

Staff Report



**Zoning and
Land Regulation
Committee**

Public Hearing: **March 28, 2023**

CUP 02584

Zoning Amendment Requested:

TO CUP: Non-metallic mineral extraction operation

Town/Section:

DANE, Section 01

Size: **71 acres**

Survey Required: *n/a*

Applicant

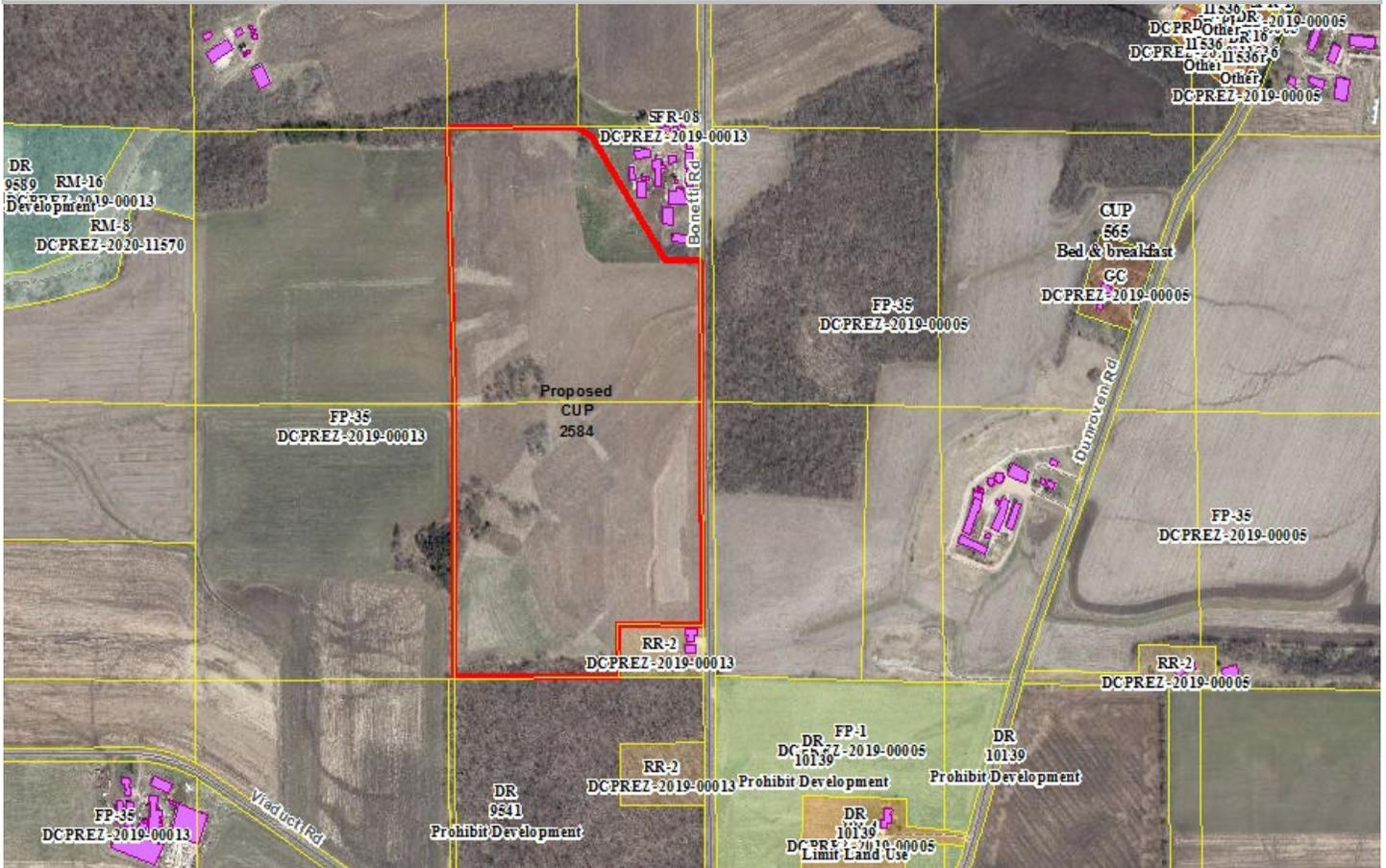
**TRI COUNTY PAVING,
INC.**

Reason for the request:

Operate a new non-metallic mineral extraction site, a temporary concrete batch and a temporary hot mix asphalt plant.

