

ORDINANCE NO. 02-59

AN ORDINANCE OF MANATEE COUNTY, FLORIDA, IMPOSING A MORATORIUM RELATING TO PHOSPHATE MINING APPLICATIONS, PETITIONS AND REQUESTS; PROVIDING FINDINGS; PROVIDING FOR APPLICABILITY; PROVIDING FOR EXCEPTIONS; PROVIDING FOR DURATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 125.01, Florida Statutes, authorizes the Board of County Commissioners of Manatee County, Florida (the "Board of County Commissioners"), to prepare and enforce comprehensive plans for the development of the County, and to establish, coordinate, and enforce zoning regulations for the protection of the public; and

WHEREAS, Section 163.3167, Florida Statutes, authorizes Manatee County (the "County") to adopt and amend comprehensive plans to guide future development and growth, and to implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations; and

WHEREAS, Section 163.3194, Florida Statutes, requires all land development regulations to be consistent with the adopted comprehensive plan; and

WHEREAS, Section 163.3202, Florida Statutes, requires the County to adopt or amend and enforce land development regulations that are consistent with and implement the adopted comprehensive plan, including, but not limited to, provisions regulating the use of land and water; and

WHEREAS, on October 22, 1981, the Board of County Commissioners enacted Ordinance No. 81-22, entitled "The Manatee County Mining and Reclamation Ordinance" (the "Mining and Reclamation Ordinance"), codified as Chapter 2-20 of the Manatee County Code of Ordinances; and

ORDINANCE NO. 02-59

WHEREAS, on May 11, 1989, the Board of County Commissioners enacted Ordinance No. 89-01 adopting the 2020 Manatee County Comprehensive Plan (the "Comprehensive Plan"), which has been subsequently amended; and

WHEREAS, on July 25, 1990, the Board of County Commissioners enacted Ordinance No. 90-01 adopting the Manatee County Land Development Code (the "Land Development Code"), which has been subsequently amended; and

WHEREAS, the Board of County Commissioners has determined that the Mining and Reclamation Ordinance should be revised to ensure consistency and compatibility of the regulations contained in said ordinance with the Comprehensive Plan and the Land Development Code and to accommodate advances in data and technology pertaining to phosphate mining and reclamation; and

WHEREAS, County staff has drafted a new ordinance entitled "The Manatee County Phosphate Mining Code" (the "Phosphate Mining Code"), which contains comprehensive regulations pertaining to phosphate mining and reclamation; and

WHEREAS, the Board of County Commissioners has held two work session meetings on the proposed Phosphate Mining Code; and

WHEREAS, the Manatee County Planning Commission (the "Planning Commission") has held two public hearings on the proposed Phosphate Mining Code; and

WHEREAS, at the meetings and public hearings, several issues have been raised which may require expertise from outside consultants; and

WHEREAS, County staff has recommended that the Comprehensive Plan and the Land Development Code be reviewed and revised to ensure that the proposed Phosphate

Mining Code is consistent with and implements the Comprehensive Plan and the Land Development Code; and

WHEREAS, new applications for additional phosphate mining acreage may be submitted prior to enactment of the proposed Phosphate Mining Code; and

WHEREAS, the Board of County Commissioners finds that it is in the best interest of the health, safety and welfare of the citizens of Manatee County and the environment and natural resources of the County to impose a moratorium relating to phosphate mining applications until final adoption of amendments to the Comprehensive Plan, amendments to the Land Development Code, the Phosphate Mining Code, and other implementing ordinances and resolutions; and

WHEREAS, the Board of County Commissioners finds that a temporary moratorium for an initial period of eighteen (18) months is necessary for County staff to address issues presented, which may include locating and working with expert consultants, and for County staff to prepare and the Planning Commission and the Board of County Commissioners to review and adopt amendments to the Comprehensive Plan, amendments to the Land Development Code, the Phosphate Mining Code, and other implementing ordinances and resolutions; and

WHEREAS, on July 30, 2002, the Board of County Commissioners authorized publication of notices and scheduling of public hearings to consider a proposed moratorium ordinance relating to phosphate mining applications; and

WHEREAS, the Planning Commission and the Board of County Commissioners have held public hearings in accordance with state law and the Land Development Code

to consider the adoption of this ordinance.

