
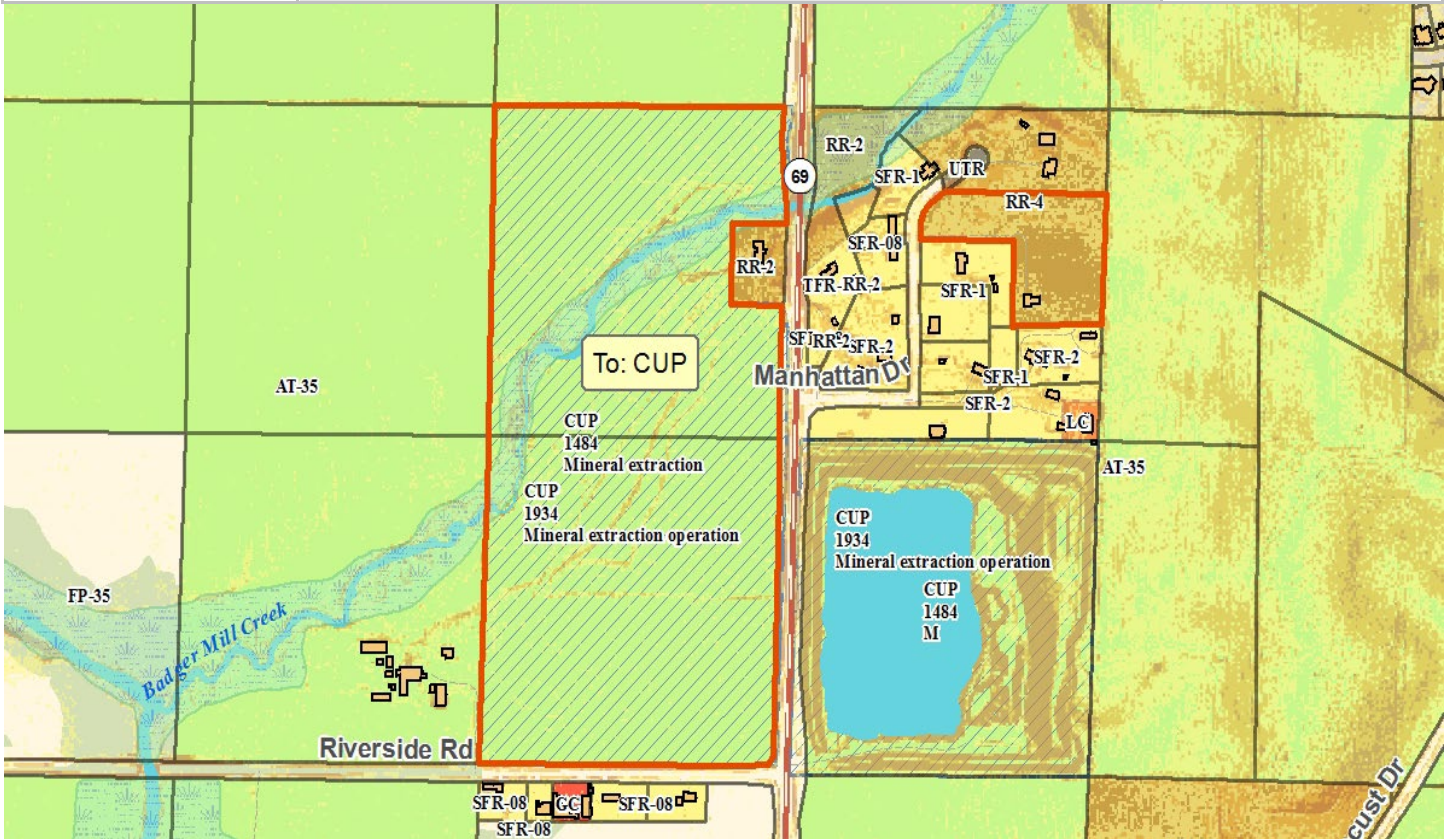


<p><b>Staff Report</b> (Andros)</p>  <p><b>Zoning and Land Regulation Committee</b></p>	<p>Public Hearing: <b>June 28, 2022</b></p>	<p><b>CUP 02567</b></p>
	<p><u>Zoning Amendment Requested:</u> <b>TO CUP: Allow crushing at an existing non-metallic mineral extraction site</b></p>	<p><u>Town/Section:</u> <b>VERONA, Section 28</b></p>
	<p><u>Size:</u> <b>80 Acres</b>      <u>Survey Required.</u></p>	<p><u>Applicant</u> <b>CURT &amp; DEB HERFEL</b></p>
	<p><u>Reason for the request:</u> <b>Allow crushing at an existing non-metallic mineral extraction site</b></p>	<p><u>Address:</u> <b>1977 STATE HWY 69, SOUTH OF 2005 STATE HWY 69</b></p>



