scheduled hearings. These notices are intended to alert adjacent land owners or other interested parties of the activity being proposed and give them an opportunity to respond.

Potential opposition to continuation or expansion of an existing aggregate mine operation is reduced if the operator's past or present operations at the site have established credibility with the community. If the proposed aggregate mine is a new operation, then the company's other operations should be used to establish credibility. Other aggregate mine operations that have projected a poor or negative public image make the job of establishing credibility much more difficult, particularly if the poor examples belong to the applicant.

ZONING HEARING

Public hearings provide an opportunity for the applicant to explain the proposal and answer questions from the Zoning Board/Commission and general public. The Zoning Board/Commission commonly makes a recommendation to grant or deny the rezoning or conditional use permit to the county or municipal elected officials who decide zoning issues. (In some jurisdictions, the Zoning Board/Commission may have authority to make the final decision, depending upon whether the application is for rezoning or a special/conditional use permit.) In either case, it is essential to obtain permit approval during this part of the process.

Keep the following in mind:

The Zoning Board/Commission may need to be educated about aggregate mining, the aggregate industry and the need for aggregate in the community.

Commission/board membership is affected by election turnover and appointments. Submission of the application should be timed accordingly.

Zoning Board/Commission members represent all segments of the community and are therefore extremely sensitive to issues and concerns raised by citizens.

The presentation at the public hearing may be the applicant's first contact with members of the Zoning Board/Commission. The company's spokesperson or agent, such as a planner, landscape architect, engineer, operator or lawyer should lead the presentation. The person selected to lead the presentation should be articulate, knowledgeable, sensitive and credible.

The applicant's preparation for the presentation should be done with the following in mind:

First impressions are lasting. Being ill-prepared may jeopardize permit approval.

The spokesperson should introduce himself/herself, the other participants and the role each plays in the process (owners, engineer, landscape architect, etc.)

One should thank the members for the opportunity to present the proposal.

It is important to express appreciation to the planning/zoning staff and others for their assistance.

The credentials and the reputation of the applicant, the person(s) making the presentation, and those who prepared the plans must be established.

Positive changes, modifications, and compromises that have been reached with the planning/zoning staff, neighbors, and adjacent property owners should be identified.

Graphics such as slides, graphs, plans, maps, and sketches should be presented to clearly communicate the proposal, mine plan, and mitigation measures.

Opportunities and constraints of the site should be discussed.

Research should be reviewed and all questions answered in an authoritative manner.

Most state enabling legislation for land use zoning mandates public hearings. If the operator has done the necessary preparation, adjacent property owners and concerned citizens will have been consulted and efforts made to respond to their concerns. Addressing these in the proposal and during public hearings decreases the impact of individuals or groups opposing the application.

Public hearings can be long, emotional, repetitive, and divisive. When citizens express their concerns, or raise issues, they should be noted. During the hearing, the applicant usually has an opportunity for rebuttal. That time should be used to respond in a rational and professional manner. If one can clarify misconceptions or give emphasis to how the proposal does respond effectively to any concerns expressed, he/she should do so. During the public hearing it is critical that the applicant and his/her representatives maintain their composure. Becoming defensive, arguing with opponents, or displaying confrontational behavior will not only damage the quality of the presentation but increase the chances of having the permit denied. The presenter should try to be relaxed and confident. A properly prepared plan and presentation will provide the basis for success. Zoning Board/Commission members are aware of issues raised in public hearings and are quite capable of sorting facts from fiction.

For a variety of reasons the vote, approving or denying an application, may not occur at the initial public hearing. The Zoning Board/Commission may have the choice of deciding and voting at that public hearing or at another meeting. Because a consensus may not be evident, more deliberations may be necessary, additional reviews of information may be needed, or the applicant may be requested to try to resolve some conflicts or concerns by modifying the proposal and the application. If there are significant problems with the proposal, a vote may mean that the application will be denied. A reasonable postponement for specific purposes is usually not against the applicant's interest. This assumes the applicant has allowed sufficient time for the review and approval process. A delay in the decision may be inconvenient, but it can allow the operator time to try to find acceptable compromises or modifications to the proposal. If problems are apparent yet the Zoning Board/Commission members or planning/zoning staff do not recommend a postponement, the applicant should not hesitate to request one if it appears the application may be denied.