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

Section 1. The Whereas clauses set forth hereinabove are true and correct and are specifically incorporated in this ordinance as findings of fact.

Section 2. A moratorium is hereby imposed on the acceptance or receipt by the Board of County Commissioners or any board, commission, department or official of Manatee County of any new applications, petitions or other requests relating to phosphate mining until final adoption of amendments to the Comprehensive Plan, amendments to the Land Development Code, the Phosphate Mining Code, and other implementing ordinances and resolutions. This moratorium shall include, but not be limited to, the following applications, petitions and requests:

- a. Rezoning to EX (Extraction) District under the Manatee County Land Development Code;
- b. Waivers of requirements under Section 2-20-8 of the Manatee County Code of Ordinances;
- c. Master mining plans under Article II of Chapter 2-20 of the Manatee County Code of Ordinances;
- d. Initial operating permits under Article III of Chapter 2-20 of the Manatee County Code of Ordinances;
- e. Reductions to setbacks under Section 2-20-33 of the Manatee County Code of Ordinances;

- f. Significant amendments or significant changes to master mining plans under Section 2-20-42 of the Manatee County Code of Ordinances; and
- g. Significant amendments or significant changes to operating permits under Section 2-20-42 of the Manatee County Code of Ordinances.

Section 3. The moratorium imposed by section 2 of this ordinance shall not apply to the following:

- a. Applications for non-significant amendments or non-significant changes to master mining plans under Section 2-20-42 of the Manatee County Code of Ordinances;
- b. Applications for non-significant amendments or non-significant changes to operating permits under Section 2-20-42 of the Manatee County Code of Ordinances;
- c. Applications for transfers of master mining plans under Section 2-20-43 of the Manatee County Code of Ordinances;
- d. Applications for transfers of operating permits under Section 2-20-43 of the Manatee County Code of Ordinances;
- e. Applications for subsequent operating permits under Section 2-20-44 of the Manatee County Code of Ordinances; and
- f. Applications officially submitted to the County prior to July 30, 2002.

Section 4. This ordinance shall expire eighteen (18) months after its effective date, unless this ordinance is amended to extend the time of the moratorium.

Section 5. If any provision of this ordinance or the application thereof to any

person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 6. This ordinance shall take effect upon filing with the State of Florida Department of State.

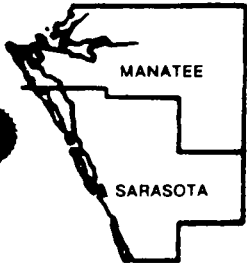
ADOPTED AND ENACTED by the Board of County Commissioners of Manatee County, Florida, with a quorum present and voting, on the \_\_\_\_ day of \_\_\_\_\_, 2002.

BOARD OF COUNTY COMMISSIONERS  
OF MANATEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Chairman

ATTEST: R. B. Shore  
Clerk of the Circuit Court

By: \_\_\_\_\_



# MANASOTA-88

**A Project for Environmental Quality 1968-2088**

September 4, 2002

Chairman Paul Sayers  
Manatee County Planning Commission  
1112 Manatee Avenue West  
Bradenton, FL 34205

**Directors**

Glenn Compton

Mary Compton

Rebecca Eger

Charles Holmes

Edith Holmes

Mary Jelks, M.D.

Hilda Quy

Doris Schember

**Re: Ordinance 02-59, Phosphate Mining Temporary Moratorium**

Dear Chairman Sayers:

ManaSota-88 strongly supports the adoption of Ordinance 02-59 to enact a temporary moratorium on all new phosphate mining permits until Mining Ordinance 02-27 has been updated. Additionally, ManaSota-88 supports a temporary moratorium on all amendment changes to any existing operating phosphate mine permit.

A temporary or permanent prohibition can be adopted if it furthers and is logically related to stated legitimate interest or concerns.

Protecting the county's drinking water supply is certainly a legitimate interest or concern. The current mining ordinance is not adequate to protect the county's water supply or resources from the adverse impacts of phosphate mining.