Address:

**NORTH OF 7715
BONETTI ROAD**



DESCRIPTION:

Tri County Paving Inc. would like to obtain a Conditional Use Permit to operate a non-metallic mineral extraction site located on approximately 47 acres on the Ripp farm along Bonetti Road. The boundary of the CUP request includes a buffer area with the total boundary equating to 71 acres. In addition to the proposed quarry, they are also requesting approval to allow a temporary concrete batch plant and a temporary hot mix asphalt plant to operate in the quarry when highway projects occur in the area.

The applicant is stating that the proposed site has approximately 75 years of reserves with an estimated 9,000,000 tons of material. The aggregate material will be used for various construction projects in and around the Dane County area. The proposal is to extract approximately 60,000 tons of finished aggregate per year depending upon industry activity.

Operational hours are proposed to be Monday through Friday 7:00 am to 6:00 pm and Saturday 7:00 am to 4:00 pm. Blasting is proposed to be between Monday through Friday between the hours 8:00 am to 2:00 pm.

The quarry operation consists of the removal of topsoil and clay to expose the limestone. The topsoil and clay will be saved on the site by creating berms around the boundaries. The limestone will be loosened by blasting. Blasting will occur approximately 6 to 8 times a year depending upon demands. The material will be crushed to a specific size and

washed to remove fine particles. A high capacity well is proposed for the washing of product. The aggregate will be stockpiled on the site for hauling. The aggregate will be hauled from the site traveling south onto Bonetti Road, then east on Viaduct Road for a short distance, and finally to County Road DM.

The proposal is showing two phases over time. Phase 1 is located on the westerly portion and phase 2 is located easterly side along Bonetti Road. All excavation will occur approximately 90 to 95 feet above the groundwater table.

On occasion, Tri-County Paving would like to operate an asphalt plant and/or a ready-mix concrete plant for public road projects. These operations are to be limited in duration and related to specific projects. The proposal does not include accepting of concrete or asphalt for recycling purposes.

OBSERVATIONS/FACTUAL INFORMATION:

Currently there are no quarry operations in the Town of Dane. All of the previous sites have terminated and reclaimed back to agricultural uses. The nearest mineral extraction site is located two miles to the east in the Town of Vienna.

The proposed site is located just south of 7839 Bonetti Road on the Ripp farm. The property is currently zoned FP-35. The zoning district lists mineral extraction operations as a conditional use. Asphalt plant and ready-mix concrete plants are also listed as a conditional use. However, the operation is limited to the construction/maintenance of public roads with limited time and duration. The Zoning and Land Regulation Committee (ZLR) will need to set limits to ensure the activity falls in line with the Farmland Preservation policies.

The land is currently used for crop production. The neighboring lands are also used for agricultural production and are also zoned FP-35. The nearest house is approximately 300 feet to the north and another residence 500 feet south of the quarry entrance. There are two additional residences within 2000 feet, not including the Ripp farmstead.

The property rests along the Dane/Vienna Town line. Bonetti Road is maintained by the Town of Vienna. The road has a paved surface of 20 feet wide and is capable of handling 250 vehicles trips per current Wisc. Stat. standards for town roads. Bonetti Road narrows to 18 feet wide just north of the site and would not be conducive to truck traffic. The Town of Vienna is working with the applicant regarding concerns of safety and maintenance of the road. See information provided from Town Clerk regarding improvements.

The proposed truck route runs $\frac{3}{4}$ of a mile south on Bonetti Road until it reaches County Highway DM. There are four residential homesites between the quarry entrance and County Highway DM.

Geological composition consists of 10" to 12" of topsoil, 6 to 8 feet of clay and 45-85 feet of limestone. Sandstone material is under the limestone. The ground water elevation is at 920' in the western end and 923' at the eastern end of the property. The lowest level of excavation will be at 1015 feet, approximately 90 feet above the water table.

All topsoil will be preserved for the construction of berms along the perimeter of the site. Berms will be located along Bonetti Road and along the south side of the driveway. The berms will act as a sound and visual barrier and prevent stormwater from leaving the property during the mining activity.

The applicant is required to submit a reclamation plan under Chapter 74 requirements. Once the hillside is removed (area flattened), the topsoil will be restored and the area will be returned to viable agricultural land use. The reclamation plan includes information on the anticipated contours and uses when the mining is completed.

