

**Staff Report Update
Review and Possible Revocation
Of CUP #2103
Non-metallic Mineral Extraction
Oak Park Quarry
(revised 6/10/16)**

Background

On December 8, 2015, the ZLR Committee held a public hearing with regard to the possible revocation of CUP 2103 for a quarry operation at 3522 Oak Park Road in the town of Deerfield. The public hearing was held due to complaints from local residents over the intensity of the blasting at the site, concerns raised by the town over the operation, and the operator's reluctance in obtaining the necessary local licenses for blasting and quarry operation. Neighbors of the quarry also alleged numerous other conditions of the CUP occasionally being violated, pertaining to such issues as the following: securing the front gate; adhering to the designated hours of operation; installing required safety fencing; storing bulk fuel onsite; and adhering to appropriate ingress/egress requirements (i.e. haul route(s) and secondary access drive). These items are presented in great detail by the neighbors in Item 3, "Letters of Opposition as of 3-22-16," of the Legistar record associated with CUP 2103.

Ultimately, the primary and most tangible outstanding issue was over the operator not having obtained the appropriate local licenses. Staff found that the operator was in violation of Condition No. 3 of the 14 conditions of CUP 2103, which required the operator to apply for and receive all applicable local, state, and federal permits (please see the attached Staff Report below for more detail). Further, questions have been raised over whether or not the conditional use permit is still meeting the six (6) standards for obtaining a conditional use permit as originally conceived at the time CUP 2103 was granted.

At the December public hearing, many of the neighbors reported that their houses were being damaged by the blasting, and representatives of the nearby Lutheran church reported damage to the church and associated cemetery. The town's attorney reported that the Town recently adopted blasting and quarry licensing regulations which the landowner, Jon Halverson, was reluctant to obtain for his operation.

At the March 22, 2016 ZLR meeting, Chair Miles stated that he would like to see progress made by the landowner in providing all information to complete the blasting and mineral extraction operation license applications. He also expressed a desire to see progress made by the town of Deerfield to address the issue regarding the required frequency of the ground vibration as noted in the town ordinance.

Committee Action

December 8, 2015 – The Committee postponed action to allow the landowner to obtain town licenses.

January 12, 2016 – The Committee postponed action seeing that the landowner was in the process of obtaining town licenses.

March 22, 2016 – The Committee postponed action in order for Committee members to attend a town meeting to gauge the situation with the town licensing in place.

May 10, 2016 – The Committee postponed action in order to conduct a site inspection of the Oak Park Quarry and surrounding areas.

June 1, The Committee conducted a site inspection at the St. Paul Lutheran Church, Oak Park Quarry, and Schuster's round barn.

Town Action

The landowner/operator submitted all the necessary information to the town of Deerfield in order to obtain a blasting license and quarry operation license. After meeting twice, the town of Deerfield approved the licenses for the quarry operation. The licenses were issued in the middle of March this year.

The town of Deerfield has recently reviewed its blasting regulations, and a blasting limit of 0.2 ppv (Peak Particle Velocity) was added to their requirements to ensure protection of historic structures. Under the new limitations, the neighboring Lutheran church is considered a historic site.

Staff Summary

In summary, as noted above, the primary outstanding issue with CUP 2103 was over Condition No. 3 of its initial approval and compliance with the town blasting and mineral extraction licensing applications. This condition has been satisfied with receipt of the appropriate town licenses. The other previously purported condition violations have been adequately addressed, as outlined later under the "STAFF REVIEW" section of this report.

Staff consulted with Corporation Counsel with regard to the violations of the conditions of approval and the status of a Conditional Use Permit once violated. Corporation Counsel provided the following response to these questions: "10.255(2)(i) states that the committee may stipulate such conditions "as deemed necessary to promote the public health, safety and general welfare of the community **and to secure compliance with the standards and requirements in subsection (h) above,.**" So, generally if a permittee is complying with the conditions it should be presumed they are meeting the standards and the committee should not be going back to reevaluate their prior decision." Counsel added that " . . . in a very unique situation the committee could find a standard violated, say #1 (not be detrimental to or endanger the public health, safety, comfort or general welfare) if the permittee started using some process or technology that was ultrahazardous and not contemplated at the time of issuance of the permit."