Sincerely,

Chairman, ManaSota-88

**Information**

P.O. Box 1728  
Nokomis, FL 34274  
(941) 966-6256  
FAX (941) 966-0659



## NOTICE OF PUBLIC HEARING

Notice is hereby given, pursuant to Section 125.66, Florida Statutes, that the Manatee County Planning Commission will hold a public hearing to consider adoption of the following ordinance, with the intent to make recommendations to the Board of County Commissioners on:

Date: Thursday, September 12, 2002  
Time: 9:00 AM or soon thereafter  
Place: Manatee County Government Administrative Center  
1112 Manatee Avenue West, 1st Floor Chambers

### ORDINANCE 02-59

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The Public is invited to speak at this hearing, subject to proper rules of conduct. The hearing may be continued from time to time to a date and time certain. The Public may also provide written comments for the Planning Commission to consider.

Rules of Procedure for this public hearing are in effect pursuant to Resolution 94-104(PC). Copies of this Resolution are available for review or purchase at cost from the Manatee County Planning Department (see address below).

Please Send Comments To: Manatee County Planning Department  
Attn: Agenda Coordinator  
1112 Manatee Ave. West 4th floor  
Bradenton, FL 34205

All written comments will be entered into the record.

**For More Information:** Copies of the proposed ordinance will be available for review and copying at cost approximately seven (7) days prior to the public hearing. Information may also be obtained by calling 749-3070 x 6829, between 8:00 AM - 5:00 PM, or by e-mail at [planning.agenda@co.manatee.fl.us](mailto:planning.agenda@co.manatee.fl.us).

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According to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made with respect to any matters considered at such meetings or hearings, he/she will need a record of the proceedings, and for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record would include any testimony or evidence upon which the appeal is to be based.

8/30/02

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1111965-0830



SARASOTA HERALD TRIBUNE  
PUBLISHED DAILY  
SARASOTA, SARASOTA COUNTY, FLORIDA

MANATEE CO. PLANNING DEPT.  
ATTN: KIM SPARKS  
1112 MANATEE AVENUE W, 4<sup>TH</sup> FLOOR  
BRADENTON, FL 34205

STATE OF FLORIDA  
COUNTY OF MANATEE

BEFORE THE UNDERSIGNED AUTHORITY PERSONALLY APPEARED MOYA NEVILLE, WHO ON OATH SAYS SHE IS THE ADVERTISING DIRECTOR OF THE SARASOTA HERALD-TRIBUNE, A DAILY NEWSPAPER PUBLISHED AT SARASOTA, IN SARASOTA COUNTY, FLORIDA; AND CIRCULATED IN MANATEE COUNTY DAILY; THAT THE ATTACHED COPY OF ADVERTISEMENT, BEING A NOTICE IN THE MATTER OF:

NOTICE OF PUBLIC HEARING  
ORDINANCE 02-59

IN THE COURT, WAS PUBLISHED IN MANATEE EDITION OF SAID NEWSPAPER IN THE ISSUES OF:

AUGUST 30, 2002

AFFIANT FURTHER SAYS THAT THE SAID SARASOTA HERALD-TRIBUNE IS A NEWSPAPER PUBLISHED AT SARASOTA, IN SAID SARASOTA COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPER HAS THERETOFORE BEEN CONTINUOUSLY PUBLISHED IN SAID SARASOTA COUNTY, FLORIDA, EACH DAY, AND HAS BEEN ENTERED AS SECOND CLASS MAIL MATTER AT THE POST OFFICE IN BRADENTON, IN SAID MANATEE COUNTY, FLORIDA, FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE FIRST PUBLICATION OF THE ATTACHED COPY OF ADVERTISEMENT; AND AFFIANT FURTHER SAYS THAT SHE HAS NEITHER PAID NOR PROMISED ANY PERSON, FIRM OR CORPORATION ANY DISCOUNT, REBATE, COMMISSION OR REFUND FOR THE PURPOSE OF SECURING THIS ADVERTISEMENT FOR PUBLICATION IN THE SAID NEWSPAPER.

SIGNED Moya Neville

SWORN TO AND SUBSCRIBED BEFORE ME THIS 30<sup>TH</sup> DAY OF AUGUST A.D., 2002 BY MOYA NEVILLE WHO IS PERSONALLY KNOWN TO ME.

