
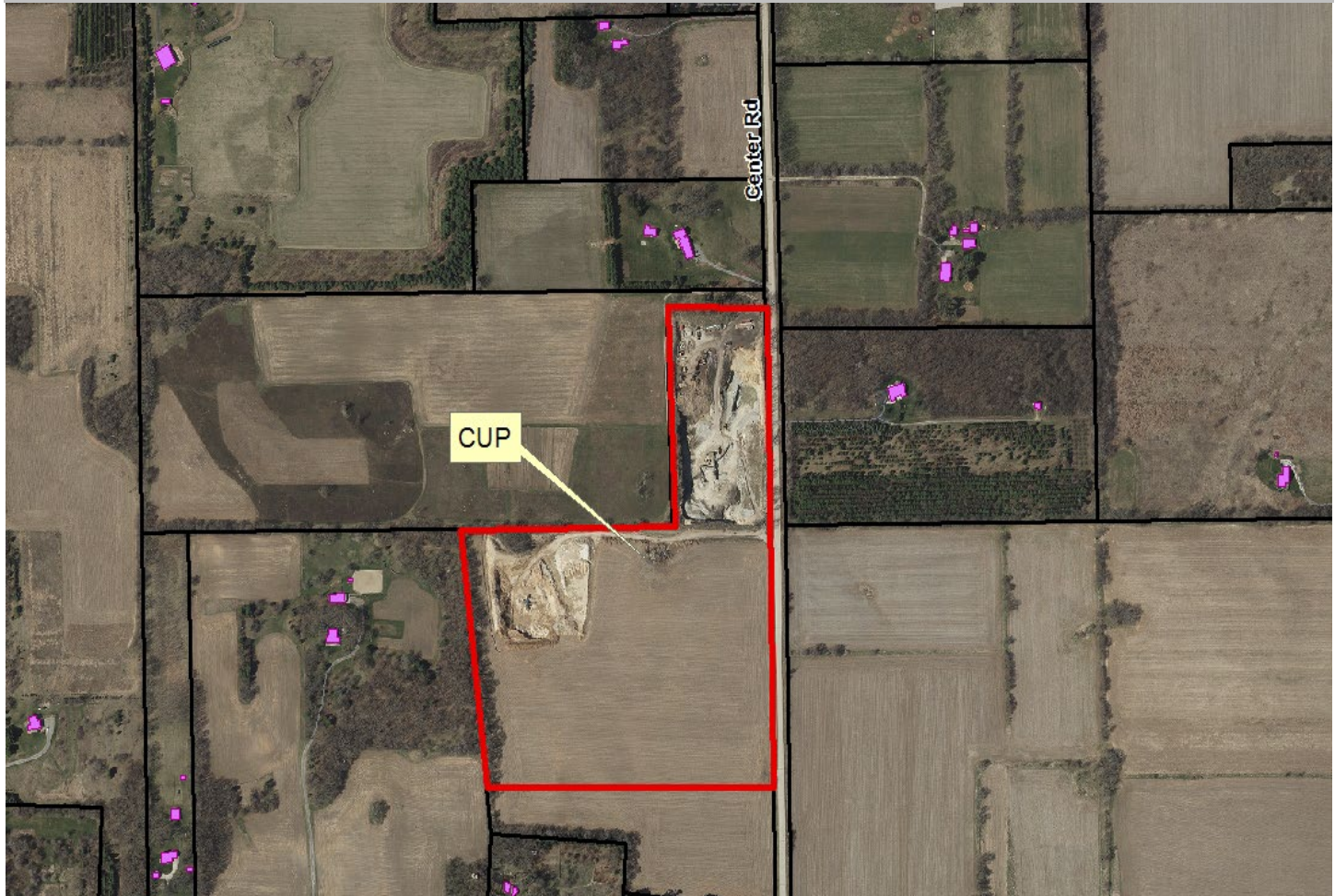


Staff Report  Zoning and Land Regulation Committee	<i>Public Hearing:</i> January 24, 2023	CUP 02582	
	<i>Zoning Amendment Requested:</i> TO CUP: Expansion of an existing non-metallic mineral extraction operation	<i>Town/Section:</i> RUTLAND, Section 28	
	<i>Size:</i> 37.8 Acres	<i>Survey Required:</i> n/a	<i>Applicant:</i> K&D STONE LLC
	<i>Reason for the request:</i> Expansion of an existing non-metallic mineral extraction operation	<i>Address:</i> WEST OF 430 CENTER ROAD	