The land use originally contemplated under CUP 2103 was for a mineral extraction operation to include blasting, and the blasting was expected to fall within the parameters allowed by state regulations. Blasting is under the state of Wisconsin's jurisdiction, and the state has opined that the blasting is within state parameters. The supervisor of the Wisconsin Mine Safety Program, Greg DiMiceli, visited this site twice in the latter half of 2015 and commented in a letter dated December 2, 2015 that, "In no case were any violations of state code noted during these visits. I have reviewed all local blasting reports from March 16, 2015, through October 13, 2015. The blasting activity at this site demonstrates a clear and sustained pattern of compliance with Wisconsin Administrative Code SPS 307."

While claims have been made by some neighbors disagreeing with the state's conclusions, this matter is under the jurisdiction of the state, and now also the town of Deerfield with the adoption of its blasting ordinance and issuance of its blasting license to Oak Park Quarry. Compliance with the town of Deerfield's mineral extraction and blasting provisions is wholly under the town's purview and subject to the town's independent administration and enforcement. Dane County does not have jurisdiction and is not qualified to be challenging the technical aspects of blasting, neither under state regulations, nor town ordinance.

Staff update 6/10/16

Pursuant to committee discussion at the May 10, 2016 ZLR work meeting, the committee conducted a site visit on June 1, 2016 to St. Paul's Liberty Lutheran Church, the quarry, and the round barn at Schuster's Farm.

In previous ZLR meetings, committee members and staff have discussed the possibility of acquiring an outside, third-party expert to determine whether blasting at this quarry could be causing damage to structures as alleged by surrounding property owners. The operator has secured the services of experts to opine on this matter (e.g. [Professor Dowding with Northwestern University](#)) that challenge the basis of such causality. While seemingly credible, the objectivity of the analysis is questioned due to it being solicited and paid for by the operator.

Staff have informally contacted a number of 'forensic' structural engineering firms to get a sense of what may be available in the market for an outside third-party analysis, and it is clear that there is sufficient availability of such experts. However, the cost of doing a full independent analysis would be significant. While a formal 'request for quotes' was not initiated by staff, and the possible range of costs would vary due to a number of factors, one engineer indicated that the cost could start at \$25,000, and quickly

exceed \$40,000 depending on how in-depth a study would be conducted. Unless the county is looking to establish a precedent for paying out-of-pocket for such analyses based on similar allegations in the future, claims of damage between neighboring property owners may best be left to civil proceedings between property owners. For now, in the opinion of staff, the most practical and tangible approach for deciding a course for CUP 2103 seems to be reliance on the existing regulations and conditions of approval.

As stated previously, Dane County cannot regulate blasting, but the town already does, and it has recently imposed stricter blasting standards for this site due to its location in proximity to the historic Lutheran church. Conditional Use Permit 2103 already has a condition, Condition No. 3, requiring the operator to be in compliance with all other local, state, and federal permits. Upon resuming operations at the quarry, if the town of Deerfield finds that the operator is not in compliance with its recently amended blasting ordinance, then Dane County would have cause to once again consider possible revocation of CUP 2103 based on noncompliance with Condition No. 3. For now, the matter of CUP 2103 rests predominantly on the operator's compliance with the town's blasting ordinance.

Staff recommendations

County Staff is suggesting one of two courses of action. These recommendations are based on the fact that the operator is currently in conformance with the 14 conditions of approval under CUP #2103 and the Town of Deerfield has adopted blasting ordinances which require the blaster operating at the Oak Park Quarry to blast at a 0.2ppv limit:

1. A motion to be made not to revoke conditional use permit, notwithstanding that future violations of the conditions of approval will be cause for revocation procedures to be enacted.
2. A motion to be made to postpone action on the revocation of the conditional use permit until October of 2016 in order to verify that the blasting conducted at the Oak Park Quarry can follow the limitation found within the Town of Deerfield blasting regulations.

Staff Report Review and Possible revocation of Conditional Use Permit # 2103



HISTORY

The property at 3522 Oak Park Road has been used for the extraction of non-metallic mineral (limestone) since 1981. One mineral extraction permit and four (4) conditional use permits have been issued over the years to allow the quarrying activity to exist on the property. The current conditional use permit, CUP #2103 was issued in 2009 to B.R. Amon & Sons for the quarry operation on the former Mandt property. The permit was approved with 14 conditions.