The Zoning Board/Commission's decision is usually not the final approval of the rezoning or conditional use permit application. This action may be only a recommendation which must be acted upon by the body of local elected officials who decide zoning issues such as the county board or city council. Statutes and board or commission practices vary between communities and from state to state.

FINAL ACTION BY LOCAL ELECTED OFFICIALS

If the application is forwarded to the county board or city council for final action, there may be a formal public hearing such as was held by the recommending body. There is typically an opportunity for the applicant to make a presentation at this public hearing, along with a staff report on the status of the application and any recommendations. The public may also have an opportunity to be heard.

Preparation for this body should be approached the same as for the previous public hearing. One should be prepared and responsive to the issues. Modifications to the plan and application, both before and after the first public hearing, should be stressed.

Because this is an elected body there may be a different reaction to the application. Individual members may have constituents to whom they are very sensitive. A form of "professional courtesy" may also be extended to a county board or city council member whose area is affected by the application; and other members may vote with him or her in a show of unity, regardless of their own personal views on the proposal. Effective communication can create an understanding of the merits of the proposal and the applicant's positive response to citizen concerns.

TIME FOR REVIEW AND APPROVAL

The permit review and approval process for a rezoning or conditional use permit application is lengthy and time consuming. It varies from community to community, but from 60 to 90 days or longer is typical. Timing is critical, and the applicant must be aware of the schedule of submittal deadlines and meeting dates for the various bodies and any deviation from that schedule for holidays. The review and public notification requirements generally provide little opportunity for significantly shortening the time required.

PROJECT JOURNAL

Operators should strive to show their efforts to respond positively and productively to the concerns of the planning/zoning staff and the public. A project journal could be developed for use by the body of local elected officials deciding the zoning issue. The information can range from detailed summaries of information submitted in the application and during public hearings to complete sets of colored plans and full technical documentation. **It is sound practice to provide the decision makers with all of the information they need, so they are able to justify or base their decision on the facts and merits of the application instead of emotions.**

The contents of a project journal should include the following:

Name of project

Description of the proposal

Operator's history and expertise

Credentials of supporting personnel

Photographs/maps of property

Site analysis

Reproductions of plans and supporting documentation

Responses to concerns and issues of staff and public

Additional relevant considerations

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5. PLANNING AND ZONING APPLICATION CHECKLIST

SITE ANALYSIS

GET TO KNOW THE SITE AND SURROUNDING AREA

What are the overall conditions of the site?

In what direction does the land slope?

How will the existing drainage be affected?

What are the public utilities?

What are the adjacent properties and land uses?

Who are the neighbors/property owners?

COMMUNICATE WITH OTHER OPERATORS AND KNOWLEDGEABLE PEOPLE

Which communication processes have been successful and which were not?

Who are supportive neighbors and elected officials?

What are successful strategies for permit approval?

Have there been other attempts to rezone or obtain conditional use permits?

How have the neighbors' responded to similar issues or permit attempts?

What is the community's attitude on these issues?

Are copies of past rezoning and conditional use permit applications available?

Have company representatives attended other public hearings relating to zoning issues?

COMMUNICATION

Stress the need for and the role of aggregate mining.

Prepare a handout to outline the permitting process; include meetings with planning/zoning staff and adjacent land owners, public hearings, public notice dates, application dates and all other pertinent information.

PLANNING/ZONING STAFF

Prepare a well thought out preliminary plan.

Do not provide too much detail in the preliminary plan.

Answer planning/zoning staff issues and concerns.

Defend your proposal and operation plan.

Obtain a strong planning/zoning staff recommendation.

Satisfy all regulatory requirements and staff recommendations.

LOCAL ELECTED OFFICIALS

If legal, establish communication with local elected officials before the public hearing.

Indicate that the proposal responds to planning/zoning staff concerns.

ADJACENT LANDOWNER/CITIZEN GROUPS

Do not ignore adjacent landowners/citizen groups.

Identify their specific agendas and differing philosophies.