(SEAL)

*[Handwritten Signature]*

OFFICIAL NOTARY SEAL  
BOBBIE J CLARK  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC968394  
MY COMMISSION EXP. OCT. 11, 2004

NOTARY PUBLIC

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# BRADENTON HERALD

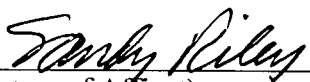
[www.bradenton.com](http://www.bradenton.com)  
P.O. Box 921  
Bradenton, FL 34206-0921  
102 Manatee Avenue West  
Bradenton, FL 34205-8894  
941/748-0411 ext. 7065

Bradenton Herald  
Published Daily  
Bradenton, Manatee, Florida

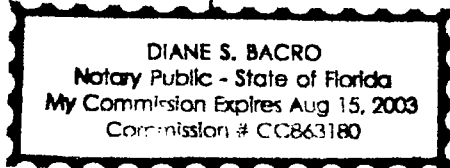
STATE OF FLORIDA  
COUNTY OF MANATEE;

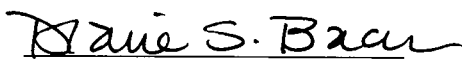
Before the undersigned authority personally appeared Sandy Riley, who on oath says that she is a Legal Advertising Representative of the Bradenton Herald, a daily newspaper published at Bradenton in Manatee County, Florida; that the attached copy of the advertisement, being a Legal Advertisement in the matter of **NOTICE OF PUBLIC HEARING** in the Court, was published in said newspaper in the issues of, **8/30,'02**

Affiant further says that the said publication is a newspaper published at Bradenton, in said Manatee County, Florida, and that the said newspaper has heretofore been continuously published in said Manatee County, Florida, each day and has been entered as second-class mail matter at the post office in Bradenton, in said Manatee County, Florida for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

  
\_\_\_\_\_  
(Signature of Affiant)

Sworn to and subscribed before me this  
4<sup>th</sup> Day of September, 2002



  
\_\_\_\_\_  
SEAL & Notary Public  
Personally Known  OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

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8/30/02

2196015

P.C. 09/12/02

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RECOMMENDED MOTION:

Based upon the evidence presented and comments made at the Public Hearing, and finding the ordinance to be CONSISTENT with the Manatee County Comprehensive Plan and the Manatee County Land Development Code, I move to recommend ~~ADOPTION of~~ Manatee County Ordinance No. 02-59.

DYE, DEITRICH, PRATHER, PETRUFF & ST. PAUL, P. L.

Attorneys at Law  
The Riverview Center, Suite 300  
1111 Third Avenue West  
Bradenton, FL 34205  
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Stephen R. Dye  
Richard G. Groff<sup>2\*</sup>  
Patricia A. Petruff<sup>1†</sup>  
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Reply To: P. O. Box 9480  
Bradenton, FL 34206  
Telephone: (941) 748-4411  
Facsimile: (941) 748-1573  
(941) 746-4302  
E-mail: ppetruff@dyefirm.com

\*Certified Circuit Civil Mediator

Board Certified:  
†City, County And Local Government Law  
‡Wills, Trusts And Estates Law

Also Admitted In:  
<sup>1</sup>California  
<sup>2</sup>Colorado  
<sup>3</sup>Louisiana

Of Counsel:  
Robert L. Scott‡

September 11, 2002

The Honorable Paul Sayers, Chairman  
Manatee County Planning Commission  
P.O. Box 1000  
Bradenton, FL 34206

Re: Proposed Ordinance 02-59

Dear Chairman Sayers:

As you are aware, I represent IMC Phosphates Company. Since IMC Phosphates is the only company currently mining in Manatee County, the proposed moratorium relating to phosphate mining applications will only impact my client. As stated in the proposed ordinance, county staff has been working on revisions to Ordinance 81-22, the Mining Ordinance, and while IMC recognizes that there are several issues which may require expertise from outside consultants, it is IMC's position that there is no need to enact a moratorium in order to appropriately address these issues. Moratoria are intended to be used sparingly and only when a community needs to engage in adoption or major plan revisions to its comprehensive plan, to make significant changes to its zoning or land development regulations or deal with crisis conditions. In the instant case, none of these reasons are applicable. Although the staff is upgrading the Mining Ordinance to insure that it is consistent with the Comprehensive Plan and may also seek to clarify some Comprehensive Plan policies, it is my position that none of these proposed changes support the need for a moratorium. On behalf of my client, I respectfully request that the Planning Commission recommend that the proposed moratorium ordinance not be adopted.



