

ORDINANCE 2012-10

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA AMENDING THE CODE OF ORDINANCES BY ESTABLISHING DEFINITIONS, STANDARDS, AND PROCEDURES FOR PONDS, BORROW PITS, AND MINING OPERATIONS; REPEALING ARTICLE 13 OF THE ROADWAY AND DRAINAGE STANDARDS "MINING AND BORROW PIT OPERATIONS;" CREATING A NEW ARTICLE 38 "PONDS AND BORROW PITS;" CREATING A NEW ARTICLE 39 "MINING OPERATIONS;" AMENDING ARTICLE 21 "HEAVY INDUSTRIAL" ZONING DISTRICT, ARTICLE 22 "OPEN RURAL" ZONING DISTRICT, AND ARTICLE 32 "DEFINITIONS" OF THE LAND DEVELOPMENT CODE TO CONFORM WITH CHANGES BEING MADE TO ARTICLES 38 AND 39 OF THE LAND DEVELOPMENT CODE; PROVIDING FOR FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Nassau County Board of County Commissioners has recognized inadequacy of existing county codes in regulating borrow pit activity within the unincorporated areas of Nassau County; and

WHEREAS, increasing pond and borrow pit activity within the unincorporated areas of Nassau County has the potential to negatively affect the public health, safety and general welfare of county residents by degrading water quality, destroying wetlands, rendering public and private roads unusable, and creating unsafe excavation geometry; and

WHEREAS, the provisions of this ordinance do not conflict with the Florida Right To Farm Act (FRTFA), Section 823.14 F.S. and includes certain exemptions to conform to statute; and

WHEREAS, the Planning and Zoning Board and Staff conducted a review of Comprehensive Plan policies, state rules, the regulations of adjacent and similar counties and solicited input from experts and affected parties in the drafting of this ordinance; and

WHEREAS, the Planning and Zoning Board conducted a public hearing on this ordinance on March 20, 2012 and voted to recommend approval; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA:

SECTION 1. FINDINGS

This ordinance is consistent with the goals, objectives and policies of the Nassau County Comprehensive Plan, in particular Policies CS.10.01, CS.10.02, CS10.03, FL.04.06, FL.04.07, FL.04.08; and does not conflict with the Florida Right to Farm Act (FRTFA).

SECTION 2. REPEAL

Article 13 of Appendix D to the Code of Ordinances, Roadway and Drainage Standards, "Mining and Borrow Pit Operations" is hereby repealed in its entirety.

SECTION 3. AMENDMENT

Article 38 of the Land Development Code is adopted and shall read as follows:

ARTICLE 38. PONDS AND BORROW PITS

Section 38.01. Applicability

Provisions of this Article apply to all new Ponds and Borrow Pits located within the unincorporated area of Nassau County. Ponds and Borrow Pits constructed prior to this ordinance are not subject to these provisions. However, any expansion or change to an existing Pond or Borrow Pit shall be subject to these standards. Size, as specified in this Article, refers to the land area at the top of bank at the largest point during the excavation.

Section 38.02. Exemptions

The following activities are exempt from the requirements of this Article:

- a) Bona fide Agricultural activities on property classified as agricultural land by the Nassau County Property Appraiser's Office according to Section 193.461(3)(a), F.S., or Exempt Agricultural Activities per Rule 40C-44.051, F.A.C. ;
- b) Maintenance dredging or repair of canals, lakes, rivers, and Stormwater Management Facilities, provided permit requirements from other local, state, and federal agencies are met;

- c) Work included in a duly approved residential subdivision or non-residential construction project;
- d) Swimming pool construction, provided that a building permit has been issued for construction of the swimming pool.
- e) Sites where contamination investigation and remediation are being conducted under the direction of the Department of Environmental Protection or the United States Environmental Protection Agency, provided that there will be no permanent change in the final grade of the land surface upon completion of the project. Such activities include, but are not necessarily limited to, contaminated soil removal.
- f) Minor excavations normally and customarily associated with owner-occupied single-family residences where no material leaves the property and the excavation is performed without heavy equipment.