DESCRIPTION:

K&D Stone LLC is seeking to acquire a Conditional Use Permit for non-metallic mineral extraction that expands their current operations further to the south. In addition, this application also includes the existing 8.5 acre registered non-conforming site. The grandfathered site has been in operation for over 80 years by different operators and for various durations. The applicant purchased the existing mineral extraction site in 2016 and later purchased additional lands to the south intending to expand the quarry.

A similar proposal was made in February of 2020 and was denied by the town of Rutland in October of 2020. On July 12, 2022, CUP 2563 (similar application) was approved by the ZLR Committee. An appeal was filed with the Board of Adjustment (BOA) and on October 27, 2022 regarding the approval of CUP 2563. The BOA reversed the decision of the ZLR Committee granting CUP 2563 finding that the written legal description was inconsistent with intended area of the CUP.

Currently, a portion of land to the south of the existing quarry is being mined in conjunction with a state-approved DOT project. Sand and gravel materials have been excavated for use in constructing the US Highway 14 roundabouts near Oregon. State approved borrow sites are exempt from local land use regulations and are monitored specifically by the state.

The proposed CUP states that sand and gravel is present as well as Dolomite; a formation of limestone throughout the proposed site. The dolomite exposed in the proposed quarry currently ranges in thickness from 35 feet on the north side to 50 feet on the south side of the quarry and is underlain by sandstone. Depth to the water table is between 20 to 50 feet from the surface.

OBSERVATIONS/ FACTUAL INFORMATION:

Currently, there are just two mineral extraction sites in the town of Rutland. Both sites are legal non-conforming. First one is the 8.5 acre site owned and operated by K & D Stone, which is a part of this application. The other is a 177-acre site located ½ mile away to the southeast from this proposal that is under the ownership of Stoughton Farms and operated by Northwestern Stone.