Assuming that the Planning Commission may be inclined to recommend adoption of proposed Ordinance 02-59, IMC has the following concerns with the ordinance as presently drafted. This ordinance establishes a moratorium on the submittal of applications relating to phosphate mining. Currently, Manatee County has a very complex and complicated process for reviewing any type of land development application. This process can be lengthy and time consuming. Rather than adopting a moratorium prohibiting the submittal of applications, IMC respectfully requests that the language in the proposed ordinance be amended to prohibit issuance of approvals, thus allowing applications to be accepted, reviewed for completeness and initially reviewed. IMC is also concerned about the phrasing in the third "Whereas" clause contained on page 3 of the ordinance. This Whereas clause references an "initial" period of eighteen months as being necessary for the staff to address "issues presented." Moratorium ordinances are required to be of limited duration. IMC respectfully requests that the word, "initial" be deleted and that the word, "maximum" be substituted in its stead. In addition, IMC requests that the moratorium period be limited to one year. As the only entity affected by this ordinance, IMC has an interest in knowing when the moratorium will terminate.

With respect to Section 2, IMC requests that the phrase, "but not be limited to" be deleted from the last sentence of the introductory paragraph of that section. Moratoria are required to be specific with respect to what is being prohibited. Inclusion of this phrase creates vagueness and uncertainty as to what is being restricted. In addition, it is IMC's position that placing a moratorium on the applications listed in Section 2, subsections b and e is inappropriate. Waivers and reduction to setbacks are not part of the primary approval process and are not governed by the Comprehensive Plan. Presently, reductions to setbacks can be approved administratively provided that certain strict conditions as set forth in Ordinance 81-22 are met. It is IMC's position that subsections b and e should be listed in subsection 3 as applications not subject to the moratorium. Alternatively, IMC respectfully requests that subsections b and c be reworded so it is clear that these subsections are not applicable to waivers of requirements or reduction to setbacks for the existing Four Corners Mine, the existing Manson Jenkins Mine, and the pending Phase II applications.

With respect to Section 2, subsections f and g, it is IMC's position that the phrase, "significant amendments or significant changes" as utilized in both of these subsections is vague and consequently will be difficult to interpret and enforce. One alternative is to have this phrase specifically defined in the text of Ordinance 02-59. Another option would be to replace this language as follows: "Any change which is determined to be a substantial deviation, pursuant to Chapter 380.06, F.S." I note

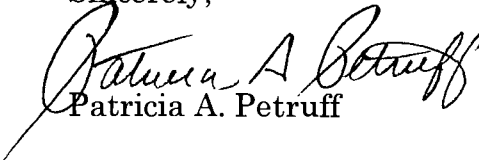
that Section 2-20-42 of the Manatee County Code of Ordinances does not define the term, "significant amendments" although it does provide examples of what could constitute "significant changes". This section of the county's code has been the subject of much discussion with staff due to its imprecise language. IMC feels that it is inappropriate to utilize it as a threshold for a change which would be prohibited due to a moratorium.

A similar concern is raised with respect to subsections a and b of Section 3. These sections are troublesome for the same reasons stated above. These subsections should be amended to read as follows: "Applications for non-substantial deviations pursuant to Section 380.06, F.S." It is IMC's position that Section 3, subsection f should be revised to read as follows: "Applications submitted to the county prior to the effective date of this Ordinance." As noted previously, IMC objects to the initial time frame for the moratorium being established at eighteen months and is concerned with inclusion of a provision for an extension. IMC respectfully requests that Section 4 be amended to read as follows: "This Ordinance shall expire twelve months after its effective date or upon the effective date of the revision to Ordinance 81-22, whichever occurs first."

Finally, it is of utmost importance to my client that there be no question that proposed Ordinance 02-59 is not applicable to the existing Four Corners Mine, the existing Manson Jenkins Tract and the rezoning application, DRI application, Master Mining Plan application and Operating application which is pending before the County. These pending applications are known as Four Corners Mine Phase II Additions. This application impacts the Jameson, Northeast and Altman Tracts all located in Manatee County, Florida.

I would be happy to answer any questions which you may have regarding points discussed in this letter.

Sincerely,



Patricia A. Petruff

PAP/lrd

Cc: Client

Planning Commissioners

Maureen Sikora, Assistant County Attorney

EMD Department