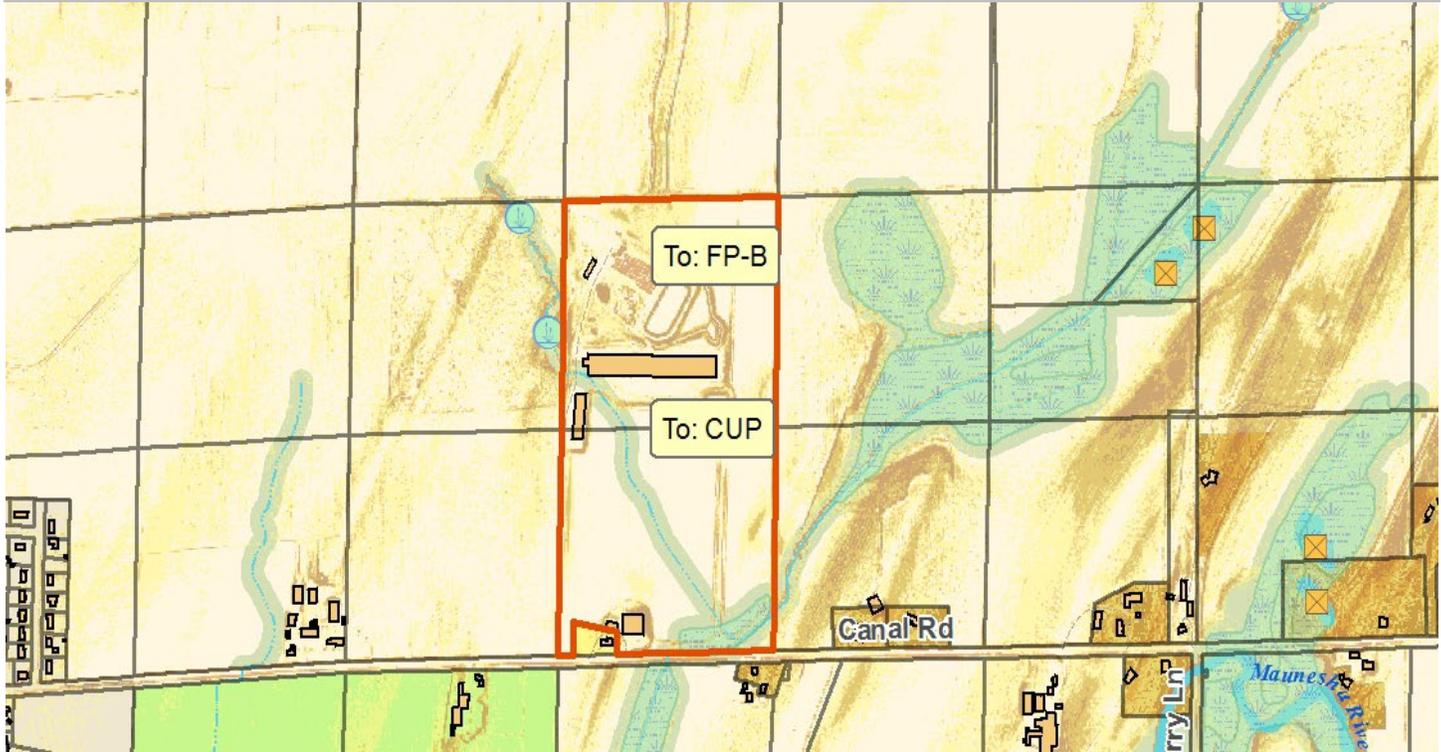


<b>Staff Report</b>    <b>Zoning and Land Regulation Committee</b>	<i>Public Hearing:</i> <b>January 25, 2022</b>		<b>Petition 11789</b>
	<i>Zoning Amendment Requested:</i> <b>FP-35 Farmland Preservation District TO FP-B Farmland Preservation Business District</b>		<i>Town/Section:</i> <b>MEDINA, Section 2</b>
	<i>Size:</i> <b>78 Acres</b>	<i>Survey Required:</i> <b>No</b>	<i>Applicant</i> <b>CARBON CYCLE CONSULTING LLC</b>
	<i>Reason for the request:</i> <b>Change zoning (FP-35 to FP-B) to allow for the composting of manure and agricultural by-products. This rezone petition is related to CUP application #2550</b>		<i>Address:</i> <b>464 CANAL ROAD</b>



**DESCRIPTION:** Applicant is requesting a rezoning of the ~78 acre property from FP-35 to FP-B (Farmland Preservation – Business). A separate Conditional Use Permit #2550 is proposed to allow operation of a commercial manure and agricultural composting operation in the FP-B district. The petitions are being submitted to resolve a zoning violation – operation of the commercial composting operation without the appropriate zoning approvals in place. In addition, their manure storage certificate was revoked by the Dane County Land & Water Resources department in December of 2021.

The proposed use is agricultural composting, mixing, blending and granulation. Manure products come from farms and manure digesters to be processed using an aerobic composting process. This process is different from that of the previous owner. A maximum of 10 trucks per day are expected. Compost will be turned as needed throughout the process and liquid manure will be added as a sustainable means to manage manure. 4-5 employees are anticipated once the site is fully operational.