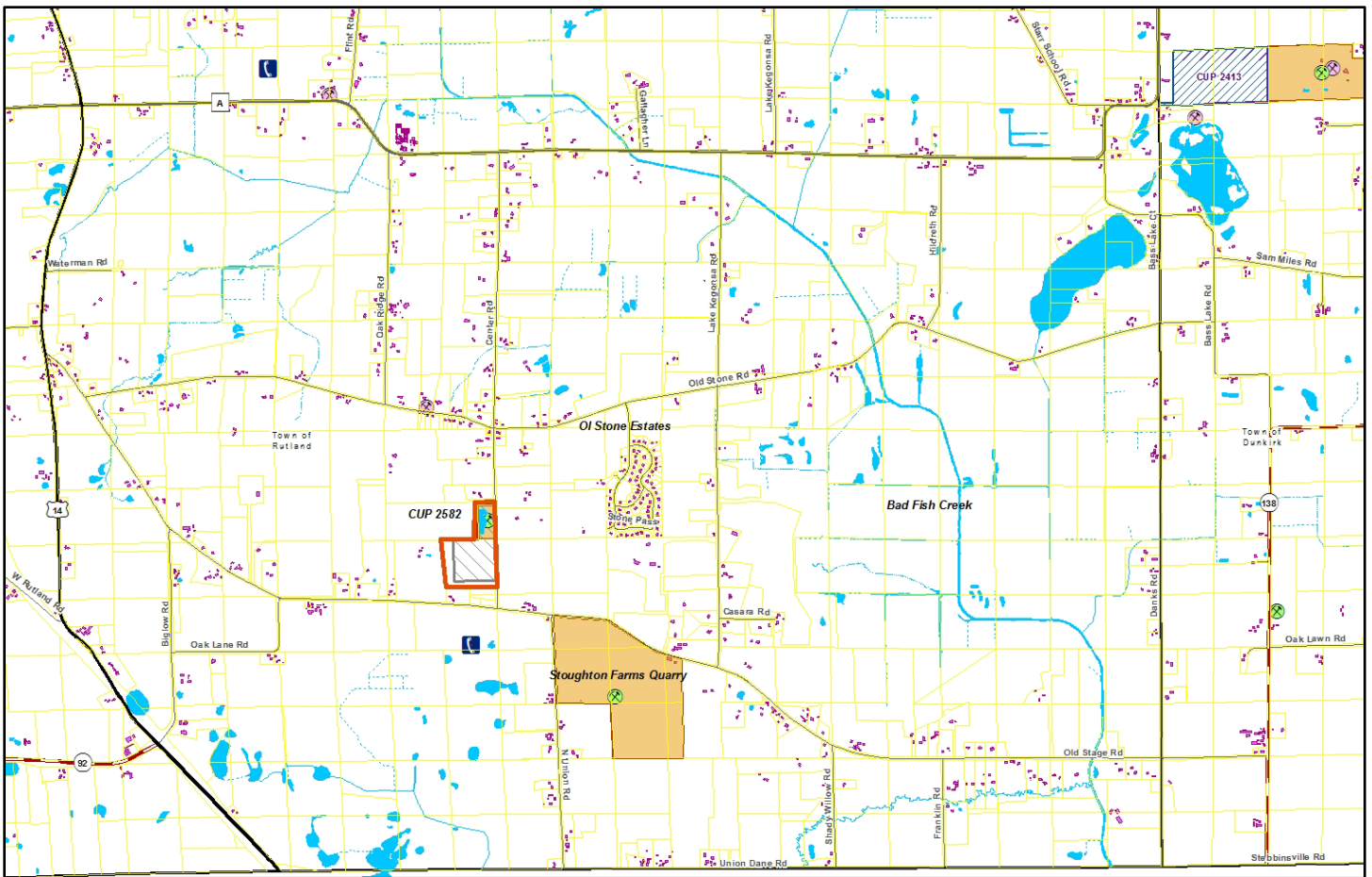
The existing uses of the K & D property that is not currently used for mineral extraction is agricultural crops. Surrounding land uses include agricultural uses, single-family homes and a cemetery owned by the township directly to the south. The proposed boundary of the CUP will be approximately 0.10 miles from the cemetery. There are single-family homes along Old Stage Road and a residential subdivision (Old Stone Estates) located approximately 0.55 miles from the eastern boundary of the proposed CUP area.

Topsoil will be preserved on site for the construction of berms along the perimeter of the site. The berms will act as a sound and visual barrier and prevent stormwater from leaving the property during the mining activity. The DNR has approved a stormwater discharge permit (No. WI-A046515-06) that allows the operator to dewater stormwater to the nearest road ditch (Center Road) in a controlled manner.

Blasting is currently conducted at the existing site and is planned for the expansion area. A blasting schedule is planned for or restricted to 10:00 a.m. to 4:00 p.m. Monday through Friday. Blasting is only allowed and performed by a Wisconsin licensed blaster and is proposed to be conducted intermittently throughout the year. Each blast is short in duration and is regulated by the Wisconsin Department of Safety and Professional Services (DSPS). The blaster shall make a reasonable effort to notify in writing or verbally all residents or owners of affected dwellings or other structures, as determined that a blasting operation is to begin within 24 hours of the blast. In addition, the applicant will allow for any resident wishing to be notified before a blast can request to be placed on a call list (pre-blast notification) and allow for residents to request one of two available seismographs to be placed on their property to confirm safe levels of vibration. According to the applicant, 4 blasts occurred on three occasions in 2020 and four occasions in 2021.

The site will consist of portable equipment such as crushing units, screening units, conveyors. Permanent structures planned include fencing, signage and a scale/scale house. The primary haul route will be Center Road to CTH A to USH 14 and USH 138 with loads delivered to customers on town roads. Loads may range from zero to 50 loads per average day; more or less may be needed for local or specialized projects.