Under the State's Blasting Requirements (SPS 307), residents located within 500 feet of the blasting location will have a pre-blast survey conducted to ascertain the status of such residences. Residences within 500' will be notified 24 hours in advanced of a blast and shall be preceded by horn blast. However, there only one house within the 500 feet.

TOWN COMPREHENSIVE PLAN

The site is located in the Agricultural Preservation Area as shown on the Land Use Map of the Town of Dane Comprehensive Plan. The Plan identifies non-metallic mineral extraction operations as an appropriate land use within a

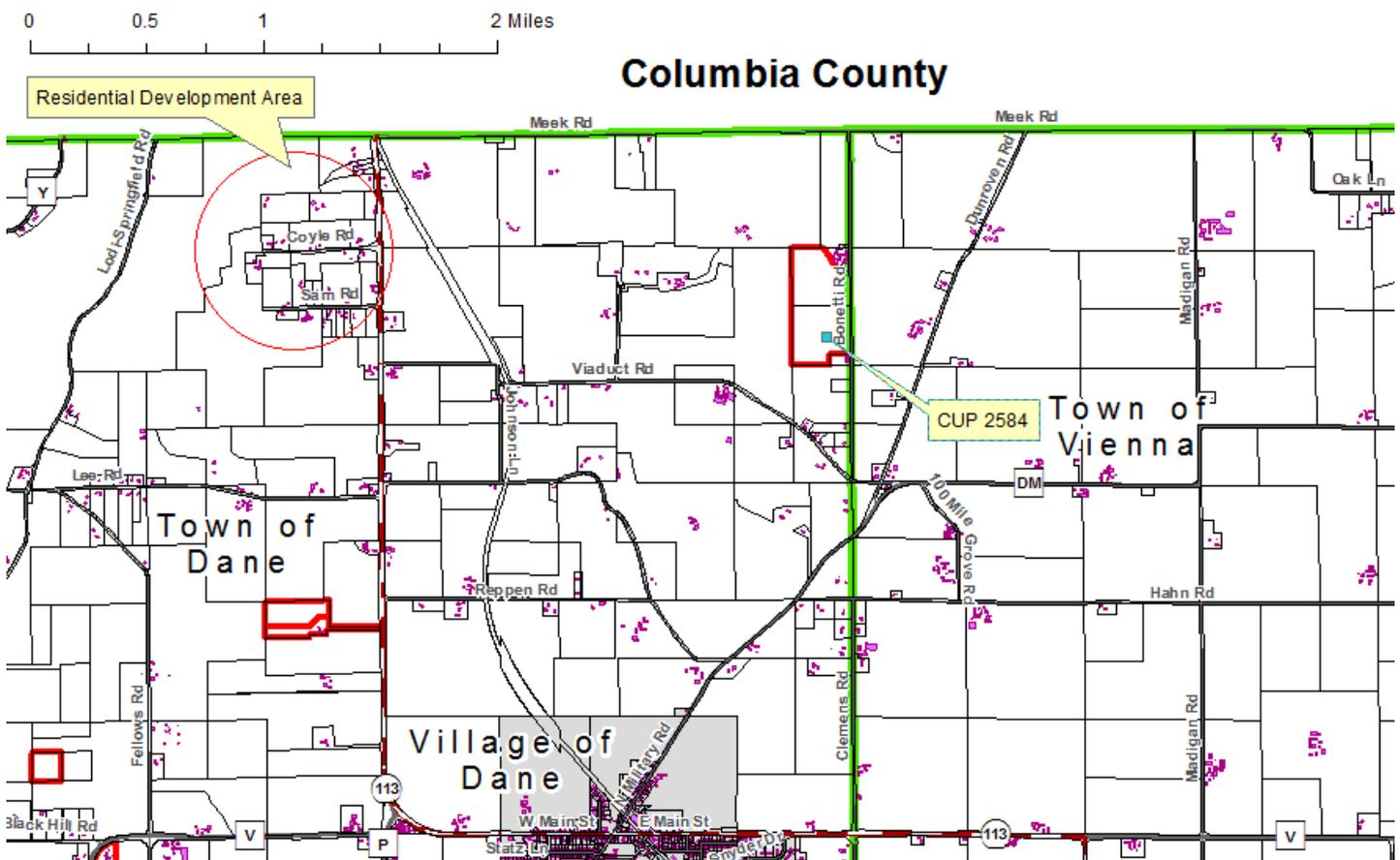
designate Agricultural Preservation Area. The plan notes that the quarries should be properly sited and directed away from clusters of homesites or planned residential areas. The Land Use Map shows a planned residential area 1.7 miles directly west of the proposed quarry.