Arrange meetings with adjacent landowners and residents.

Meet with organized citizen associations.

Be open minded, flexible, patient and willing to compromise.

Dispel misinformation.

Establish initial communication with individuals and group leaders.

Defend proposal and plan.

Make certain that the requests in the application are realistic and that commitments are attainable.

HEARINGS

ZONING BOARD/COMMISSION

Develop and present a well prepared, defensible plan.

Take advantage of pre-submittal meetings to develop strong relationships.

Stress proposed mitigation measures.

Respond effectively and positively to issues and concerns raised at public hearings.

LOCAL ELECTED OFFICIALS

Be certain to comply with recommendations of planning/zoning staff and the Zoning Board/Commission so there are no unresolved issues which need to be negotiated in the public hearings.

List all concerns and issues raised at previous public meetings and hearings and address them appropriately, whether verbally or by modifications to the plan.

Indicate changes made to the proposal as a result of planning/zoning staff and public input.

Attempt to gain support of all affected by the proposal, especially any members of the county or municipal body hearing the zoning case.

LEGAL CONCERNS

ENSURE COMPLIANCE WITH:

All public notice requirements

All posting requirements

All time deadlines

All legal requirements for zoning

All application requirements

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6. CONCLUSION

To reiterate, planning is the process of establishing a "vision" or "plan" for a community. It also sets forth the written policies and strategies needed to achieve the plan.

Zoning is the "tool" to implement the plan. It contains the written regulations and standards required to ensure that the plan is successful.

For aggregate producers to be successful in obtaining the permits required to conduct operations, they must understand these concepts and develop plans which are compatible with the community plan and meet or exceed the zoning standards.

Process is defined as "a series of actions or operations conducive to an end" (Webster). Obtaining permits to operate an aggregate mine involves more than simply filling out an application. It is a "process" involving many operations or actions which must be taken. Failure to attend to each and every operation or action puts an application in jeopardy.

This manual outlines the processes essential for being successful when applying for aggregate mining permits. By being attentive to these ideas on communication and the techniques or strategies presented, aggregate mine operators will improve their chances for being successful during the permitting process.

Community review of permit applications, including aggregate permits, is increasing nationwide. A study conducted in two Midwestern States approximately in 1988 and 1991 indicated that aggregate mine operators were concerned about the issue of obtaining permits for continued operation. This study was conducted for a third time in Illinois (1998) and again this year (2008) in Wisconsin. Results from the two more recent surveys indicated this issue remains be a concern and significantly more so than it was when the study was originally conducted. One conclusion from this twenty year research project is certain: the issues of obtaining permits and opposition to their being granted are still "alive and well".

Applying for permits to conduct aggregate mine operations does not need to "strike fear in the heart" of an operator. Understanding the process, developing open and honest communication between all parties, and putting together a sound plant operation, problem mitigation and final use plan will provide the basis for aggregate mining permit approval.

While they do not guarantee success, the processes described in this manual are intended to assist aggregate mine operators when applying for permits. They have been utilized successfully with many applications for aggregate mine operations. The authors hope that aggregate producers will find them useful.

It has been said that the three most important words in business and industry are "location, location, location." Perhaps it can be said that the three most important words in the zoning and permitting process are "communication, communication, communication."

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7. ACKNOWLEDGMENTS

This manual was begun several years ago by Dr. Norman L. Dietrich, but due to his untimely death in 1996 it was not completed. The draft document was discovered in his files. Dr. Dietrich's daughter, Ms. Debra Dietrich-Smith, gave us permission to finish the manual so it could be made available to the aggregate and asphalt industries.

We would like to thank Dr. Dietrich for "putting his thoughts on paper" and Ms. Debra Dietrich-Smith for permission to complete them. The construction industry will surely benefit from their generosity. Dr. Dietrich was a "friend" to our industry. This manual, which is a tool to assist aggregate producers in their efforts to expand their businesses, is a reflection of his beliefs and philosophy that this industry is compatible with other land uses if "planned" and "operated" properly.

We would be remiss if we did not thank Ms. Caryl Kadner for the many hours she spent preparing this document. Her patience and abilities are reflected on each page. Thank you, Caryl.

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