**OBSERVATIONS:** The property previously supported a large cattle operation. Manure from the livestock was being composted on the northerly portion of the property. See site plan from previous owner. The composting pad and collection pond are still intake. Currently, the property is being used for agriculture/open space purposes and the composting operation. The composting operation consists of a 2.9-acre pad for windrow composting, 1.3-acre lagoon and two large buildings. Surrounding land uses are agricultural/woodland. There are 5 residences located within 1/2 mile of the subject property.

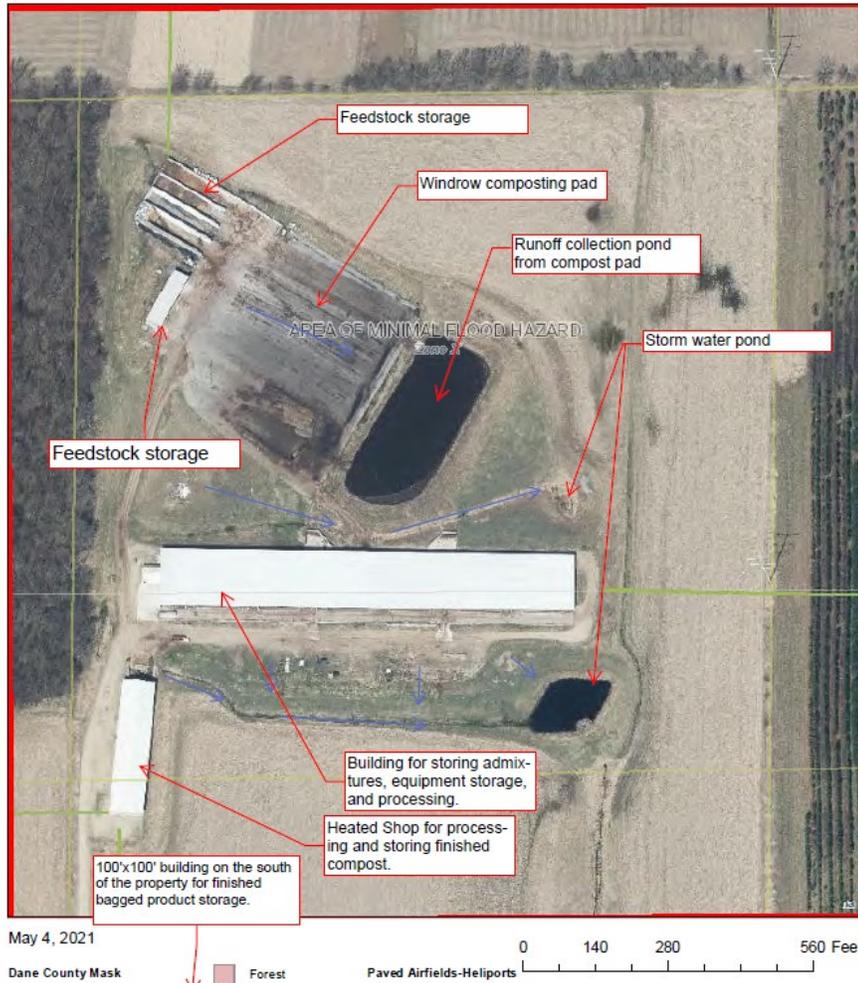
As noted, the property is currently in violation of the zoning code for failure of obtaining the necessary approvals for a composting operation. There is violation on the property regarding manure storage permitting. See Land & Water Resources Department Staff section, below.

**COMPREHENSIVE PLAN:** The property is located in the town’s agricultural preservation area. The proposed rezoning appears reasonably consistent with comprehensive plan policies. Any questions about the comprehensive plan, please contact Majid Allan at (608) 720-0167 or [allan@countyofdane.com](mailto:allan@countyofdane.com)

**RESOURCE PROTECTION:** There is a constructed drainage way on the southern portion of the property.

**LAND AND WATER RESOURCES DEPT:** The operator’s Certificate of Use for the manure storage facility onsite was revoked in December of 2021 for failure to meet various conditions of the certificate. The terms of the revocation include the following:

- Until a new Certificate of Use is issued, the operator may not haul any additional manure or manure derivatives to the site.
- Material that is on-site may remain there at this time and shall be monitored to prevent runoff or discharges.
- Material may be hauled from the site to an approved location if it can be done in accordance with federal, state, county, and local regulations.
- Once the conditions from the original conditional Certificate of Use are completed, a new Certificate of Use can be issued.





**STAFF:** The property is located in a town-designated farmland preservation area. Town policies support agricultural uses throughout the farmland preservation areas of the town. The zoning division has received a number of complaints regarding operations at the site over the past 5 months. The complaints relate to the strong odors produced from the composting operations, as well as negative impacts to Canal Road from truck traffic coming/going from the site. In addition to the impact of truck traffic on the road condition, safety concerns were noted as there are already spots where there is poor visibility of oncoming traffic. The plan commission encouraged citizens to share these concerns with the Town Board. The Plan Commission developed conditions of approval in effort to address neighbors' concerns.