Section 38.03. Standards for Ponds

- 1) The owner/applicant shall submit a scaled site plan or sketch to the Engineering Services Department illustrating the following: parcel boundaries, easements, buildings, septic systems, wetlands, and the proposed Pond. The Engineering Services Department shall review the application within ten (10) working days of submittal and issue a letter confirming that the application conforms to this Article.
- 2) The following standards shall apply to Ponds:
 - a) Twenty-five (25) foot setbacks shall be observed from parcel boundaries, septic systems, and wetlands;
 - b) Four (4) feet horizontal to one (1) foot vertical (4:1) slopes shall be observed to a depth of two (2) feet below mean low water line;
 - c) Maximum depth shall be twelve (12) feet below the Seasonal High Ground Water Table Elevation; and,
 - d) Lot upon which the proposed Pond will be located shall be a minimum of one (1) acre in size (uplands).
- 3) The aggregation requirements of Section 38.04(4) shall apply to the excavation of any Pond.
- 4) Duration of County Approval. County approval to excavate a Pond shall expire sixty (60) days from the approval date. The expiration date may be extended for thirty (30) days upon submission of a written extension request from the operator to the Engineering Services Department. Upon

expiration of the county approval, the operator may re-apply in accordance with this Article.

Section 38.04. Standards for Borrow Pits

- 1) The owner/applicant shall submit a site plan signed and sealed by a professional engineer registered in the State of Florida to the Engineering Services Department illustrating the standards established in Section 38.04(56). The Engineering Services Department shall review the application within ~~ten~~ five (5) working days of submittal and issue a letter confirming that the application conforms to this Article.
- 2) The owner/applicant shall obtain permits from the SJRWMD for projects which exceed thresholds for management and storage of surface waters and consumptive use. The owner/applicant shall be responsible for determining requirements of the SJRWMD. The applicant shall provide the Engineering Services Department with SJRWMD permits necessary to operate the Borrow Pit or, if the SJRWMD determines no permit is required for the construction and operation of the Borrow Pit, written verification from the SJRWMD exempting the Borrow Pit from the SJRWMD's permitting requirements.
- 3) Where the SJRWMD determines that no permit is required for the construction and operation of the Borrow Pit, the Borrow Pit shall be no closer than one-hundred (100) feet setback from any property boundary.
- 4) Borrow Pits shall not be closer than seventy-five (75) feet to any part of a septic tank system.
- 45) Any two (2) or more excavations, located upon lands under common ownership, within six hundred and sixty (660) feet of each other shall be aggregated and regulated as if a single excavation.
- 56) Application Requirements For Borrow Pits. An application for a Borrow Pit shall contain, at a minimum, the following documentation:
 - a) Erosion and sediment control measures if required by the SJRWMD;
 - b) Plans for any dewatering activities if required by the SJRWMD;
 - c) Access to the project (note: owner to provide access to the appropriate county personnel for the purpose of inspection during normal working hours and at reasonable times when work is in progress);

- d) Fence detail, if side slopes are less than four (4) feet horizontal to one (1) foot vertical (4:1) down to two (2) feet below mean low water level;
- e) Location and setbacks to: property lines, structures, septic tanks, wetlands, right-of-way, easements, and existing bodies of water;
- f) Documentation of the seasonal high groundwater level (soil bore to determine lithology) if excavation will be deeper than twelve (12) feet below the Seasonal High Ground Water Table Elevation as referenced in Rule 40C-42.026, F.A.C.;
- g) Any access/haul roads that abut a public or private paved road shall provide for edge of pavement stabilization/apron— with a minimum depth of six (6) inches, which stabilization may consist of compacted crushed crete, limerock, slag rock, or asphalt millings, to protect pavement edge; and
- h) Access points abutting a public or private road shall be wide enough to provide for two way traffic; at least twelve (12) feet wide.
- i) ~~Florida Fish and Wildlife Conservation Commission (FWC) permit authorizing the relocation of gopher tortoises; a survey indicating that no gopher tortoises burrows are present at the subject property, or other FWC authorization to address the presence of gopher tortoises pursuant to Chapter 68A 27, F.A.C.; and~~
- j) ~~One hundred (100) foot setback from property boundaries provided that the SJRWMD determines that no permit is required for the construction and operation of the Borrow Pit.~~

67) Hours of Operation. Borrow Pits may operate from 7 a.m. to 6 p.m. Monday through Saturday.

