

Patrick & Carol Tesar

676 Craig Road

Edgerton, WI 53534

Town of Albion, County of Dane

To: Dane County Zoning Administrator

REQUEST TO FILE AN APPEAL TO THE DANE COUNTY ZLR/COUNTY BOARD DECISION TO
GRANT CUP #2260

Pursuant to **sec. 10.255(2)(j)** of the Dane County Zoning Ordinance we wish to file an appeal to the decision of the Dane County ZLR board and any other local or county boards decisions to grant CUP #2260 on the grounds that it is in violation of several county zoning laws and standards for consideration and granting of a conditional use permit for non-metal mineral extraction on A-1 EX Agricultural District land in Dane County.

We have requested but received little findings of fact from either zoning staff or the ZLR board in regards to the May 13, 2014 decision, what was received to us from zoning staff only supports our position of objection in that the ZLR has ignored the published standards and procedures they provided to us as their finding of fact. We have received no requested notice as to the "final action" date that would start the clock on the term for filing an appeal. The zoning office has miscalculated the dates as to the 40 days for town action from the May 13, 2014 meeting. We are sending a copy of this request to file an appeal to the decision on CUP #2260 via email to Dane County Zoning Administrators on July 9 to compensate for that error by the office of Dane County Zoning. We list the conditional use zoning standards and the specific reasons they violate those standards for our request to appeal the ZLR decision below.

**Conditional Use Permit provisions from section 10.255
Dane County Code of Ordinances**

(h) Standards. No application for a conditional use shall be granted by the town board or zoning committee unless such body shall find that all of the following conditions are present:

1. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare;

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to review and consider supplied testimony, documents of evidence, and interested parties statements opposing CUP #2260 for the reason that it will be detrimental to and endanger the public health, safety, and general welfare. Specifically it is a risk to close resident's safety, comfort and welfare in regards to documented potential contamination of drinking water, excessive noise levels at hours required for sleeping, documented flyrock hazard of quarries near dwellings and roads, and exposure to dust and cancer causing silica particulates during periods of operation after freezing temperatures have set in. It is also detrimental to and endangers the public health, safety, comfort and general welfare of all Albion residents and occupants of vehicles traveling state highway 73, as there is no provision to prevent traffic congestion provided, nor ability to provide a safe access to highway for this volume of gravel trucks entering and exiting the site to prevent traffic congestion, delay of emergency vehicles, and accidents. In addition, the ZLR board failed to consider evidence and testimony provided to them and the zoning department on the danger to the public and travelers on highway 73 from animals that will be startled by the proposed blasting, crushing, loading, hauling activity sounds, movements, and vibrations, due to the fight or flight instinct of horses, dogs and other animals that can result in them running through fencing that is adequate and safe containment under normal agricultural activity but not reliable in close proximity to quarry and mining activity in preventing animals from escaping onto public roads or neighboring properties.

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;

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to review and consider supplied testimony, documents of evidence, and interested parties statements opposing CUP #2260 for the reason that it will substantially impair the uses, the value, and the enjoyment of our properties and it is specifically not compatible with my already permitted use of my property. We will be prevented in the enjoyment of our property, due to the noise, dust, traffic caused by this quarries close proximity to our property. Our property value will be decreased by more than 25 - 50% based on documented studies and documents supplied by expert witnesses. Also, insurance companies have already notified us and neighbors that our policies do not protect us from quarry operations!

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;

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to review and consider supplied testimony, documents of evidence, and interested parties statements opposing CUP #2260 for the reason it will specifically impede and completely prevent our normal and orderly improvement of our property for the permitted use, by including but not limited to, the devaluation, the dust, the noise, the loss of quiet and peaceful habitably and the loss of our safety. Example: Dust destroys turbines and decreases solar efficiency; we can longer improve our energy costs with the addition of wind generators nor solar panels as there is no provision for dust control after freezing temperatures set in but while the quarry is still in operation. There are many more examples.

4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to review and consider supplied testimony, documents of evidence, and interested parties statements opposing CUP #2260 for the reason that Scott Hinkle of the Wis. DOT has specifically notified the Dane County Zoning department and Roger Lane in writing prior to the May 13 ZLR meeting that they will approve no permit for access to state highway 73 by the applicant. The access road contained in the application is permitted as a farm road only.

5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to review and consider supplied testimony, documents of evidence, and interested parties statements opposing CUP #2260 for the reason that it cannot meet this requirement because no amount of improvement to the road from the mine can prevent the traffic stoppage on Hwy 73 that will be constant due to the amount of truck loads entering and existing the property. Furthermore, state highway 73 is a restricted access highway that has been designated as the alternate route for the interstate highway I39/90 during future construction to prevent traffic congestion. State DOT officials notified Dane county zoning administrator in writing on May 12 that no public good would be served in allowing access to the applicant and none would be granted. This information was not provided to the ZLR by Roger Lane when requested by a ZLR board member at the May 13, 2014 meeting, and the decision to grant the CUP #2260 was therefore made without consideration of the Wis DOT's position as to highway access.

