

MEMO

To: Zoning & Land Regulation (ZLR) Committee

From: Alexandra Andros, AICP, Senior Planner (andros@countyofdane.com)

Date: July 12, 2022

Subject: Application for mineral extraction CUP#2567, Town of Verona

Town Action: The town of Verona approved with the following conditions:

THE CONDITIONAL USE PERMIT IS SUBJECT TO THE FOLLOWING CONDITION(S):

- a. The applicant shall not apply for an extension of the termination date of the permit which is December 30th, 2030.
- b. The CUP will expire upon any change of operator.
- c. The current CUP will terminate if a new CUP is granted.
- d. Engine braking is prohibited for all vehicles either entering, leaving or driving on-site.
- e. No off-site materials may be brought on site for any operational purposes.
- f. The applicant will reduce the noise caused by the back up signal of trucks.
- g. The applicant will comply with all applicable Town and County ordinances.
- h. Noise levels shall not exceed 70 decibels measured at the inside edge of the ROW line on the Phase II parcel. Measurements shall be taken at two sites to be determined and data shall be publicly available in real time.
- i. No visual dust generated by on-site operations will be permitted to cross property lines.
- j. All applicable conditions of the existing CUP shall carry forward along with any applicable standards.

Staff: Staff recommends approval with conditions. The following list combines conditions that are contained in the Dane County Zoning Ordinance along with conditions developed for the specifics of this proposal. These conditions are the same as associated with the current CUP (CUP#1934), minus the condition regarding no crushing on site, plus those provided by the town. These suggested conditions are subject to deliberation and modification by the Zoning and Land Regulation (ZLR) Committee.

RECOMMENDED CONDITIONS:

- 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.
- 14) 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.
- 15) 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.
- 16) CUP #2567 will expire on December 30th, 2030. The applicant shall not apply for an extension of the duration of the permit period*
- 17) The CUP will expire upon any change of operator*
- 18) Reclamation shall meet all requirements of Chapter 74 of the Dane County Code of Ordinances.
- 19) The site shall be excavated from north to south. During excavation, groundwater elevation at Riverside Road shall be monitored at MW#4. If a rise in groundwater is directly attributable to the excavation, the excavation shall be stopped until a plan is developed and implemented to mitigate any potential damage to the homes south of Riverside Road.
- 20) If WisDNR determines that a decrease in the groundwater base flow to Badger Mill Creek has occurred as a direct result of the operation of CUP#2567, the operator shall replenish the lost flow volume with approximately 60 degree water from a source within the site mutually agreeable to the DNR and the operator.
- 21) The area north of Badger Mill Creek shall be designated a "buffer area" as designated on the site plan. No mineral extraction shall take place within the buffer area. Mineral extraction shall not take place within the 100 foot setbacks or within a floodplain, mapped wetland or within 500 feet of Badger Mill Creek.
- 22) There shall be no blasting on the site.

- 23) No water from the site is to be pumped off the site.
- 24) There shall be no bulk fuel stored on site.
- 25) A spill prevention and counter-measure plan shall apply to all operations on the site including subcontractors and suppliers per the plans submitted by the applicant.
- 26) The operator shall implement a fugitive dust control plan.
- 27) No visual dust generated by on-site operations will be permitted to cross property lines*
- 28) No chemical additives are to be used with the water used for washing aggregates or dust control.
- 29) 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.
- 30) 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."
- 31) The landowners shall sign a covenant that limits access to the two driveways indicated on the site plan. The driveway on the west side of STH 69 shall be a restricted use driveway.
- 32) WisDOT agrees to the concept of the production crossing under the highway provided that a safety section is included and that maintenance and removal agreements are submitted with a "Permit to work in right-of-way".
- 33) 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.
- 34) The "vision triangles" shown on the haul road entrance shall be maintained by the Operator.
- 35) Mineral extraction excavation shall be set back from the property lines and rights-of-way a minimum of 100 feet.
- 36) 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.
- 37) Days and hours of all operations, equipment warm-up, cool down, maintenance and repairs shall be as follows: Daily operations = Monday through Friday; Hours of Operation = 8:00 a.m. to 6:00 p.m. (including equipment maintenance); hours for warm-up = 7:30 a.m. to 8:00 a.m.; hours for cool-down = 6:00 p.m. to 6:30 p.m.
- 38) The mineral extraction phases shall be fenced with a 5 foot high fence with a single strand of barbed wire at the top.
- 39) The enclosure fence shall be posted with "No trespassing" signs.
- 40) The entrance to each phase shall remain gated, and that gate shall have a locking mechanism.
- 41) The entrance into the site shall be from the approved DOT entrance as shown on the submitted operations plant.
- 42) The berms shall be seeded and landscaped and maintained in a reasonable condition per the submitted planting plan.
- 43) The berms shall have the planned landscaping completed within one year of beginning site development for each phase.
- 44) No asphalt plant or concrete plant is permitted.
- 45) No material will be brought in to the site for washing, crushing, or any other process.
- 46) No permanent buildings shall be erected on the site.
- 47) 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.
- 48) The operator shall implement a groundwater monitoring plan as follows:
 - a) Prior to the commencement of any site excavation after the issuance of CUP#2567, the applicant shall offer to sample and inspect local existing wells within 1,000 feet of the CUP limits, which have not