Another requirement for mineral extraction sites is a reclamation plan is to be submitted that meets the requirements found in Ch. 74. The applicant has submitted a reclamation plan to the Planning Department and is on hold pending the outcome of CUP 2582. Stormwater management and erosion control aspects of the plan will be reviewed by the Dane County Land and Water Resources office. The reclamation plan includes information on the anticipated contours and uses when the mining is completed. The plan states that after the aggregate mining is completed, the subject lands will be reclaimed for agricultural use (above water table) and recreational purposes (pond).



CONDITIONAL USE PERMIT DECISION MAKING: “Conditional uses” are those land uses which, because of unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review.

Prior to granting or denying a conditional use, the zoning committee shall make findings based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the 8 standards to obtain a conditional use permit. Below is the list of the 8 standards and the applicant’s testimony with regards to meeting the standards.

1. **The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.**
 - *Extraction will continue to operate intermittently as it has in the past to fulfill local demand for construction aggregate products as it has in the past. Safety precautions, including a 4’ high fence, berms, and locking gate around the perimeter of the quarry, will be maintained. In addition, operational and engineering controls have been developed as part of the conditional use permit application process. These include detailed plans for safety, aesthetics, noise abatement, emission control, blasting, storm water pollution prevention, reclamation, and the control of noxious weeds. In addition, the site will be operated in compliance with all Federal MSHA, State of Wisconsin, Dane County, and Town Rutland requirements.*
2. **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.**
 - *The existing quarry has been in operation since 1937 to supply local demand for stone products; continued operation of the quarry will not devalue or interfere with the enjoyment of the surrounding properties. The existing quarry is surrounded by agricultural land and with proposed berms and existing off site trees to obstruct from view on all four sides. The site will continue to be accessed from the entrance(s) drive on Center Road. Unless there is a local delivery, no traffic will be routed onto Old Stage Road. Per Appendix L - Home Property Values Study S. MacWilliams there is no market-supported evidence that the expansion of the existing 9 acre*

non-metallic mining operations expansion to the south will adversely impact the neighboring residential property values.

Portable equipment will be used as needed to drill, blast, crush and stockpile material. Best management practices outlined in the operation plan for the site will be used to reduce noise and control dust.

- 3. 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.**
 - *According to the Town of Rutland Comprehensive Plan (March 6, 2007), preserving the rural character of the area is a priority. The site is located in a rural area with only 6 residential homes within 1000' of the proposed site. Operations will occur incrementally to preserve farmland. When the mineral resources at the site have been depleted, the site will be reclaimed to a freshwater lake (~19 acre) surrounded by farm fields (~19 acre) as outlined in the proposed reclamation plan for the site.*
- 4. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;**
 - *The operation plan for the site identifies access roads and drainage for the site. The site will be accessed from the existing (north) quarry entrance on Center Road until the additional entrance will be created to access the expansion property to the south. The driveways will be will be protected with recycled asphalt, with seeding and erosion control along the side slopes. Operations will comply with permits issued by Wisconsin DNR and Dane County for erosion control and storm water pollution prevention.*
- 5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;**
 - *The quarry will be serviced by the existing north driveway on Center Road until the additional south entrance is created. Traffic on this section is light and offers easy access to US 14. The existing driveway has adequate room to facilitate turning into and out of the property. A stop sign will be erected to signal exiting trucks to stop prior to turning onto Center Road.*
- 6. The conditional use shall conform to all applicable regulations of the district in which it is located.**
 - *The existing quarry is in the process of being zoned into the FP-35 (General Farmland Preservation) Zoning District. The proposed expansion area is currently zoned under the FP-35 (General Farmland Preservation) Zoning District. Nonmetallic mineral extraction is permitted in areas designated FP-35 through the issuance of a Dane County conditional use permit (CUP). K&D Stone LLC will operate the quarry in compliance with the CUP, as well as all Federal MSHA, State of Wisconsin, Dane County, and Town of Rutland requirements.*
- 7. The conditional use is consistent with the adopted town and county comprehensive plans.**
 - *The Town of Rutland has established Agricultural Preservation Districts as a means of preserving agricultural lands and rural character. The operation of the quarry expansion is consistent with the adopted Town of Rutland Comprehensive (2007), and Dane County Zoning, FP-35 (General Farmland Preservation) which seeks to limit the density of residential development.*
- 8. If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the findings described in s. 10.220(1).**
 - a. The use and its location in the Farmland Preservation Zoning District are consistent with the purposes of the district.**
 - *Farmland Preservation Districts helps local government preserve farmland and minimize land use conflicts. The operation of the existing quarry is compatible with these purposes and only a temporary use. Areas not used directly for quarrying activities will be maintained for agricultural production and site will be reclaimed for agricultural use (except for freshwater lake).*
 - b. The use and its location in the Farmland Preservation Zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.**
 - *Aggregates can only be extracted where they occur in nature close to the surface, and the raw materials for aggregate production are not located in all areas. The aggregates at the site are accessible, and tested to meet State specifications for quality. Quarry operation is compatible with agricultural operations for many reasons; both:*
 - *are reliant upon the geology and quality of native earth materials,*
 - *are seasonal in nature,*
 - *involve harvesting of resources using heavy equipment,*

