

Staff Report



**Zoning and
Land Regulation
Committee**

Public Hearing: **September 22, 2020**

Zoning Amendment Requested:

TO CUP: Mineral Extraction Accessory Use - stockpiling and processing concrete and asphalt pavements for the purpose of recycling and reuse

Size: **38.2 Acres**

Survey Required.

Reason for the request:

Mineral Extraction Accessory Use - stockpiling and processing concrete and asphalt pavements for the purpose of recycling and reuse

CUP 02500

Town/Section:

BURKE, Section 24

Applicant

**Wolf Paving &
Excavating**

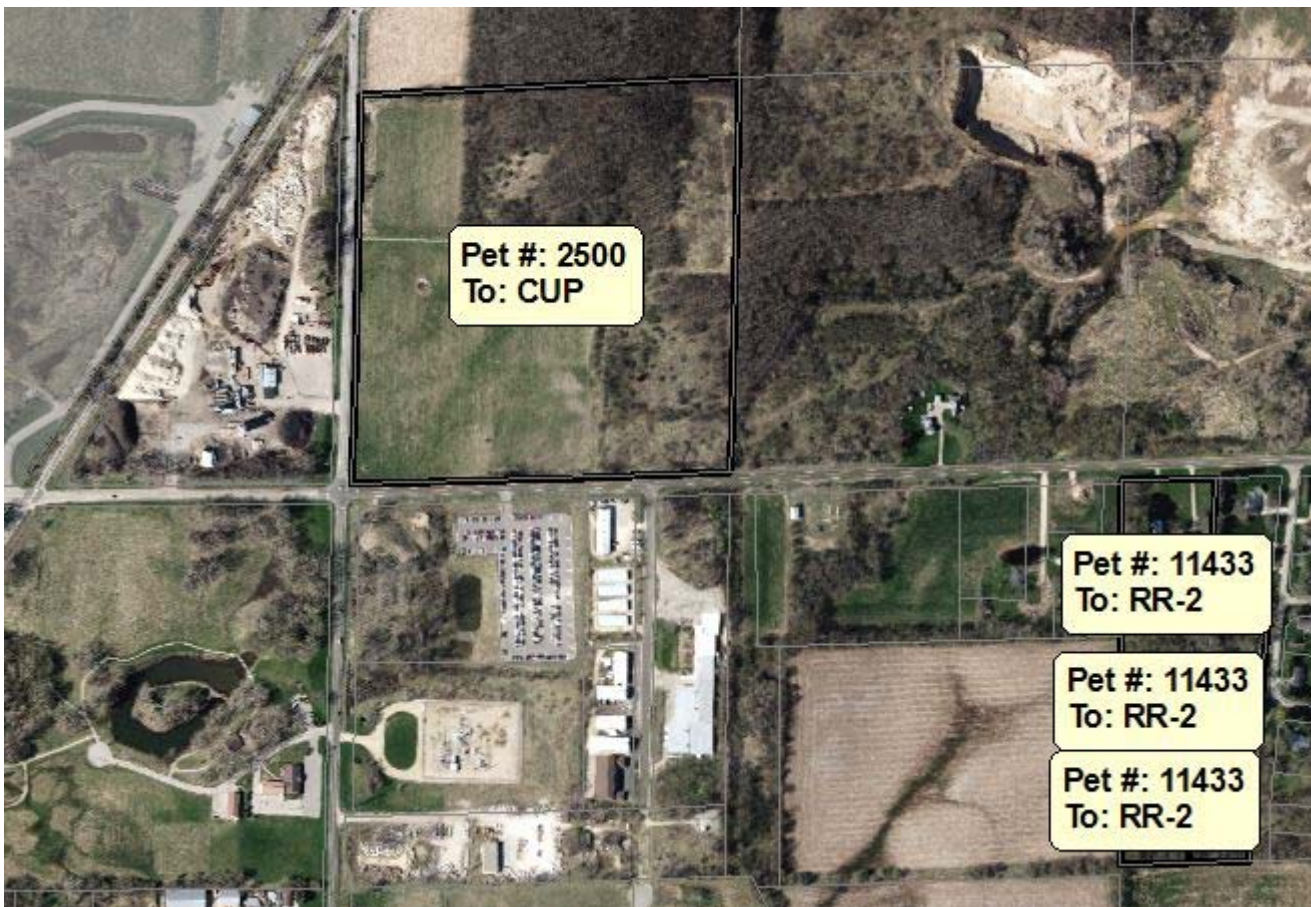
Address:

**EAST OF 5423 REINER
ROAD**



DESCRIPTION: This application is for stockpiling and processing concrete and asphalt pavements for the purpose of recycling and reuse. The proposed use is an accessory use to mineral extraction. There will be no blasting at this site.

OBSERVATIONS: The property is located at the northeast intersection of Reiner and Nelson Roads in the town of Burke, and borders the City of Madison. It is surrounded by a mixture of industrial, extractive, commercial and residential land uses. Directly to the west is an asphalt plant, to the east an active mine, and southwest a concrete batch plant. There are a several single-family homes on large lots to the southeast of the site, and a subdivision to the east along Sunnyburke Drive. A recent petition to create residential lots (pet#11433 by Peter & Chelsea Sachs) will create more residential lots along the same street (see image below).