6. That the conditional use shall conform to all applicable regulations of the district in which it is located.

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to review and consider supplied testimony, documents of evidence, and interested parties statements opposing CUP #2260 for the reason that it cannot conform to all applicable regulations because it does not comply to standards 1.,2.,3.,5. and 6. listed above, those standards are regulations.

We, an aggrieved party, further request appeal of the granting of CUP #2260 on the grounds that it also violates the required Dane County Zoning regulations and standards listed in S.10.123(3)(a)(1).

According to Section 10.123(3)(a)(1) of the zoning ordinance, the ZLR Committee must also consider the following factors when approving CUPs in the A-1 Exclusive District:

a. The statement of purposes of the zoning ordinance and the A-1 Exclusive Agriculture District.

It does not conform with the statement of purpose of the zoning ordinance in that it is for 10 years it does not state specific dates required in 10.191 5. Proposed dates to begin extraction, end extraction and complete reclamation. They are not stated specifically. It is not specific in 10.191 10. Types, quantities, and frequency of use of equipment to extract, process, and haul. These are not fully stated. And regarding the application mapping in 10.191 15. (d) 2. 2. Zoning district boundaries in the immediate area. Label all zoning districts on the subject property and on all neighboring properties. The application map Yahara submitted failed to label the Zick property at all or the zoning on all neighboring properties. In Weber v. Town of Saukville, 209 Wis. 2d 214, 237-38, 562 N.W.2d 412 (1997), the Wisconsin Supreme Court held that the sufficiency of a CUP applicant's materials must be measured at the time that notice of the final public hearing is first given.

b. The potential for conflict with agricultural use.

This CUP #2260 has proven potential for conflict with our agricultural use of our property. Specifically the blasting, crushing, loading, hauling activity sounds, movements, and vibrations that creates an unacceptable risk of panic and resulting injury to horses, handlers and other livestock and animals and the growing of both ornamental and food crops that will be contaminated by uncontrolled dusts.

c. The need of the proposed use for a location in an agricultural area.

There is no unique feature to this site that has impeded the full planting of crops for the past six decades and the same mineral extraction potential is readily available all over the area, it is not unique to this site. There is no justifiable need for the proposed use of this property next to homes, and properties with non-compatible already permitted uses. The applicants have no contract to supply materials for the projects stated and there is a quarry in the area that has been awarded the material contract for highway 73 already. As can be seen currently, the corn crop on this parcel of land is growing to its fullest potential and everyone who knows anything about reclaimed farmland will tell you it's poorer than what was taken off!

d. The availability of alternative locations.

Crazy Acres Inc. is owned by James Wileman who also owns Dane County Growers and several other corporations with thousands of acres of land holdings in Albion that contain the mineral properties of this site, and are convenient to the projects the minerals will be moved to, and would not cause the traffic congestion on Hwy 73 that this site will cause, and that could be used without the close proximity and the harm to neighboring properties. The ZLR board and Albion Town board failed to inquire about or consider about availability of alternate locations. Two pages of alternative sites were provided to the Albion Town board, Dane County board and Yahara Materials and ignored.

e. Compatibility with existing or permitted use on adjacent lands.

The ZLR board and Albion Town board failed to consider evidence that CUP #2260 is absolutely and completely incompatible with existing permitted use on adjacent lands.

f. The productivity of lands involved.

This will take this site out of the current level of agricultural use for 10 years, and not increase the agricultural use after reclamation. This field has been fully planted and harvested for the 28 years we have been in residence.

g. The location of the proposed use so as to reduce to a minimum the amount of productive agricultural lands converted.

This site will not reduce the amount of productive agricultural lands converted, there is property owned by applicant that has rock outcroppings that does impede planting and harvesting, this site is not one of them. Use of those alternative sites would return more agricultural land to planting

h. The need for public services created by the proposed use.

There is a need for the public services of a quarry in the area, but there is one located in the area already with full ability to supply the local needs. This proposed site for CUP #2260 is located in such close proximity as to cause irreversible damage to others that have the same rights to the safety, use, and enjoyment of their land. By use of this site over other sites available for this purpose to this land owner the rights of neighboring land owners, the environment, and public safety are being ignored. This site was not selected for the good of the public, it was selected for

the profit/convenience of Crazy Acres Inc. and Yahara Minerals as testified to by the Yahara Minerals representative in front of witnesses. It is unnecessary to locate this site in this location to provide the same service to the public need.

i. The availability of adequate public services and the ability of affected local units of government to provide them without an unreasonable burden.