- are better suited to areas of low population, and
 - require safe and efficient transportation access to ensure products make it to their market.
 - Given these reasons, extraction is both reasonable and appropriate for this location.
- c. **The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.**
- The site will be developed incrementally to preserve farmland as described in the operation plan for the site.
- d. **The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.**
- The site will continue to be utilized for agricultural production in area(s) that are not part of quarrying / mining operations. After the resource is depleted and the 37.8 acre CUP site is reclaimed - approximately 50% of the site will be dedicated to agricultural use and the remaining 50% will be a freshwater lake matching and fitting in with the existing surrounding parcels.
- e. **Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.**
- Construction damage to land remaining in agricultural production will be minimized by the utilization of dedicated haul routes onto and through the property. Trucks and excavation equipment will not be allowed onto agricultural fields outside the CUP boundary.

POTENTIAL NUISANCES ASSOCIATED WITH MINERAL EXTRACTION

Mineral extraction has potential nuisances that pertain to blasting, truck traffic, dust, noise and aesthetics. The applicant has submitted information regarding how those potential nuisances are handled as part of their application.

Potential conditions of approval specific to CUP 2582 can be developed after public input and deliberation by the Zoning and Land Regulation (ZLR) Committee. Common topics include but are not limited to, hours of operation, hours for blasting, blasting notification procedures, screening, duration, site access, and identification of haul routes.

Under Dane County Zoning Ordinance section 10.103(15), there are special requirements for mineral extraction operations to address many of the potential conflicts with the land use activity. In addition to conditions required for all 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 shall be saved and stored on site for reclamation of the area.
2. The applicant shall 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. *(See staff suggested conditions below)*
4. Reclamation of the site shall meet all requirements of Chapter 74 of the Dane County Code of Ordinances.
5. The driveway accessing the site shall be paved or covered with crushed asphalt for a minimum distance of 100 feet.
6. The access have gates securely locked when the extraction site is not in operation.
7. All excavation shall be setback a minimum of 20' from any property line.
8. All excavations shall be setback to the building setback requirements from streets.
9. The Town and Committee will assign hours of operation appropriate to the particular application. [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 staff suggested conditions 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. Discharge of water from a site is limited. *(See staff suggested conditions below)*
12. All trucks and excavation equipment to have muffler systems that meet current industry standards for noise abatement.
13. The operator shall meet DNR standards for particulate emissions.
14. The operator shall carry liability insurance with Dane County and the Town listed as additional named insureds.
15. The town board and zoning committee may set further reasonable restrictions on a mineral extraction operation. *(See staff suggested conditions below)*

- a. Blasting shall conform to Wisconsin Administrative Code SPS 307. 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.
- b. All fuel storage must comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment.
- c. 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.