**TOWN ACTION:** Town Plan Commission and Town Board unanimously approved with the following conditions:

1.  **Deed restriction** limiting use(s) in the FP-B zoning district to only the following:
  - The conditional use conform in all aspects, to the approve site plan and operational plan.
  - The applicant shall apply for, receive, and maintain all other legally required and applicable county, state, and federal permits.
  - The ongoing business operation shall meet all legally require and applicable government licensing requirements.
  - The operator shall take reasonable measures to control dust on the driveway a minimum of 500 feet from the public right of way.
  - The applicant and Town of Medina will enter into a road maintenance agreement.
  - All vehicle accessing the site must obey posted road weight limits
  - Failure to comply with any imposed conditions or to pay reasonable costs of investigation or enforcement of sustained violation may be grounds for revocation of the conditional use permit.
  - Hours of operation for deliveries shall be 6-8pm daily

Staff anticipates public opposition to be presented at the public hearing for this petition. In accordance with committee policy, staff recommends postponement at the public hearing to provide an opportunity to consider the anticipated public testimony.

**STAFF UPDATE (updated 2/16/23):** The petition was postponed at the January 25, 2022 ZLR Committee public hearing meeting due to public opposition. Most of the concerns raised were with regard to related Conditional Use Permit #2550

that proposes operation of a composting facility on the property. Public comments were made about the applicant's ability to comply with the relevant regulations, concerns about potential impacts to groundwater, and potential impacts to area roads and an existing pipeline.

In the months following the public hearing and initial postponement, the applicant continued to work with various agencies and financial institutions to secure the necessary approvals. Below is a list of the various approvals/permits being pursued, with a note on the status of each:

- *WDNR Compost Facility Permit*
  - o A Plan of Operation Approval letter was issued 6/17/2022.
  - o Applicant has been working with a surety bond company to secure the required financial assurance mechanism, which will then allow him to get the compost facility license. In October 2022 DNR staff confirmed that the compost facility permit had been issued, but not the related license, which requires financial assurance of approximately \$200,000. Applicant was still working on this in early February.
- *Dane County Land & Water Resources Department – Certificate of Use (CU)*
  - o Dane County re-issued the Certificate of Use on 9/27/2022, after applicant installed the fencing around the manure lagoon, and follow-up inspections and repairs were done.
- *Dane County Planning & Development – Stormwater Management confirmation for Rezoning and CUP*
  - o On 10/14/2022, Jason Tuggle confirmed that the conditions of the basins appeared to be substantially in compliance with the previously approved stormwater plan and he had no concerns at that time. Storm water basin surveys were provided to LWRD.
- *WDNR Wastewater Permit*
  - o In October 2022 the applicant provided responses to WDNR's questions; no additional information or permit applications were requested from wastewater staff.

By ordinance, the ZLR Committee can postpone action on a proposed rezone until any unresolved violations of County Ordinances are corrected. Per the Committee's adopted rules, if no action has been taken on a petition or application within one year of the public hearing (in this case, January 25, 2023), the application shall be expired and considered withdrawn. The applicant shall be notified the application is withdrawn, and the Committee will not take further action on the request. If the applicant wishes to pursue the conditional use permit and/or rezoning, the applicant must complete a new application and public hearing in its entirety. If the Committee determines that a new public hearing is required for an active petition.

The applicant has been working for over a year on obtaining the necessary approvals from various agencies. Most of which have been obtained but not completed. However, Committee rules limit the review of rezoning and CUP proposals to one year. After one year, the applications expire.

**STAFF UPDATE (3-28-23):** On February 28, 2023 the ZLR Committee suspended the rules in order to discuss the petition with the applicant. The applicant explained that he is working through the final step to getting financial assurance needed for the compost facility license from WDNR. The Committee agreed to grant additional time to complete this task, until the March 28, 2023 ZLR meeting at which time the Committee may act on the petition or deem it expired.

The applicant has provided a written summary / update, and copies of the required permits. Note that no wastewater permit is needed for the composting operation proposed under related CUP 2550. Regarding the town's action report on the rezone petition, staff have confirmed that the conditions listed are intended for the associated CUP for the composting facility.

**STAFF RECOMMENDATION:** Staff recommends approval of the rezoning petition with the following conditions:

1. A Delayed Effective Date of 180 days from the date of county board approval of the rezoning petition shall be imposed.
2. Within 180 days of county board approval of the rezoning petition, the owner shall provide the zoning administrator with copies of all required permits and licenses for operation of a composting facility.
3. Upon submittal of the required permits and licenses, owner shall record a deed restriction on the FP-B zoned property (tax parcels 081202380006, and 081202395009) that states the following:

- a. Allowable land uses are limited exclusively to a composting facility and agricultural uses.
4. Failure to provide the required materials or record the required deed restriction within the 180 day time period shall cause the rezoning to be null and void.

Any questions about this petition or staff report please contact Majid Allan at (608) 267-2536 or [allan@countyofdane.com](mailto:allan@countyofdane.com).