78) Duration of County Approval. County approval to operate a Borrow Pit shall expire on the expiration date of the Environmental Resource Permit (ERP) issued by the SJRWMD. If the operator obtains an extension of the ERP by the SJRWMD, the operator shall provide the Engineering Services Department with a copy of the ERP extension approval from the SJRWMD. The Engineering Services Department shall extend County approval to operate the Borrow Pit to that expiration date established by the ERP.

Section 38.05. Bonding Requirements for Platted Subdivisions

For the duration of the authorized work, a maintenance bond, equal to \$0.10 per cubic yard of material removed, shall be required by the public works director for any Pond or Borrow Pit where the excavation is accessed from a road or street dedicated as part of a subdivision platted pursuant to Chapter 177, Florida Statutes.

Section 38.06. Administration and Enforcement

- 1) Unless exempted as provided in this Article, all Ponds and Borrow Pits in unincorporated Nassau County shall conform to the procedures and standards established in this Article. It shall be unlawful to operate or construct a Pond or Borrow Pit without approval as established in this Article.
- 2) The Engineering Services Department shall issue written approval to the applicant prior to commencement of the activities. Said approval must be in effect at all times during the construction of the Pond or operation of the Borrow Pit.
- 3) Code Enforcement shall investigate alleged violations in accordance with county regulations. Code Enforcement shall have the authority to temporarily stop work pending adjudication.
- 4) Revocation. Authorization under this Article shall be revocable at any stage of the work contemplated herein upon the following grounds:
 - a) Approval was granted upon gross misrepresentation by the applicant;
 - b) The work violates any ordinance of the county;
 - c) The work is not being performed in accordance with the provisions of this Article; or
 - d) The work is not being performed in accordance with the terms of any permit or development order.
- 5) The county may avail itself of any other legal or equitable remedy available to it, including, without limitation, injunctive relief or revocation of any approval involved. Any person violating this Article shall be liable for all costs incurred by the county in connection with enforcing this chapter, including, without limitation, attorneys' fees, and temporary safety measures put in place, or caused to be put in place by the county.

Section 38.06. Bonding

A maintenance bond may be required if the public works director determines that the construction or operation of a Pond or Borrow Pit will be detrimental to county rights-of-way.

Section 38.07. Audit

One (1) year after the adoption of this Article, the Growth Management Department and the Engineering Services Department shall perform an audit of Ponds and Borrow Pits constructed or operated pursuant to this Article. The

audit shall evaluate the efficacy of this Article in the regulation of Ponds and Borrow Pits and shall include an evaluation of enforcement efforts against unauthorized excavations.

SECTION 4. AMENDMENT

Article 39 of the Land Development Code is adopted and shall read as follows:

ARTICLE 39. MINING OPERATIONS

Section 39.01. Applicability

Provisions of this Article apply to all Mines located within the unincorporated area of Nassau County. Mines constructed prior to this ordinance are not subject to these provisions. However, any expansion or change to an existing Mine shall be subject to these standards. Size, as specified in this Article, refers to the land area at the top of bank at the largest point during the excavation.