TOWN PLAN: The *Town of Rutland Comprehensive Plan - 2005 thru 2024* has two sections that reference non-metallic mining land uses. Under the Agricultural Preservation planning area, non-metallic mining proposals are to be reviewed on a case-by-case basis. Under the land use section of the plan, development [residential] should not be located near known sand and gravel deposits. See excerpts below.

Goal 6: *Agricultural Preservation District - Preserve agricultural land in the town.*

Objectives:

1. *Preserve existing farm operations.*
2. *Permit development that enhances the growth of agriculture in the Town.*
3. *Preserve the rural character of the Town.*

Policies:

#27 - Continue to review nonmetallic mining proposals on a case-by-case basis.

Goal 7: *Land Use - Create a pattern of development that fosters the rural character and agricultural land preservation and that minimizes potential conflicts between incompatible land uses.*

Objectives:

1. *Maintain the agricultural land base to the greatest extent possible.*
2. *Minimize the negative effects of incompatible land uses.*

Policies:

#16 - To the extent possible, ensure that new development is not located on or near known sites containing substantial non-metallic deposits suitable for extraction.

TOWN ACTION: Pending.

STAFF RECOMMENDATION: The contents of this staff report summarizes the written testimony provided by the applicant. As part of the conditional use permit process, the public hearing portion may raise additional concerns. It is suggested that the Committee postpone action after the public hearing in order for staff to analyze the additional testimony received and include it as part of this report. Please note that the zoning change on the northerly 8.5 acres will need to become effective as part of the process.

Pending any comments at the public hearing and action by the Town of Rutland, the Committee will need to make findings of fact as to whether the proposed CUP will meet the applicable CUP standards outlined above. Some potential impacts may be addressed as listed below:

- Limiting the amount of years the CUP is in effect. Applicant is requesting 50 years, but the committee may want to limit the number of years to 20. The land use can be evaluated in the future.
- Limit the hours of operation from 7:00 a.m. to 7:00 p.m., Monday through Friday, and 8 a.m. to 1:00 p.m. on Saturdays. No operations being allowed on Sundays and on certain holidays. This would reduce the impact on neighborhood.

- Blasting may be limited from Monday through Friday, 10:00 AM to 4:00 PM. This would reduce the impact on neighborhood.
- Require a stormwater discharge permit and stormwater prevention plan from the DNR. This will regulate stormwater issues that may occur on site.
- Mining activity may be limited to 30 acres open at any one time. This would promote the policies regarding farmland preservation.

Below are a list of conditions as required by the special requirement section of the zoning ordinance related to mineral extraction that will need to be part of the conditional use permit if approved. Please note that additional conditions or alterations to the conditions listed below may be needed to address concerns raised at the public hearing.

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 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 Conditional Use Permit shall expire in 20 years after the effective date.
4. Reclamation shall meet all requirements of Chapter 74 of the Dane County Code of Ordinances. Mining activity shall be limited to 30 acres open at any one time.
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 street right of way.
8. Any excavation below the grade shall be setback a minimum of 30 feet from the street right-of-way.
9. Hours of operation from 7:00 a.m. to 7:00 p.m., Monday through Friday, and 8 a.m. to 1:00 p.m. on Saturday. No operations allowed on Sundays and on holidays {insert specific holidays}. Operation is defined as crushing, washing, screening, and stockpiling of materials; trucking of any material to and from the site; stockpiling or processing of recyclable materials. Maintenance of equipment may be performed outside hours of operation.
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. Any water pumped off-site shall be in accordance with Wisconsin DNR Stormwater Discharge Permit WI-A046515-06.
12. All trucks and excavation equipment shall 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. Blasting shall only occur Monday through Friday between the hours or 10:00 AM to 4:00 PM. 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 1000 feet of the mineral extraction site to either receive or stop receiving such notices at any time. Residents need to communicate with operator regarding such requests. All blasting on the site must conform to all requirements of SPS 307, Wisconsin Administrative Code or its successor administrative code regulations.
16. Any fuel storage on-site shall comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment. All excavation equipment 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.

Any questions about this petition or staff report, please contact Roger Lane at (608) 266-9078 or email at lane.roger@countyofdane.com