The Town Board of Albion and the Dane County ZLR board has put a completely unreasonable burden on the neighboring property owners, and the interests of the Town of Albion residents as a whole in their failure to uphold the integrity of the procedure and follow the regulations and procedures required to issue this approval for CUP #2260. Specifically relating to the traffic congestion that could impede emergency response and cause backups, delays and accidents for area residents and businesses, also in the loss of tax revenues due to the loss of neighboring property values.

j. The effect of the proposed use on water or air pollution, soil erosion and rare or irreplaceable natural resources.

The ZLR board failed to consider documents of evidence provided addressing the dust and silica particulate contamination that will occur from winds after operation hours, dust after freezing temperatures set in, or from the hauling trucks and the mine road, nor has any plan to eliminate that been provided. The ZLR ignored expert environmentalist and hydrologist testimony in favor of the unqualified opinions from applicant and applicant's attorney as to the potential destruction of existing and sensitive natural wildlife habitat, including eagle and migratory bird habitat due to noise and continuous mining activity in such close proximity to the wetlands and natural areas, and natural areas on private neighboring properties.

IN addition, CUP #2260 was granted by the Dane County ZLR in direct conflict and violation of their own published standards and procedure contained in:

Rules and Procedures of the Dane County Zoning and Land Regulation Committee of the Dane County Board.

Under Section II: Application Procedures it states:

a. Rezone & Conditional Use Permit Applications

Applicants for zoning map amendments shall provide, at a minimum, the following materials and information to staff at the time of application. The Zoning Administrator may require additional information be submitted as needed.

1. Legal description of lands to be included in the zoning map amendment or conditional use permit request. Separate descriptions shall be required for each lot proposed. Each description shall include the size of the described area in square feet and acres. Legal descriptions shall be prepared by a Registered Land Surveyor, except in the case of existing platted lands, and shall be submitted to the department in an electronic format (e.g, .doc, .pdf). The requirement that a surveyor prepare the legal description may be waived if the Zoning Administrator determines that an aliquot parts description based on the public land survey system is sufficient.

2. Scaled drawing of the proposed rezone area, showing point of beginning, dimensions, etc., as in the legal description. The scale of the drawing should be 1" = 400 feet. The scale drawing should also include the following:

- a. The size of the area to be rezoned in acres or square feet.
- b. Existing and proposed Zoning Districts for the proposed rezone area.
- c. Existing Zoning Districts of all neighboring properties.
- d. Soil Capability Unit classifications as shown in the Soil Survey of

Dane County, Wisconsin.

3. Detailed written description of the proposed use(s) of the property to be rezoned, or the conditional use requested.

4. Brief description of surrounding land uses.

Applicants applying for a multiple-family, commercial, or manufacturing rezone or conditional use permit shall include complete site and operational plans in accordance with s. 10.255(2)(e) of the code of ordinances. The site plan shall be drawn to an easily legible scale, shall be clearly labeled, and shall include the following, as applicable:

Site plan requirements

1. Scale and north arrow;
2. Location of subject property, parcel number(s), and any relevant certified survey map (CSM) or plat information related to the identification of the property;
3. Subject property lines and lot dimensions;
4. All building, outdoor use areas, right-of-ways and easements, both existing and proposed, including provisions for utilities, water, stormwater and sewer, either public or private. Existing and proposed uses should be labeled and clearly distinguishable. All dimensions and setbacks should be shown, including building heights;
5. Location and width of all interior roads or driveways and existing and proposed driveway entrances and exits onto public and private roadways, traffic pattern flows shall be clearly indicated;

6. Parking lot layout in compliance with all provisions of the Dane County Code of Ordinances;
7. Zoning district boundaries of the subject property and adjacent properties;
8. Location and distance from subject property and residences on adjacent properties;
9. Natural features such as cropped areas, woodlands, lakes, ponds, streams (including intermittent streams), significant drainage courses, contour lines, flood zones and wetlands;
10. Any other information which the Zoning Administrator deems necessary to reasonably determine the location, nature and condition of any actual or proposed feature of the site. The committee shall have the option of reviewing lengthy documents/reports however documents of this nature shall be summarized by Department staff.

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to review and consider supplied testimony, documents of evidence, and interested parties statements opposing CUP #2260 for the reason that the minimum requirement for application materials that must be provided at the time of application was not met by the applicant at the time of application, and did not include item c. Existing Zoning Districts of all neighboring properties. Nor did it include item 4. Brief description of surrounding land uses.