DESCRIPTION OF OPERATION: Next door to the proposed site, Wolf Paving has an existing operation where the company operates an asphalt plant including storing of materials needed for production, the recycling of asphalt and concrete materials, and has an existing shop and building. This existing site is undersized and this proposal will provide more space for activities associated with mining including aggregate stockpiling, equipment storage and recycling of concrete and asphalt materials.

Ingress and egress will be from Reiner Road and all interior roads will be paved. To further minimize dust, all interior roads will be watered as necessary depending on weather conditions. Hours of operation will be 6:00 a.m. to 7:00 p.m. Monday through Saturday with the majority of operations occurring from the months of April through November. Occasional operations would be necessary at night or weekends to support projects in the area that might require such timing. The proposed operation would share employees and resources with the property directly to the west. It is anticipated that no more than 10 employees would be on site at any time depending on the level of operations occurring.

TOWN PLAN: The subject property is located in the town's single-family residential land use area. The property is located in the Madison portion of the cooperative plan between the town of Burke, City of Sun Prairie and Village of DeForest. This property is part of an area that the City plans for neighborhood development and related uses.

COOPERATIVE PLAN AND INTERGOVERNMENTAL AGREEMENTS: The subject area is within the City of Madison, City of Sun Prairie, Village of DeForest & Town of Burke cooperative plan, and is included in intergovernmental agreements with the City of Madison. In discussions with the City of Madison, the applicant agreed to restore the site in such a way that it will complement the City's future plans. The final land use will be identified in the reclamation plan as required in Chapter 74, non-metallic mining reclamation.

CITY OF MADISON COMMENTS: The City objects to this proposal based on a lack of consistency with the town of Burke plan and the Cooperative Plan, as well as failure to meet standards related to approving CUPs as stated in the County Zoning Ordinance. The City also requested, that if the county does approve CUP 2500, that they do so with 2 additional conditions. These are discussed under "Staff Recommendations" later in this report. *Please see attached letter for*

further detail. Applicant provided a letter to the town of Burke in response to the concerns raised by the City of Madison. *Please see attached applicant letter to the town.*

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: If the permit is approved, staff recommends that all of the following conditions be applied to CUP 2500. The conditions below are divided into three sections. The first section of conditions are those required of *all* conditional use permits. The second set of conditions below are *standard* for all conditional use permits *for mineral extraction*. It should be noted that because there is no blasting proposed at this site, some of the included standard conditions will not be applicable. The third and final set of recommended conditions are based on the *specifics of this site and proposed operation*, and where appropriate, the concerns expressed during the Town Board meeting and comments received in advance of the ZLR public hearing. If approved by ZLR, staff recommends that all three sections of conditions below be applied to CUP 2500, in addition to those approved by the town of Burke and with which ZLR is in agreement.

Standard CUP Conditions. The town board and zoning committee 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.

Conditions Unique to CUP 2500. Potential conditions of approval specific to CUP 2500 (note that these are *DRAFT* conditions subject to deliberation and modification by the Zoning and Land Regulation Committee):

- 1) There shall be no blasting on this site.
- 2) Ingress and egress shall be off Reiner Road.

- 3) Hours of operation shall be from 6:00 a.m. to 7:00 p.m., Monday through Saturday. Operations outside of these times must be for projects that require such timing.

TOWN: The town of Burke has approved with conditions. The town conditions varied from those recommended above with those that are unique to CUP 2500. They are as follows:

Conditions Unique to CUP 2500. Potential conditions of approval specific to CUP 2500
(note that these are DRAFT conditions subject to deliberation and modification by the Plan Commission and Town Board):

- 1) There shall be no blasting on this site.
- 2) The site plan including driveway location, ingress, egress, turn lanes, etc. shall be approved by the Town Engineer prior to construction.
- 3) Hours of operation shall be from 6:00 a.m. to 7:00 p.m., Monday through Saturday. Operations outside of these times must be for projects that require such timing. If hours of operation are extended for a period of five (5) days or more, the operator shall provide a written notice to the Town Clerk no less than 24 hours in advance of extending the hours of operation.
- 4) The operator shall take reasonable measures to control dust on the property.
- 5) An annual road maintenance fee of \$2,000 is submitted to the municipality by December 31 each year.

The above Resolution was duly adopted by the Town Board of the Town of Burke, Dane County, Wisconsin, at a meeting on August 19, 2020.

Please see attached Town Action Report.

STAFF: The City of Madison, requested that the county consider the following 2 conditions:

- Given the proximity to existing and planned residential development, the proposed CUP be limited to a 10-year timeframe.
- The applicant document the existing conditions of the site including topographic contours, a tree survey identifying the type, size and condition of larger trees on the site, and any other important environmental features. Once this information has been established, the applicant revise the CUP application with a site plan that minimizes impacts to these features and is consistent with the open space/community separation area specifically noted in the Cooperative Plan.

Staff recommends approval with the town conditions plus conditions in response to the City's concerns. Two for the committee to consider are:

- 1) For the reclamation plan, applicant shall identify an end land use that will complement the City's development plans for the subject area.
- 2) CUP period: The applicant desires a 20+ permit period. As a compromise regarding CUP permit period, staff recommends that the permit period shall be 10 years. Keep in mind that the section 10.103(15)(b)(3)(a) of the zoning ordinance allows a 5-year extension of conditional use permits for mineral extraction, and related accessory uses, based on a review by the Zoning Administrator in consultation with the town board. In this case, that means a potential for 15 years.