Excerpt from the Town Plan

NATURAL RESOURCE RECOMMENDATIONS - NONMETALLIC MINERAL RESOURCES

- *There are limited areas in Dane used for nonmetallic mineral extraction. The town might receive requests for new or expanded extraction sites over the planning period. Such uses are appropriate in the Agricultural Preservation Areas, provided that they are properly sited and reclaimed per new state and county rules. Extraction activities are not generally compatible with residential uses and should be directed away from clusters of homesites or planned residential areas.*

TOWN ACTION: The Town of Dane will be holding a public hearing on April 10th at the American Legion Hall.



CONDITIONAL USE PERMIT DECISION MAKING: “Conditional uses” are those land uses which, because of unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review.

Prior to granting or denying a conditional use, the ZLR Committee shall make findings based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the eight standards to obtain a conditional use permit. Below is the list of the eight standards and the applicant’s response to those sections.

1. **The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

- *Berミング; berms will be constructed as necessary and maintained to provide for visual and sound barriers to any adjoining residences. Dust Control; The entire access road will be paved with asphalt and watering will be done in the quarry as needed to control dust. Erosion Control and a storm water pollution prevention plan is in place. We will meet all MSHA requirements. We will meet all State Blasting regulations. The site will be secured by a fence along Bonetti Rd. and a locking gate at the driveway entrance into the quarry.*
- 2. The uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.**
- *Adjacent Property owners will feel little to no impact with the proposed mineral extraction. The mechanized equipment used is not louder than typical farm machinery. Berms will be constructed and maintained to provide for visual and sound barriers to other properties in the neighborhood. Tri County Paving Inc. will pave the entire access road and watering will be done in the quarry to control dust as needed. There are only 2 residences within 1500 Feet of the site (1 of the residence's is owned by the owner of the property) a total of 9 houses within a ½ mile of the operation. The town designates this area as an Agricultural Preservation Planning area which greatly limits additional housing in the surrounding area. Most of the surrounding area is used for agricultural production.*
- 3. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.**
- *The existing land is currently used for row crops. The proposed reclamation plan will show that most of the site will be placed back to row crops with more gradual contours. The orderly development of the area is geared toward agricultural production. Very little residential development is allowed on adjacent properties. Once the limestone is extracted, the area will be returned to agricultural production.*
- 4. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;**
The proposed conditional use is located in an area that will be satisfactorily served by and will not impose undue burden on any improvements, facilities, utilities or services provided by the public agencies serving the subject property. We will be using a newly constructed shared farm field entrance for access to the proposed quarry. Bonetti Road is capable of handling truck traffic. We will bond the road with the Township as per requirements. The quarry will have a portable scale and portable scale house. We will also install a high-capacity well in the future. Storm water will be contained in the proposed quarry, we have included the Storm Water Pollution Prevention Plan.
- 5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;**
- *Bonetti Road is 1.5 miles long and is a low volume road mainly used as farm access road with very minimal number of residential homes. Approx: 3 south of proposed entrance and 1 north of proposed entrance. We will construct a wide entrance for trucks to enter the site safely. The entire entrance and roadway to the quarry floor will be paved with asphalt. There will be a security gate installed.*
- 6. The conditional use shall conform to all applicable regulations of the district in which it is located.**
- *Tri County Paving Inc. will follow all regulations/ordinances laid out by the State of Wisconsin, County of Dane, and Town of Dane. The new quarry will be located in an FP-35 Zoning District. FP-35 Zoning Districts allow for quarry operations under a conditional use permit. Tri County Paving Inc. also acknowledges the special requirements for mineral extraction found under DCCO 10.103(15).*
- 7. The conditional use is consistent with the adopted town and county comprehensive plans.**
- *The Town of Dane and County of Dane will find that the proposed use is consistent with agricultural use and pursuant to Sect. 91.75(5) of the Wisconsin Statutes: (a) that the limestone quarry is an activity that will not convert land that has been used for primarily for agricultural purposes; (b) is not an activity which will conflict with agricultural operations subject to farmland preservation agreement of the subject property; and (d) is not an activity which will conflict with agricultural operations on other properties. The Town of Dane's Comprehensive Plan page 34 Item 5. States such uses are appropriate in the Agricultural Preservation Areas.*