Also, applicant's application failed to include the items required specifically for application for conditional use permits including items:

- 4. All building, outdoor use areas, right-of-ways and easements, both existing and proposed, including provisions for utilities, water, stormwater and sewer, either public or private. Existing and proposed uses should be labeled and clearly distinguishable. All dimensions and setbacks should be shown, including building heights;**

5. Location and width of all interior roads or driveways and existing and proposed driveway entrances and exits onto public and private roadways, traffic pattern flows shall be clearly indicated;

6. Parking lot layout in compliance with all provisions of the Dane County Code of Ordinances;

7. Zoning district boundaries of the subject property and adjacent properties;

8. Location and distance from subject property and residences on adjacent properties;

9. Natural features such as cropped areas, woodlands, lakes, ponds, streams (including intermittent streams), significant drainage courses, contour lines, flood zones and wetlands;

In *Weber v. Town of Saukville*, 209 Wis. 2d 214, 237-38, 562 N.W.2d 412 (1997), the Wisconsin Supreme Court held that the sufficiency of a CUP applicant's materials must be measured at the time that notice of the final public hearing is first given. It has been tested and deemed necessary by the Wisconsin Supreme Court that application materials for a CUP must be complete prior to public hearing. Applicant's application materials for CUP #2260 were deficient in materials required by law at time of first application and public hearing, and were still deficient in these requirements by law at the time the Dane County ZLR committee board granted CUP #2260.

Under section III. Conduct of Public Hearing it states:

d. When individuals wish to speak all persons wishing to speak in favor of the petition shall be heard first. All persons wishing to speak against the petition or ask questions shall be heard second. Review of Town action, staff comments and any other communication concerning the matter will be heard next. Where any comments concerning the matter have been made objecting to the petition or questions have been asked, one representative of the applicant may speak in rebuttal.

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to follow the standards of conduct they provided to us prior to meetings and in the supplied findings of fact, in that they allowed applicant more than one representative of the applicant to speak in rebuttal to matters of objections.

g. Individual speakers are limited to no more than five minutes speaking time.

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to follow the standards of conduct they provided to us prior to meetings and in the supplied findings of fact, in that they did not allow the five minutes of speaking time they had notified interested parties wishing to speak in objection they would have in advance of the meetings. Parties in opposition were specifically told to structure their statements to five minutes prior to the public meetings, then restricted to only three minutes at the meetings, leaving them no fair opportunity to restructure their statements to fit within the shortened time period. This prevented important information from being heard in public meeting. Also, several written copies of objection statements, and documents of supporting evidence submitted to Dane County Zoning staff in person and via email are unable to be located in the file of objections to #2260.

Under Section IV: Action Items g. it states:

g. In all cases where a petition for rezoning areas zoned for exclusive agricultural use are considered the rezoning amendment shall include findings of the County Board that the following conditions exist as required by

Wis. Stats. 91.48 (1)(a):

1. The land is better suited for a use not allowed in the farmland preservation zoning district.

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to review and consider supplied testimony, documents of evidence, and interested parties statements opposing CUP #2260 for the reason that this proposed site of CUP #2260 has been in full cultivation and yield for over 60 years by eyewitness, and evidentiary documents supplied to the ZLR. Applicant has failed to produce any

evidence that this site has not provided full yields, nor required special treatment to produce full yield.

2. The rezoning is consistent with any applicable comprehensive plan.

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to review and consider supplied testimony, documents of evidence, and interested parties statements opposing CUP #2260 for the reason that CUP #2260 is in direct contradiction to the published comprehensive plans of both Dane County and Albion Township.

3. The rezoning is substantially consistent with the county certified farmland preservation plan.

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to review and consider supplied testimony, documents of evidence, and interested parties statements opposing CUP #2260 for the reason that CUP #2260 removes a substantial amount of productive farmland from cultivation for a period of ten years with no substantiating evidence that it will increase that agricultural use of the site after reclamation. It also substantially diminishes the agricultural uses of neighboring properties.

4. The rezoning will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

We, an aggrieved party, request an appeal of the decision to grant CUP #2260 in that both the Town of Albion Board and the ZLR board failed to review and consider supplied testimony, documents of evidence, and interested parties statements opposing CUP #2260 for the reason that it will substantially impair and limit our agricultural use of our property due to noise and vibration safety hazards, and dust pollution.

This request for appeal respectfully submitted by aggrieved interested parties to CUP #2260: Patrick & Carol Tesar, owners of neighboring property 676 Craig Road, Town of Albion, County of Dane, state of Wisconsin July 10th 2014.

Cc: Dane County Executive Parisi

Cc: Wisconsin Attorney General

Cc: Wisconsin Governor's office

Cc: State Representative Jorgensen

Cc: State Sen. Cullen

Cc: Wis DOT

Cc: others