

May 10, 2022

***Via E-Mail - clerk@town.rutland.wi.us***

Town Clerk  
Town of Rutland  
4177 Old Stage Rd.  
Brooklyn, WI 53521

RE: Conditional Use Permit 2022-02563 for Non-Metallic Mineral Extraction  
Our File No. 26199.85032

Dear Clerk,

I represent Nelson Excavating and Son, LLC. We submit this letter in response to a letter submitted by Attorney Christa O. Westerberg on behalf of Gail Simpson and Henry Spelter and the comments made at the public hearing on April 28, 2022.

Despite their allegations, Nelson Excavating meets its requirements for a conditional use permit at the parcel adjacent to Center Road. While the application is for a "new quarry south" of Nelson Excavating's additional site, it is in the same location and only expands upon Nelson Excavating's preexisting use of the area. It is a "new" impact, but similar to what already exists. The CUP includes plans for everything required to obtain a conditional use permit, and if the Board would like additional information, Nelson Excavating will do its best to provide that information.

One aspect of this CUP that is more or less ignored is that the area is already zoned as FP-35. While true that this mainly references farm use, the description of the zoned area acknowledges that there will be noise, dust, odors, heavy equipment, and chemicals in use for long hours of operation. While the quarry is different in type to farm use, the residents cannot be surprised by the sounds they will hear.

Nelson Excavating is not required to have every plan drawn up before granting the CUP. Nelson Excavating will submit a reclamation plan to Dane County upon approval of the CUP for this site.

**STANDARD 1: The proposed land use will not be detrimental to or endanger the neighborhood's health, safety, comfort, or general welfare.**

The CUP must explain how Nelson Excavating will limit activities to a "reasonable level," not whether Nelson Excavating will eliminate any noise that the site will generate. As explained, Nelson Excavating will utilize physical barriers to assist in diffusing noise generated from the quarry. Further, Nelson Excavating used generally accepted geologic and hydrogeological practices that are the industry standard for quarry and mining operations in creating this CUP.

Nelson Excavating does not need to have every example listed by Dane County for it to satisfy reasonableness. The things listed by the county are examples, not requirements, and may vary from use to use. As outlined in the CUP application, Nelson Excavating is taking precautions to limit its activity to reasonable levels. Further, there is already a quarry in the parcel directly to the north. Nelson Excavating has maintained that site properly and will continue to do so in this parcel.

Some written complaints opposing the quarry generally state that they believe Nelson Excavating is not doing enough. However, they do not suggest anything reasonable that it could do to alleviate the concerns. They further do not state any authority proving that what Nelson Excavating is doing is insufficient. Some complaints were raised regarding trucks in the area; however, many noted that Nelson Excavating's trucks were not causing the problem.

Finally, the FP-35 Zoning of the parcel anticipates the alleged disturbances. Any of the possible noise conditions that will occur with Nelson Excavating's use are not outside of the uses already anticipated on the parcel. Simply because those noise conditions are not currently there is no reason to deny Nelson Excavating the CUP.

**STANDARD 2: The uses, values, and enjoyment of other properties in the neighborhood already permitted shall in no foreseeable manner be substantially impaired or diminished by the establishment, maintenance or operation of the proposed conditional use.**

As noted by the blaster who spoke with the board on April 28, 2022, more blasting does not necessarily mean more noise. The experienced blasting crews that Nelson Excavating retains can time the blasts so that they all occur at the same time. A larger quarry may mean that Nelson Excavating can blast more; however, since the blasting occurs at the same time, the overall noise output is not unreasonably increased. Twenty blasts timed to go off at the same time is functionally similar to a single blast.

Attorney Westerberg's objections to the CUP do not note how the neighborhood's quality of life has decreased from the already existing quarry area. It mentions specifically that it will interfere with hanging laundry, opening windows, or hosting very niche events like graduation parties.

However, the letter does not justify how they will be affected. Further, the letter does not allege any impact from the preexisting quarry to the north of the CUP site.

As stated in our application, mining is suitable for low population areas like the present area. There will not be constant “fears” regarding hours of operation. Nuisance conditions will not be occurring as frequently as suggested outside of the normal operation. Further, as already noted, the area is zoned as FP-35 and, as the Ordinance states for FP-35 zoning, noise, dust, odors, and heavy equipment are expected for long hours of operation.

As outlined in our emissions control plan, Nelson Excavating has plans for potential fugitive emissions sources and management controls for transportation, crushing, screening, conveying aggregate, stockpiling, truck transport, and total facility. Nelson Excavating also outlines control options they will implement, such as water spray applications, shrouding, chemical dust suppressant application, drop height management, site traffic speed control, timing management, paving, and sweeping.

**STANDARD 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.**

If the “normal and orderly development” of the area is only related to farmland, then the CUP would not interfere with that. The Comprehensive Plan encourages land use consistent with the town’s rural character, and a quarry would certainly be in line with that plan. There appears to be no plan for development other than for agricultural, farm, or “rural” uses. Farm operations in the surrounding area are not going to be impeded by the quarry.