Section 39.02. Standards for Mining Operations

- 1) In addition to the Conditional Use application criteria, the following standards shall apply:
 - a) No permit shall be issued for activities within, or within twenty-five (25) feet of, jurisdictional wetlands as defined by Chapter 62, F.A.C., unless a permit has been issued by the Florida Department of Environmental Protection (DEP) authorizing the proposed activities;
 - b) A minimum twenty-five (25) foot setback shall be observed as measured from property lines, roadway easement, or wetlands to top of bank;
 - c) Excavations shall not be closer than seventy-five (75) feet to any part of a septic tank system;
 - d) Provision shall be made for suitable area for staging of heavy equipment and stockpiling of excavated material. Use of public or private rights of way to stage vehicles, equipment or materials shall be prohibited.
 - e) The owner/applicant shall obtain all permits from the DEP and SJRWMD for the construction and operation of a Mine including, but not limited to, permits required for management of surface waters, consumptive water use and reclamation; and
 - f) Any two (2) or more excavations, located upon lands under common ownership, within six hundred and sixty (660) feet of each other shall be aggregated and regulated as if a single excavation.

- 2) An Industrial Future Land Use and "IH" Zoning shall be required for Mining Operations. In addition, Mining Operations shall comply with Chapter 17 of the Code.
- 3) Any terms and conditions incorporated in the Final Order of the Conditional Use and Variance Board or the Board of County Commissioners shall be binding on the excavator, contractor, owner, applicant, successor, and assigns.
- 4) Application Requirements for Mining Operations: An application for a Mine shall satisfy the requirements of Section 39.02(1) and Chapter 17. In addition, an application for a Mine shall contain, at a minimum, the following documentation:
 - a) Existing and proposed contours at proposed maximum excavation level and proposed finished level;
 - b) Typical cross-section;
 - c) Existing and proposed surface water drainage patterns;
 - d) Plans and sections are to be signed and sealed by a professional engineer registered in the State of Florida;
 - e) As-builts, submitted by registered land surveyor duly licensed in the State of Florida, to be provided when excavation is completed;
 - f) If it is determined that the Mining Operation may be detrimental to public rights-of-way or private roads serving multiple property owners, a maintenance bond shall be required at the request of the Public Works Director; and
 - g) Reclamation plan of land according to Chapter 17.

Section 39.03. Administration and Enforcement

- 1) Unless exempted as provided in this Article, all Mining Operations in unincorporated Nassau County shall conform to the procedures and standards established in this Article. It shall be unlawful to operate or construct a Mine without approval as established in this Article.
- 2) An application for a Mining Operation shall be submitted to the Growth Management Department and shall contain the information set forth in this Article. The Growth Management Department shall distribute copies of the application for internal review by applicable county departments as required by this Article.
- 3) The Growth Management Department shall review the application, recommendations and comments from the reviewing county departments, the

results of field review, and make a recommendation to the Conditional Use and Variance Board (CUVB) as to compliance with the provisions of this Article.

- 4) The CUVB will conduct a public hearing. The CUVB may attach reasonable conditions which become binding on the conduct of the operation. Appeals of the CUVB decision are provided in Section 3.05.
- 5) The Growth Management Department shall issue a permit prior to commencement of the activities. The permit shall include Conditional Use application requirements, if applicable. Said permit must be in effect at all times during operation of the mine.
- 6) Code Enforcement shall investigate alleged violations in accordance with county regulations. Code Enforcement shall have the authority to temporarily stop work pending adjudication.
- 7) Revocation. Authorization under this Article shall be revocable at any stage of the work contemplated herein upon the following grounds:
 - a) Approval was granted upon gross misrepresentation by the applicant;
 - b) The work violates any ordinance of the county;
 - c) The work is not being performed in accordance with the provisions of this Article; or
 - d) The work is not being done in accordance with the terms of any permit or development order.
- 8) The county may avail itself of any other legal or equitable remedy available to it, including, without limitation, injunctive relief or revocation of any permit involved. Any person violating this chapter shall be liable for all costs incurred by the county in connection with enforcing this chapter, including, without limitation, attorneys' fees, and temporary safety measures put in place, or caused to be put in place by the county.

Section 39.04. Bonding

A maintenance bond may be required if the public works director determines that the construction or operation of a Mine will be detrimental to county rights-of-way.