8. **If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the findings described in s. 10.220(1).**
- a. **The use and its location in the Farmland Preservation Zoning District are consistent with the purposes of the district.**
 - *All measures will be made for as much land to be row cropped as possible, the reclamation of the quarry will create more gradual elevation contours that are more conducive for row cropping.*
 - b. **The use and its location in the Farmland Preservation Zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.**
 - *Non-Metallic Mining is allowable under Farmland Preservation, the quarry will be located in a rural area with very few homes adjacent to the property or even in the vicinity.*
 - c. **The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.**
 - *Tri County Paving Inc. will operate and maintain the quarry in order to allow row cropping to continue as material is extracted.*
 - d. **The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.**
 - *As Material is extracted and space allows Tri County Paving Inc. will begin reclamation to reestablish row crop farming as soon as possible.*
 - e. **Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.**
 - *All measures will be made for as much land to be row cropped as possible. The reclamation of the quarry will create more gradual contours that are conducive to row cropping and help minimize erosion.*

POTENTIAL NUISANCES ASSOCIATED WITH MINERAL EXTRACTION

Mineral extraction has potential nuisances that pertain to blasting, truck traffic, dust, noise and aesthetics. The applicant has submitted information regarding how those potential nuisances are handled as part of their application.

Potential conditions of approval specific to CUP 2584 can be developed after public input and deliberation by the ZLR Committee. Common topics include but are not limited to, hours of operation, hours for blasting, blasting notification procedures, screening, duration, site access, and identification of haul routes.

Under Dane County Zoning Ordinance section 10.103(15), there are special requirements for mineral extraction operations to address many of the potential conflicts with the land use activity. In addition to conditions required for all conditional use permits, the Town Board and ZLR Committee shall impose, at a minimum, the following conditions on any approved conditional use permit for mineral extraction:

1. Topsoil shall be saved and stored on site for reclamation of the area.
2. The applicant shall receive approval of an erosion control permit prior to commencing extraction operations.
3. The Town and Committee will set an expiration date for the conditional use permit based on the quantity of material to be removed.
4. Reclamation of the site shall meet all requirements of Chapter 74 of the Dane County Code of Ordinances.
5. The driveway accessing the site shall be paved or covered with crushed asphalt for a minimum distance of 100 feet.
6. The access have gates securely locked when the extraction site is not in operation.
7. All excavation shall be setback a minimum of 20' from any property line.
8. All excavations shall be setback to the building setback requirements from streets.
9. The Town and Committee will assign hours of operation appropriate to the particular application. [Note: Typical hours of operation are from 6:00 a.m. to 6:00 p.m., Monday through Friday, and 8 a.m. to early

afternoon on Saturday. If there are residences nearby, hours may be more limited (e.g., start at 7:00 a.m. with no Saturday hours).

10. There shall be a safety fence around the entire extraction area at all times. That safety fence shall be a minimum of 4 feet in height.
11. There shall be no alteration of topography within 5 feet of the property line.
12. Discharge of water from a site is limited.
13. All trucks and excavation equipment to have muffler systems that meet current industry standards for noise abatement.
14. The operator shall meet DNR standards for particulate emissions.
15. The operator shall carry liability insurance with Dane County and the Town listed as additional named insureds.
16. The town board and zoning committee may set further reasonable restrictions on a mineral extraction operation.
 - a. Blasting shall conform to Wisconsin Administrative Code SPS 307. Blasting shall occur between sunrise and sunset, as required by SPS 307. The zoning committee and town board may set further daily limits on hours when blasting may occur to minimize impact on neighboring properties.
 - b. All fuel storage must comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment.
 - c. All excavation equipment, plants, and vehicles shall be fueled, stored, serviced, and repaired on lands at least 3 feet above the highest water table elevation to prevent against groundwater contamination from leaks or spills.
 - d. In the event that a mineral extraction operation will destroy an existing Public Land Survey Monument, witness monuments must be established in safe locations and a new Monument Record filed by a Professional Surveyor, prior to excavation and disturbance of the existing monument.