**DESCRIPTION:** This application is for allowing crushing at an existing mineral extraction site (CUP 1934) in the AT-35 zoning district. State Highway 69 which runs directly in front of the subject site is being rehabilitated and reconstructed from Belleville to Verona over the next two years, and the applicant (Payne & Dolan) will be supplying fill and aggregate for the project. The general contractor for this project has expressed the need for a substantial amount of crushed aggregate. Because the current CUP does not allow crushing, the applicant had to apply for a new CUP. CUP #1934 allows for various mineral extraction related operations including site development, sand and gravel extraction, processing, washing, product delivery, and reclamation, but it does not allow crushing. The key condition necessitating a new CUP, is condition number 18 which states “no crushing shall be done on site”.

This application includes keeping all of the other previously approved conditions and operations outlined in CUP #1934. The only difference between this submittal and the currently approved CUP is the ability to bring 2-3 portable crushing units unto the site in order to crush the gravel. All the other operations such as screening, washing and conveying are already allowed. Crushing will only take place on the west side of Highway 69, also referred to as Phase 2. Payne & Dolan is not requesting any other changes to the permit and will abide by all the applicable conditions in CUP #1934.

CUP 1934 was approved with 47 conditions of approval, based on the specifics of the proposal and concerns raised during the public process. Some conditions worth noting include: no blasting or drilling, no permanent buildings, the

implementation of a groundwater monitoring plan (including well testing), and the designation of an area north of Badger Mill Creek as a buffer area in which no mineral extraction shall take place. The key condition necessitating a new CUP, is condition number 18 which states “no crushing shall be done on site”.

If this conditional use permit request is denied, then CUP #1934 would remain in place and the site will continue to operate.

**HISTORY & OBSERVATIONS:** The proposed CUP is 80 acres in size. The current CUP (#1934) was approved in 2005, and there is a history of permitting for mineral extraction going back to 1998. The original proposal for CUP 1934 was for a 113+ acre site to be operated in two phases. Phase 1 was located east of state trunk highway (STH) 69 and was the initial site for sand and gravel extraction as well as other operations such as processing of material and dispatching trucks. Phase 2 was planned for removing sand and gravel from the west side of STH 69 and conveying the material under the highway to the operations and processing area. This CUP is located on the west side of STH 69.

The Badger Mill Creek runs through the property, as well as associated floodplain and wetland areas (see map). The geology of the site was formed by a glacial outwash river which once flowed down the Badger Mill Creek Sugar River Valley. According to a geologic survey conducted by the applicant, the sand deposit begins roughly 8 to 10 feet below the surface, and is in excess of 50 feet thick. Nearly all of the deposit lies beneath the groundwater table. The surrounding area is primarily rural agriculture in character. A small unsewered subdivision is located east of STH 69. It is worth noting that zoning petition #11854 for a multi-family residential development is located in this rural residential subdivision. Proximity to an active permitted mineral extraction operation should be noted for that proposal. Four residences and one commercial use (auto repair) are located south of the CUP area, south of Riverside Road.



**TOWN PLAN:**

The subject property is in the *Transitional Agriculture* and the *Environmental Resources Protection Corridor* future land use areas in the town of Verona Future Land Use map (Map 9.6). The primary intent of the Transitional Agriculture area is for potential future rural residential development. The intent of the Environmental Resources Protection Corridor is to direct structural development away from environmentally sensitive features such as wetlands and floodplains.

