



Dane County Planning and Development Department

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MEMORANDUM

TO: Dane County Zoning & Land Regulation Committee (ZLR)
FROM: Todd A. Violante, AICP, Director
DATE: Friday, August 10, 2018
RE: CUP 2416 for a Concrete Batch Plant in the Town of Burke

The purpose of this memo is to offer additional guidance to ZLR members as they consider conditional use permit (CUP) 2416; it's intended to complement the staff report and all other material associated with this petition and included in the Legistar record. The decision making context for the proposal is multifaceted, challenging, and complex.

ZLR essentially has two options for action: either deny CUP 2416, or approve it with conditions. While denial is an option, in light of the factors outlined below, Planning and Development Department staff recommend approval of CUP 2416 with the 24 conditions proposed in the associated staff report (which include the 10 conditions approved by the town of Burke). While there may be fair and compelling arguments to the contrary, staff believe that there is a preponderance of factors in support of approval.

The proposed use is largely compatible with the majority of uses in the immediate area, most of which are intensive, similar uses (e.g. asphalt plant; landfill; trucking company; electric substation; multiple quarries; and numerous intensive commercial uses). Based on experience, as well as substantial evidence as defined in state statutes and information submitted by the applicant, staff feel that the valid and tangible concerns raised in opposition to the proposal by nearby residents in the Ambassador Condominiums can reasonably and effectively be addressed with appropriate conditions, as outlined in the staff report.¹

While comprehensive plan consistency has been raised as an issue, there are other complicating considerations. The town of Burke, the primary local government with jurisdiction over the proposal, approved the CUP. Although the town of Burke/Dane County comprehensive plan for the area calls for

¹ One point of clarification is warranted in regard to the email comments submitted by nearby property owners. A great deal of concern was expressed and information submitted about the health and environmental impacts of cement manufacturing. It is important to clarify that a concrete batch plant is *not* a cement manufacturing plant. Cement manufacturing is a much more intensive land use. While cement is one of the ingredients of concrete, among other elements like water, sand, and gravel, it is not being manufactured on this site.

possible future residential development on the parcel (as does the city of Madison's peripheral development plan), the town of Burke supports the use, and the Town of Burke Hall is immediately adjacent to the subject site. Additionally, state law does not require consistency between conditional use permits and comprehensive plans: Section 66.1001(2m)(b), Wis. Stats., states the following: "A conditional use permit that may be issued by a political subdivision does not need to be consistent with the political subdivision's comprehensive plan." While the comprehensive plan consistency requirement is applied stringently to rezoning requests, local jurisdictions are allowed more discretion when it comes to CUPs. Local governments *may* apply comprehensive plan policies to CUP decisions, but they are not bound to them. Rather, CUP decisions rely more on a quasi-judicial process of meeting ordinance standards and ameliorating secondary impacts based on appropriate conditions. CUP 2416 is further complicated by the holdover zoning district of A-1 Agriculture, which only exists in the town of Burke and three other towns in Dane County: A-1 allows both residential development as a permitted use, and more intensive conditional uses like concrete batch plants, sanitary landfills, radio towers, and mineral extraction, *all in the same zoning district*.

In this particular case, department staff believe that the use as proposed in CUP 2416 is a better use of the site than residential. The surrounding area has many, long-established and very intensive land uses that may continue for decades. Introducing new residential uses on the subject parcel may not be the most appropriate or compatible use for the site. It is important that this larger land use context be understood before rendering a decision.

Regarding our standards for CUPs, the city of Madison raised concerns over the second and third standards:

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; and
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."

In the second standard, staff feel that the operative word is *substantially*. The concerns of surrounding property owners are extremely important, and with the appropriate conditions and enforcement, the goal is for there to be little impact on surrounding properties from the proposed development. Regarding the third standard, as noted above, this area of urban-rural interface is already a very intensively used rural industrial neighborhood containing many uses similar to the one proposed, most of which are allowed in the A-1 zoning district, and many other existing uses and parcels are zoned for commercial use. The use proposed for this parcel is normal for the surrounding area, and again, with the appropriate conditions and enforcement, would be operated in an orderly fashion.

Wisconsin Statutes, s. 59.69(5e)(b)(1), states, "If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the county ordinance or those imposed by the county zoning board, the county shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence." The applicant has agreed to the 24 proposed conditions.

In conclusion, while CUP 2416 presents a relatively intense land use, there are numerous such plants and similar uses throughout Dane County, many in close proximity to residential areas. They are necessary for the growth and development of our communities, and some of them should reasonably be located close to urban areas, nearer to sites of current and future development, and in proximity to mineral extraction operations to minimize travel distances. If done properly, they can successfully coexist with other land uses. Questions have been raised over comprehensive plan consistency, CUP standards, and secondary impacts. In light of recent amendments to state law pertaining to CUPs, the broader land use context of the proposal, the specific elements of the proposal, and the applicant being amenable to the proposed conditions, Department staff support approval of CUP 2416 with the 24 recommended conditions.