STAFF RECOMMENDATIONS

The contents of this staff report summarizes information provided by the applicant. As part of the conditional use permit process, the public has an opportunity to provide additional information and raise concerns. Concerns raised will need to be addressed by the application. Staff has identified several items of concern regarding this proposal. Staff is suggesting that the Committee request additional information be submitted by the applicant to address the concerns.

1. The special requirements for mineral extraction operations require that the Town and/or County set an expiration date on the CUP. Staff would suggest a 20-year time limit if acceptable to the applicant.
2. The requested hours of operation appear to be outside the suggested hours for mineral extraction as noted in the zoning ordinance. Staff suggest limiting the hours of operation from 8 am to 1:00 pm on Saturdays; no operations being allowed on Sundays and on certain holidays. This may reduce the impact on the surrounding land uses.
3. The site contains a 47-acre excavation area. If the entire area is exposed all at once, the activity may conflict with farmland preservation policies. As part of the phasing plan, the applicant should provide information on how portions of the property could be reclaimed to minimize the amount of land taken out of crop production.
4. The applicant provided minimal information on the proposed high capacity well. The applicant should provide more information on the intent of the well, how the water will be used, anticipated quantity used, and provide details regarding wash areas and location of wash water detention basins.
5. Very little information has been provided regarding the temporary asphalt plant and temporary concrete plant. Staff is concerned that if all three activities are conducted at once, the trucking activity may exceed the capacity of the existing roadway. Additional information should be provided by the applicant regarding frequency of use; specific anticipated projects (distance away from location); location of plants on property; odor control methods; and anticipated hours of operation. Conditions should be placed on the land use in order to comply with Farmland Preservation policies.
6. Bonetti Road may have limitations being used as a truck route. Due to width being 18 feet north of the site, staff would suggest limiting trucking to the south portion of Bonetti Road. Given that the CUP is in the Town of Dane and the roadway is maintained by the Town of Vienna, the applicant should provide additional information regarding Town of Vienna's acceptance of using Bonetti Road for trucking purposes.

Pending any comments at the public hearing and action by the Town of Dane, the Committee will need to make findings of fact as to whether the proposed CUP will meet the applicable CUP standards outlined above in the decision making section.

CONDITIONS FOR CONDITIONAL USE PERMITS

Below is standard list of conditions for all conditional use permits along with special conditions for unique land uses. Please note that additional conditions or alterations to the conditions listed below may be needed to address concerns raised at the public hearing.

Standard conditions for all conditional use permits

- 1) The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan, phasing plan, and following conditions.
- 2) New and existing buildings proposed to house a conditional use must be constructed and maintained to meet the current requirements of the applicable sections of the Wisconsin Commercial Building Code or Uniform Dwelling Code.
- 3) The applicant shall apply for, receive and maintain all other legally required and applicable local, county, state and federal permits. Copies of approved permits or other evidence of compliance will be provided to the zoning administrator upon request.
- 4) Any ongoing business operation must obtain and continue to meet all legally required and applicable local, county, state and federal licensing requirements. Copies of approved licenses or other evidence of compliance will be provided to the zoning administrator upon request.
- 5) Existing onsite wastewater sewage disposal systems, if any, serving the conditional use must be inspected by a licensed plumber to determine its suitability for the proposed or expanded use. Deficient systems must be brought, at the owner's expense, into full compliance with the current requirements for new development of the state plumbing code and Chapter 46, Dane County Code.
- 6) All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
- 7) Off-street parking must be provided, consistent with s. 10.102(8).
- 8) If the Dane County Highway, Transportation and Public Works Department or the town engineer determine that road intersection improvements are necessary to safely accommodate the conditional use, the cost of such improvements shall be born by the landowner. Costs born by the landowner shall be proportional to the incremental increase in traffic associated with the proposed conditional use.
- 9) The Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation. Zoning staff conducting inspections or investigations will comply with any applicable workplace safety rules or standards for the site.
- 10) The owner must post, in a prominent public place and in a form approved by the zoning administrator, a placard with the approved Conditional Use Permit number, the nature of the operation, name and contact information for the operator, and contact information for the Dane County Zoning Division.
- 11) The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site, available for inspection to the public during business hours.
- 12) Failure to comply with any imposed conditions, or to pay reasonable county costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit. The holder of a conditional use permit shall be given a reasonable opportunity to correct any violations prior to revocation.