SECTION 5. AMENDMENT

Article 22 of the Land Development Code shall be amended to read as follows:

ARTICLE 22. OPEN RURAL: OR

Section 22.01. Permitted uses and structures.

(H) Borrow Pits and Ponds, as defined herein, ~~not more than one (1) acre in size.~~

Section 22.03. Conditional uses.

(L) Borrow Pits, ~~(in excess of one (1) acres in size),~~ Sawmills, railroad yards, railroad right-of-way and trackage.

SECTION 6. AMENDMENT

Article 21 of the Land Development Code shall be amended to read as follows:

ARTICLE 21. INDUSTRIAL, HEAVY: IH

Section 21.03. Conditional uses.

(K) Commercial mining operations. Commercial Mining operations must meet the requirements of Chapter 17, Mining Operations.

SECTION 7. AMENDMENT

Article 32 of the Land Development Code shall be amended to read as follows:

POND: A body of water, individually or cumulatively up to one (1) acre maximum surface area in size at its largest point during excavation and less than twelve (12) feet below the Seasonal High Ground Water Table Elevation

LAKE: A natural occurring body of water larger than a Pond. Lakes created by impoundment are NOT naturally occurring bodies of water and are regulated as Borrow Pits.

BORROW PIT: An excavation exceeding one (1) acre in size A location where soil or other mineral deposits on or in the earth are removed from their location and naturally occurring earthen materials are removed and transferred off site for use as fill material. Extraction of said earthen material occurs intermittently as need dictates. No processing is involved; Material excavated from a Borrow Pit is utilized in its natural state and is not sold commercially for use to build up land processed, except for the use of scalping screen to remove large rocks, wood, and other debris. The materials are used more for their bulk than their intrinsic qualities.

MINE: An excavation utilized for Mining Operations.

MINING OPERATION An operation or activity, including but not limited to Commercial Mining Operation or Strip Mining, where earthen materials are excavated for processing and refinement for commercial purposes. Activities such as hydraulic dredging, blasting, plant processing, sorting, and classification to produce products with a defined specification, construction of permanent processing plants and/or facilities, use of chemicals, and onsite scaling constitute Mining Operations. Presence of any of the aforementioned activities creates a rebuttable presumption that the subject operation constitutes a Mine. Operations and activities at Borrow Pits, as defined herein, are excluded from Mining Operations.

STORMWATER
MANAGEMENT
FACILITY:

A system designed to control the discharge of a given volume of stormwater runoff into surface waters via on-site storage. Examples include systems such as excavated or natural depression storage areas,

retention ponds, ditches, swales, and other components of an engineered system.

GROUND WATER Water beneath the surface of the ground, whether or not flowing through known and definite channels, as defined in Rule 40C-4.021, F.A.C.

SECTION 8. CODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall be included and incorporated into the Land Development Code (LDC) of Nassau County, Florida. The codifier may re-letter or renumber sections to conform to the uniform numbering and style of the LDC.

SECTION 9. SEVERABILITY

It is the intent of the Board of County Commissioners of Nassau County, Florida, and is hereby provided, that if any section, subsection, sentence, clause, phrase, or provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 10. EFFECTIVE DATE

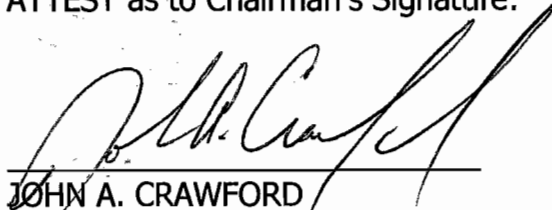
This ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

ADOPTED THIS 30th DAY OF April, 2012 BY THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA.


BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA


STACY T. JOHNSON
Its: Chair

ATTEST as to Chairman's Signature:


JOHN A. CRAWFORD
Its: Ex-Officio Clerk

Approved as to form


David A. Hallman,
County Attorney