Since that time, the property was purchased by Jon Halverson (Oak Park Quarry, LLC) in 2010. Mr. Halverson has continued the quarrying activity on the property as allowed under CUP #2103.

PROCESS

Non-metallic mineral extraction operations may be allowed in certain zoning districts under a conditional use permit. In order for the conditional use permit to be granted, the Zoning and Land Regulation Committee must find that all of the six standards as listed in Dane County Code of Ordinances Section 10.255 must be met. The standards are as follows:

1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare.
2. That 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.
3. That 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.

4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.
5. That adequate measures have been or will be being taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;
6. That the conditional use shall conform to all applicable regulations of the district in which it is located.

CUP #2103

In March of 2009, the Dane County Zoning and Land Regulation Committee held a public hearing regarding conditional permit #2103. The request was made due to the previous conditional use permit, CUP #1757, was about to expire. There was no public opposition with regards to the continuation of the quarrying activity on the property. The Town of Deerfield Board voted unanimously in favor of the issuance of the permit. As part of the approval, 14 conditions were place on the in order to satisfy the standards for obtaining a conditional use permit. The conditions of CUP # 2103 are as follows:

1. The applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
2. Reclamation shall meet the requirements of Chapter 74 of the Dane County Code of Ordinances.
3. The applicant shall apply for and receive all other required local, state and federal permits.
4. Operations shall cease no later than 10 (ten) years from the date of CUP approval.
5. The driveway accessing the subject site shall be paved for a distance of at least 100 feet from the public road. 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.
6. The haul route will be Oak Park Road South to USH 12.
7. 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."
8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m., Monday through Friday, and from 7:00 a.m. to 1:00 p.m. on Saturdays. No operations of any kind shall take place on Sundays or legal holidays.
9. There shall be a safety fence around the entire extraction area at all times. That safety fence shall be a minimum of 5 feet in height with a single strand of barbed wire on the top.
10. No water shall be pumped or otherwise removed from the site.
11. There shall be no bulk fuel stored on site
12. The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
13. The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076.
14. 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. Unless the operation is in reasonable compliance with these terms of this approval, such approval is subject to amendment or revocation.

Concerns

Over the last year, the Zoning Division has been receiving complaints regarding the operation of the quarry. In July of 2014, the Town Board expressed their concerns regarding potential violations of the conditions of approval for the quarry. Also, the Zoning Division has received several complaints from neighboring residents and a local church representative regarding concerns on the intensity of blasting at the quarry operation.

STAFF REVIEW

County staff has conducted a review of the conditions of approval for Conditional Use Permit #2103. The results of each condition of approval are as follows:

Condition #1: The landowner is in compliance with erosion control requirements. Dane County Erosion Control Permit # EC2015-0145 is on file with Dane County Zoning Division.

Condition #2: The owner is in compliance with Reclamation requirements. The owner of the property has accepted the responsibilities for reclaiming the land when he purchased the property. Reclamation permit #74-2 and financial assurance is on file with the Dane County Zoning Division.

Condition #3: The owner of the property is not in compliance with this condition. The land owner has not obtained a Town of Deerfield Blasting License and/or Mineral Extraction License. All State and County permits/licenses have been obtained. See attached permit review sheet.

Condition #4: The owner is in compliance. The conditional use permit for the operation was approved in 2009. The operation may continue until March 24, 2019.

Condition #5: The main driveway is in compliance with the condition. A new driveway has been installed on the property that is not in conformance with the condition requirements. The new driveway does not fall within the boundaries of the CUP, it reflected on an approved operation plan or reclamation plan, and it is not paved at least 100 feet from the public road. The landowner has been instructed not to use the driveway for mineral extraction purposes.

Condition #6: The current haul route is in compliance with the condition.

Condition #7: The access point is in compliance with the condition.

Condition #8: The quarry is currently in compliance with the hours of operation. In 2014, complaints were filed by the Deerfield Town Board and neighbors with regards to starting operations prior to 6:00am. Since that time, the hours of operation have been followed.