**COUNTY ZONING ORDINANCE**

**Compliance with Standards Required for Granting Conditional Uses:** Chapter 10 provides eight standards for granting a CUP in Section **10.107(7)(d)(1)**, 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.
7. That the conditional use is consistent with the adopted town and county comprehensive plans.
8. If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the finding described in Section 10.220(1)

**CONDITIONS:**

During the comprehensive rewrite of the Dane County Zoning Ordinance, a great deal of work was put into developing a comprehensive list of conditions to apply to all conditional uses. In addition, extra time, attention and expertise was put into developing a list of conditions for a subset of specific uses - mineral extraction being one such use. The conditions are as follows:

*Standard CUP Conditions.* The zoning committee (ZLR) shall impose, at a minimum, the following conditions on any approved conditional use permit, which are common across all CUPs:

- 1) Any conditions required for specific uses listed under s. 10.103 (see list below).
- 2) The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and phasing plan.
- 3) 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.
- 4) 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.
- 5) 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.

- 6) 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.
- 7) All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
- 8) Off-street parking must be provided, consistent with s. 10.102(8).
- 9) 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.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) 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.

*Standard Mineral Extraction CUP Conditions.* The following are conditions for all mineral extraction conditional use permits. The town board and zoning committee shall impose, at a minimum, the following conditions on any approved conditional use permit for mineral extraction:

- 1) 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.
- 2) 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.
- 3) The Town and Committee will set an expiration date for the conditional use permit based on the quantity of material to be removed and the expected duration of mineral extraction activities.
  - a) Extensions. Due to uncertainty in estimating duration for mineral extraction, conditional use permit holders who have operated without violations, may have the duration of their permit extended for a period not to exceed five years, based on an administrative review by the zoning administrator, in consultation with the town board. No more than one such extension shall be granted over the lifespan of the conditional use permit, and all conditions shall remain the same as the original permit. Further extensions or any modifications of conditions shall require re-application and approval of a new conditional use permit.
- 4) 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) Highwalls shall be free from falling debris, be benched at the top, and certified by a civil engineer to be stable.
- 5) 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.
- 6) 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."

- 7) All surface and subsurface operations shall be setback a minimum of 20' from any property line that does not abut a public right of way.
- 8) Excavations below the grade of an abutting public street or highway shall be set back from the street or highway a distance at least equal to the distance that is required for buildings or structures under s. 10.102(9). The committee and town board may require greater setbacks where necessary to avoid subsidence, or for consistency with Chapters 11, 14, 17 or 74, Dane County Code.
- 9) The Town and Committee will assign hours of operation appropriate to the particular application. No operations of any kind shall take place on Sundays or legal holidays. The committee and town board may approve limited exceptions to normal hours of operations for projects associated with Wisconsin Department of Transportation or municipal road projects requiring night work. [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).] See specifics for this operation below.
- 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) 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.
- 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, Wisconsin Administrative Code.
- 14) 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.
- 15) At their own initiative or at the applicant's request, the town board and zoning committee may set further reasonable restrictions on a mineral extraction operation, or prohibit any mineral extraction accessory use.
- 16) Additional conditions for particular circumstances. Where any of the following circumstances apply, the zoning committee and town board shall also impose the following conditions on any approved conditional use permit for mineral extraction:
  - a) Blasting:
    - (1) Blasting Schedule. 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. Schedules for blasting need not conform to hours of operation for the overall mineral extraction project.
    - (2) 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, operators will honor the requests of residents within 500' of the mineral extraction site to either receive or stop receiving such notices at any time.
    - (3) Other standards. All blasting on the site must conform with all requirements of SPS 307, Wisconsin Administrative Code, as amended from time to time, or its successor administrative code regulations.
    - (4) Fly rock shall be contained within the permitted mineral extraction area.
  - b) Fuel storage. All fuel storage must comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment.
  - c) Mineral extraction at or near groundwater. 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.

**TOWN:** As of June 13, 2022, we have not yet received a Town Action Report.

**STAFF:** Staff recommends postponement. Prior to the ZLR work meeting, staff will work on a list of potential conditions that will take into account the specifics of this proposal including town and public input provided at the public hearing.

The draft conditions will be subject to deliberation and modification by the Zoning and Land Regulation (ZLR) Committee.

*Questions? Contact Alexandra Andros at 608-261-9780 (office), 608-720-0168 (mobile) or email [andros@countyofdane.com](mailto:andros@countyofdane.com)*