**STANDARD 4: There are adequate utilities, access roads, drainage, and other necessary improvements to allow the land use or improvements are planned to provide adequate measures.**

Some were concerned with the water supply in the area. The water supply is sufficiently separated from the quarry to not be contaminated. Nelson Excavating had a well survey done to ensure that well water would not be contaminated. Nelson Excavating also has a certified Storm Water Pollution Prevention Plan as is required by the State. There were also concerns regarding an erosion plan; however, an erosion control plan is not required before approval for the CUP. Nelson Excavating is utilizing WDNR’s “construction site best management practices” handbook to prevent erosion and sediment loss.

**STANDARD 5: Adequate measures have been or will be taken to provide adequate ingress/egress to public streets and the proposed conditional use will not present traffic conflicts.**

The quarry will have to make use of the road, and there will be busy and slow days. However, as was noted by residents at the public hearing, Nelson Excavating has been a conscientious user of the roads, unlike other quarry operations in the area. Further, these are rural roads where there is not likely to be heavy vehicle traffic. If there are concerns about the use of the roads, those concerns should be directed to the companies whose drivers are misusing public roads.

If there is a concern regarding road traffic, two open entrances to the road would decrease traffic congestion as there would be more than one entry point. Fewer employees and other visitors would be waiting to turn in to the Quarry.

**STANDARD 6: The conditional use shall conform to all applicable regulations of the district in which it is located.**

The letter submitted by Attorney Westerberg asserts broadly that the use of the parcel as a quarry does not conform with Wis. Stat. § 91.46(6); however, as is shown, Nelson Excavating does conform to the six legal requirements of non-metallic mineral extraction. If they claim we do not meet one of the requirements, they should point out which requirements we do not meet.

The letter also alleges that we do not meet the requirements of Dane County ordinance Chapter 74. That is a broad ordinance, and if they oppose our use and think we are not following the rules, they should point out which provisions we are violating or are unable to meet. Chapter 74 is 26 pages long, and it would take an unreasonable amount of time to separately address each provision in a CUP application.

**STANDARD 7: The conditional use is consistent with the adopted Town and County Comprehensive Plans.**

Nelson Excavating has summarized why its use is consistent with and advances the Town and County Comprehensive plans. Nelson minimizing the amount of land converted to agricultural use to accommodate permitted non-farm developments is in line with the building of a quarry as it is an accommodation of non-farm developments to satisfy a need for stone and minerals in the area.

This CUP permit only turns an existing gravel pit into a quarry. It keeps separate the farmland and the quarry. This is in line with the Dane County Comprehensive Plan. Some have summarily stated that the CUP is inconsistent with the Town and County Comprehensive Plans. The plans already seek to limit the density of residential development, and this involves no residential development.

## **STANDARD 8: Five Requirements for Non-Agricultural Uses in Farmland Preservation Areas**

### **1. The proposed use is consistent with the purpose of the district**

First, the FP-35 zoning district does not require the parcel to be used solely for agricultural purposes. The FP-35 Zoning district acknowledges that there will be noise, dust, odors, heavy equipment, and chemicals in use for long hours of operation. This defeats the argument that residents will be in constant fear of the operation of the quarry. They already should have expected these uses as per the preexisting zoning requirements and expectations set by Dane County.

### **2. The proposed use is reasonable and appropriate with alternative locations considered.**

First, the Nelson Excavating does not need to explain every reason why it did not purchase a different site. Nelson Excavating already owned this parcel and the adjacent quarry to the north. These uses are not so different as to warrant purchasing new land in another part of the county for the operations.

The residents already expected the noise, dust, and other alleged nuisances per the FP-35 zoning requirements. Further, the use of the parcel only perpetuates the preexisting expectations of the existing quarry.

### **3. The proposed use is reasonably designed to minimize the use of agricultural lands.**

The proposed use is not required to describe every detail of the buildout into mining operations. Nelson Excavating has laid out the use of the area after mining operations cease; thus, it considers it possible. It is impossible to tell the amount of reclamation that will be achieved at this stage of the project. The surrounding farmland will still be preserved for agricultural use.

### **4. The proposed use does not substantially impair the current or future agricultural use of surrounding parcels.**

The currently existing Quarry does not interfere with the surrounding land for farm use, so it is unlikely that this expansion will interfere as well. If the opposition believes that it will, they should point out those ways in which the expanded quarry will impact agriculture in the surrounding area, and Nelson Excavating can address those concerns. Nelson Excavating is committed to partnering with the community to alleviate concerns with the quarry.

Likewise, blanket statements that Nelson Excavating has failed to discuss the current agricultural use of surrounding parcels are unsupported. There is no evidence that this will impair the current or future agricultural use of surrounding parcels any more than the already existing quarry does, which imparts little to no impairment.

**5. Construction damage to remaining lands in agricultural use is minimized and/or repaired.**

Nelson Excavating lists methods in its CUP application to preserve the remaining land's ability to be used for agriculture in the future. There are some concerns that Nelson Excavating does not list what standards were required that Nelson Excavating has not met.

Further, direct haul routes significantly minimize the utilization of potential agricultural use as it does not disrupt prime agricultural land.

For the foregoing reasons, Nelson Excavating has satisfied the requirements for a conditional use permit to extract reserves from the parcel.

Sincerely,

AXLEY BRYNELSON, LLP



Charles "Buck" V. Sweeney  
CVS:NTR