



# Dane County Board of Adjustment

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## Decision of the Dane County Board of Adjustment

**Administrative Appeal:** 3665 (DCPVAR-2014-03665 Buckeye Quarry)

### FINDINGS OF FACT

Having heard the testimony and considered the evidence presented, the Board determines the facts of this case to be:

**Filing Date:** December 3, 2014.

**Meeting notice published:** February 12 & 19, 2015, Wisconsin State Journal.  
Affidavit of publication/posting is on file.

**Hearing Date:** February 26, 2015.

**Appellant:** Yahara Materials, Inc. & Buckeye Quarry, LLC (Michael Lawton, Attorney, Boardman & Clark LLP)

- A. The appellant is the owner of the following described property which is the subject of the appeal: Buckeye Quarry located at 4315 Buckeye Road in the NW  $\frac{1}{4}$  and the SE  $\frac{1}{4}$  Section 14, Town of Blooming Grove, Dane County.
- B. In 1969 the Dane County Code of Ordinances was amended to regulate mineral extraction by requiring a conditional use permit to be issued prior to extraction activity. At that time existing mineral extraction sites were required to be registered with the County in order to continue as a legal non-conforming mineral extraction operation without a conditional use permit.
- C. The Gehrke property was registered in 1969 as an active mineral extraction site. The ownership boundaries were contained within the northeast  $\frac{1}{4}$  and the southeast  $\frac{1}{4}$  of Section 14 in the Town of Blooming Grove as shown in the 1969 Plat Book.
- D. In 1969, The Gehrke's did not own property in the northwest  $\frac{1}{4}$  of Section 14 in the Town of Blooming Grove.
- E. A portion of the subject property has a grandfathered status as a legal non-conforming mineral extraction site and the current mineral extraction use is permitted by right without requiring a conditional use permit.

- F. Based on GIS information with 2014 aerial photography, the Zoning Administrator determined that mineral extraction was occurring on the subject property including areas outside of the registered non-conforming boundary.
- G. The extraction was being performed on land that is not part of a legal non-conforming use without first obtaining a conditional use permit pursuant to Dane County Code of Ordinances Section 10.191.
- H. The Zoning Administrator issued a stop work order, dated November 10, 2014, to stop the mineral extraction occurring on portions of lands outside of the registered non-conforming boundaries.
- I. The appellant requests an appeal of the Zoning Administrator's stop work order regarding the status of the portions of land where mineral extraction is occurring.

### **CONCLUSIONS OF LAW**

Based on the above findings of fact the Board concludes that:

The zoning administrator acted within his authority, and correctly, when issuing the November 10, 2014 stop work order because:

- Yahara Materials has conducted non-metallic mineral extraction activities in an area which requires a conditional use permit under Dane County Code of Ordinance Section 10.191.
- The area in violation is located in the northwest ¼ of Section 14 in the Town of Blooming Grove. Specifically, the east 359 feet of the south 1070 feet of the Northwest Quarter of Section 14, Township 07 North, Range 10 East, Town of Blooming Grove, Dane County, Wisconsin. This is a portion of land contained within parcel number 0710-142-9840-0..
- The Zoning Administrator followed the proper procedures in determining the registration status and boundary of the non-conforming mineral extraction site.
- The appellant did not provide sufficient evidence to support that the lands in question had a legal non-conforming status to allow mineral extraction without an approved conditional use permit.
- Per the purpose of DCCO Chapter 74, reclamation plans are not intended to interfere with zoning rules, regulations or status of mineral extraction sites related to the location, operation or end uses.

On the basis of the above findings of fact, conclusions of law and the record in this matter the board **affirms** the Zoning Administrator's enforcement of the zoning code.

Appeals. This decision may be appealed by a person aggrieved by this decision or by any officer, department, board or bureau of the municipality by filing an action in certiorari in the circuit court for this county within 30 days after the date of filing of this decision. The municipality assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to expiration of this 30-day period.

I certify that this is the decision of the Dane County Board of Adjustment:

Steven Schulz, Chairman      Sign: \_\_\_\_\_      Date: \_\_\_\_\_

Filed with the Dane County Planning and Development Department, Zoning Division:

Todd Violante, Director      Sign: \_\_\_\_\_      Date: \_\_\_\_\_