Condition #9: A site inspection was conducted this October. The extraction area was fenced and was found to be in compliance with the safety fencing requirements.

Condition #10: The landowner is in compliance with the condition. The property is internally drained and no water leaves or is removed from the site.

Condition #11: The landowner is in compliance with the condition. Portable fuel containers are used for the equipment. No bulk fuel is being stored on site.

Condition #12: The operator appears to be in compliance with the muffler system requirements. However, all equipment and trucks appear to be owned by sub-contractors working at the site.

Condition #13: The landowner appears to be in compliance with particulate emissions. Rock ledge quarries sites that produce less than 300,000 tons on a rolling annual basis are exempt from air emission standards. The portable crushers that were used on site appear to be in compliance with emission standards.

Condition #14: The landowner allows inspections to be conducted on the site when requested. Previous violations observed have been corrected in a timely manner.

REVOCATION

Revocation of a conditional use permit. If the zoning committee finds that the standards in subsection (2)(h) and the conditions stipulated therein are not being complied with, the zoning committee, after a public hearing as provided in subs. (2)(f) and (g), may revoke the conditional use permit. Appeals from the action of the zoning committee may be as provided in sub. (2)(j).

Permit Review Sheet

Local Permit – Town of Deerfield

Blasting and Mineral Extraction licenses

The Town of Deerfield has recently adopted ordinances for the regulation of Blasting and the Non-metallic Mining Operations. County Staff has requested an update concerning the submittal and/or processing of licenses for the Oak Park Quarry.

On November 30, 2015, the Town Clerk responded to the request. The Town of Deerfield mailed the applications to the owner of Oak Park Quarry, Ahlgrimm Explosives, and the owner's attorney. As of that date, the Town of Deerfield is not in receipt of an application.

Driveway permit

A driveway permit was issued by the Town of Deerfield on July 21, 2014 for installation of an alternative route to the quarry. The new driveway allows the quarry to be accessed further south onto Oak Park Road. However, the driveway is outside the limits of the CUP and therefore can not be used as part of any mineral extraction uses.

The new driveway may only be used for agricultural purposes until such time as the boundaries of the conditional use permit are amended.

State of Wisconsin Permits

Stormwater /Wastewater Permit

The Wisconsin DNR regulates the discharge of pollutants to waters of the state through the Wisconsin Pollutant Discharge Elimination System (WPDES) program and the Storm water Management program. In 2013, a letter of intent for this mineral extraction site was reviewed by the DNR and found to be acceptable. See attached Nonmetallic Mining Operations permit WI-0046515-5.

Air Emissions Permit

The Wisconsin DNR issues general operation permit for rock ledge quarries that produce over 300,000 tons of material over an annual rolling basis. The Oak Park Quarry falls under this requirement and is exempt from an operations permit.

Portable crushing equipment used on the site requires an air emissions permit. It appears that the sub-contractor used to crush the aggregate has air emission permits for all of their portable crushers.

Blasting

The Wisconsin Department of Safety and Professional Services licenses blasters under their explosives program. Ahlgrim Explosives Company is being used as the blaster for the Oak Park Quarry and currently holds the necessary licenses to conduct the blasting activity.

There have been concerns regarding the intensity of the blasting occurring at the Oak Park Quarry. The Wisconsin SPS reviewed the blasting reports for the Oak Park Quarry over the last few months and found that the blasting occurring at the Oak Park Quarry is in compliance with the Wisconsin Administrative Code SPS 307. See attached letter from Greg DeMicelli.

Dane County Permits

Reclamation Plan

- BR Amon & Sons submitted a reclamation plan on January 2, 2002. Aicardo Roa with the Land Conservation office approved the plan on May 15, 2002. The reclamation plan does include some basic erosion control measures and the lands are to be returned back to an agricultural use when mining has ceased. On December 14, 2010, Jon Halverson signed a certification of permit transfer and assumes all responsibilities of the approved reclamation plan.

Conditional use Permit for Non-metallic Mineral Extraction

Conditional Use Permit #2103 was issued on March 24, 2009 for the non-metallic mining operation. The permit will expire on March 24, 2019. The permit includes the standard conditions for mineral extraction operations which include hours of operations and State requirements.