been previously inspected. The inspections shall be conducted by an independent qualified inspector approved by the County Sanitarian, selected and paid for by Payne & Dolan.

- b) Neighbors' wells located within 1,000 feet of the site will be tested semi-annually for bacteria and nitrates.
 - c) On-site monitoring wells will be measured for water elevation on a quarterly basis.
 - d) All sampling and testing will be done by an independent qualified inspector, selected and paid for by Payne & Dolan, and approved by the County Sanitarian.
 - e) If at any time the annual sample results exceed the levels established in the Wisconsin Admin Code NR140.10, the County Sanitarian will be notified and appropriate remedial steps will be taken as outlined in the Wisconsin Admin Code.
 - f) All remedial steps to be taken shall be as per the attached wells, septic systems and basement claims procedure.
- 49) Mandatory well testing for bacteria and nitrates will be done semi-annually, and VOCs to be done annually. Contract to be in place before start of operation. All results will be made available to all property owners within 1,000 feet of the site.
- 50) Payne & Dolan must offer to place drain tiles around the homes at 7211 and 7229 Riverside Rd prior to beginning operations. Furnishing and placing of the drain tiles will only be done with written approval of the property owner.
- 51) Payne & Dolan must offer the following protections for neighbors' wells, septic systems and basements:
Basement assurance: Prior to the commencement of any site excavation after the issuance of CUP#2567, Payne & Dolan shall offer to inspect basements of homes within 1,000- feet of the CUP area. The inspections are to establish and to document existing conditions of the basement prior to commencing development of the CUP site. Payne & Dolan shall post and maintain at all times during the term of CUP#2567, a bond in favor of Dane County in the amount of ten thousand dollars (\$10k) as security for its obligations under the basement claims procedure. Mitigation may include, but is not limited to drain tile, sump pump, rebuilding the basement, etc. The owner shall give their approval for the mitigation in writing prior to beginning the mitigation. Should the need for mitigation be found to be necessary due to the operation of CUP#2567, Payne & Dolan shall maintain the equipment and provide electrical power, if used, for the life of CUP#2567.
- 52) The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed the current industry standards for noise abatement.
- 53) The applicant will reduce the noise caused by the back-up signal of trucks*
- 54) Engine breaking is prohibited for all vehicles either entering, leaving or driving on-site*
- 55) All loaded dump trucks shall be tarped prior to leaving the site.
- 56) Trucking of materials from the site shall be limited to trucks owned or hired by Payne & Dolan, Inc. or customers who have entered into a sales contract with Payne & Dolan which includes trucking, in which case the contract with the customer shall include a clause directing the customer to abide by all applicable conditions of CUP#2567
- 57) The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076, Wisconsin Administrative Code.
- 58) Noise levels from the asphalt plant processing and site operations shall not exceed 75 decibels (dBa scale), as measured from the property line.
- 59) 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 \$2,000,000 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.
- 60) 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.

- 61) 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.
- 62) Payne & Dolan must extend an offer for seven days after approval of CUP#2567 for a "Property Value Agreement" to homeowners within ¼ mile of the CUP site.
- 63) Operator shall be not be required to provide surveys, inspections, plans, offers or guarantees if those items were completed and/or offered under the previous CUP 1934.

* *Town condition wording*