Special required conditions for mineral extraction

- 13) Topsoil, or appropriate topsoil substitute as approved in a reclamation plan under Chapter 74, Dane County Code, from the area of operation shall be saved and stored on site for reclamation of the area. Topsoil or approved topsoil substitute must be returned to the top layer of fill resulting from reclamation.
- 14) The applicant shall submit an erosion control plan under Chapter 14, Dane County Code covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
- 15) The permit period shall be **20 years** from effective date.
- 16) Reclamation shall meet all requirements of Chapter 74 of the Dane County Code of Ordinances. In addition, all

reclamation plans must meet the following standards:

- a) Final land uses after reclamation must be consistent with any applicable town comprehensive plan, the Dane County Comprehensive Plan and the Dane County Farmland Preservation Plan.
 - b) Final slopes shall not be graded more than 3:1 except in a quarry operation.
 - c) The area shall be covered with topsoil and seeded to prevent erosion.
 - d) The area shall be cleared of all debris and left in a workmanlike condition subject to the approval of Dane County
 - e) High walls shall be free from falling debris, be benched at the top, and certified by a civil engineer to be stable.
- 17) The driveway accessing the subject site shall either be paved or covered with crushed asphalt for a minimum distance of 100 feet from the public right-of-way. The operator shall maintain the driveway in a dust free manner in accordance with local, state, and federal regulations, and shall clean any dust or mud tracked onto public roads.
 - 18) The access to the driveway shall have gates securely locked when the extraction site is not in operation. The site shall be signed "no trespassing."
 - 19) All surface and subsurface operations shall be setback a minimum of 20' from property lines that do not abut a public right of way.
 - 20) Excavations below the grade abutting Center Road shall be setback 30 feet from the property line.
 - 21) Hours of operation shall be **7:00 am to 6:00 pm** Monday through Friday, and **7:00 am to 6:00 pm** on Saturday. **Hours for warm-up are 6:30 am to 7:00 am Monday through Friday, and 6:30 am to 7:00 am on Saturdays.** Only maintenance of equipment (no blasting, crushing, trucking, stockpiling, etc.) is allowed on Sundays. There shall be no operations of any kind on holidays. Holidays are to include: New Year's Eve, New Year's Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve, and Christmas.
 - 22) There shall be a safety fence around the entire extraction area at all times. That safety fence shall be a minimum of four (4) feet in height.
 - 23) Except for incidental removal associated with dust spraying or other routine operations under this permit, water shall not be pumped or otherwise removed from the site.
 - 24) The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
 - 25) The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076, Wisconsin Administrative Code.
 - 26) Dane County and the Town shall be listed as additional named insureds on the operator's liability insurance policy, which shall be for a minimum of \$1,000,000 combined single limit coverage per occurrence. The operator shall furnish a copy of a Certificate of Insurance as evidence of coverage before operations commence. The liability insurance policy shall remain in effect until reclamation is complete.
 - 27) Blasting:
 - a) Blasting shall limited to Monday through Friday **10:00 am to 2:00 pm**.
 - b) Notice of Blasting Events. Prior to any blasting event, notice shall be provided to nearby residents as described in SPS 307, Wisconsin Administrative Code. In addition, the operator shall maintain a list of residents within ½ mile of the site who wish to be notified of blasts. Residents need to communicate with operator regarding such requests.
 - c) All blasting on the site must conform to all requirements of SPS 307, Wisconsin Administrative Code, as amended from time to time, or its successor administrative code regulations.
 - d) Fly rock shall be contained within the permitted mineral extraction area.
 - 28) Any fuel storage on-site shall comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment.
 - 29) In the event that a mineral extraction operation will destroy an existing Public Land Survey Monument, witness monuments must be established in safe locations and a new Monument Record filed by a Professional Surveyor, prior to excavation and disturbance of the existing monument.

Special required conditions for temporary asphalt plants and concrete batch plants

- 30) The zoning committee and town board shall set **daily limits on hours for concrete and asphalt production**, as necessary to minimize impact on neighboring properties. Schedules for concrete or asphalt production need not conform to hours of operation for the overall mineral extraction project.
- 31) Operators of concrete or asphalt plants shall be responsible for any conditions placed on such operations.

32) Asphalt production facilities must comply with all requirements, including spill containment, of Chapter ATCP 93, Wisconsin Administrative Code.

Any questions about this petition or staff report, please contact Dan Everson at (608) 267-1541 or email at everson.daniel@countyofdane.com