
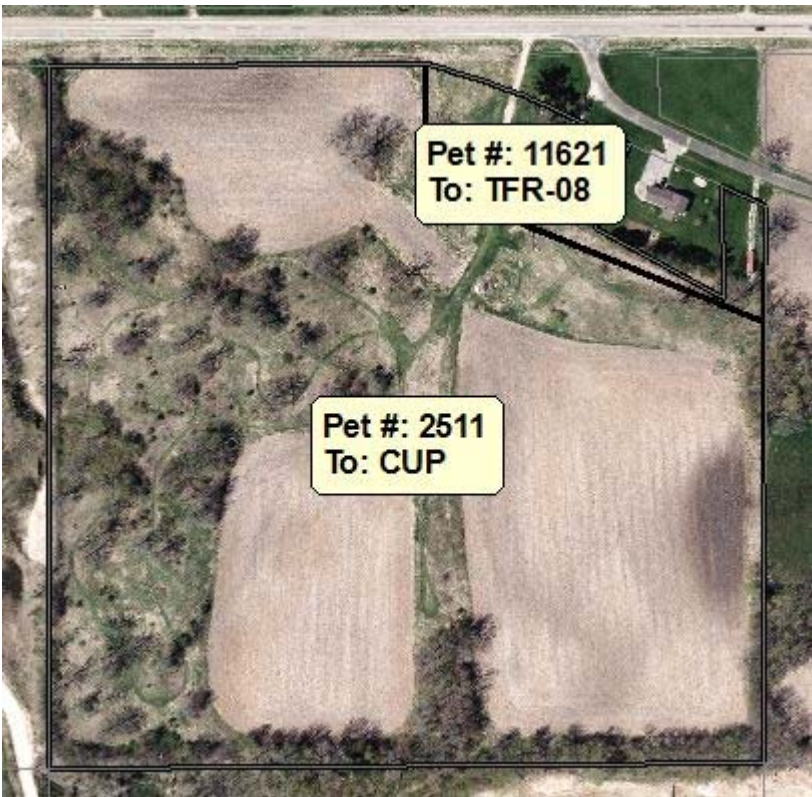
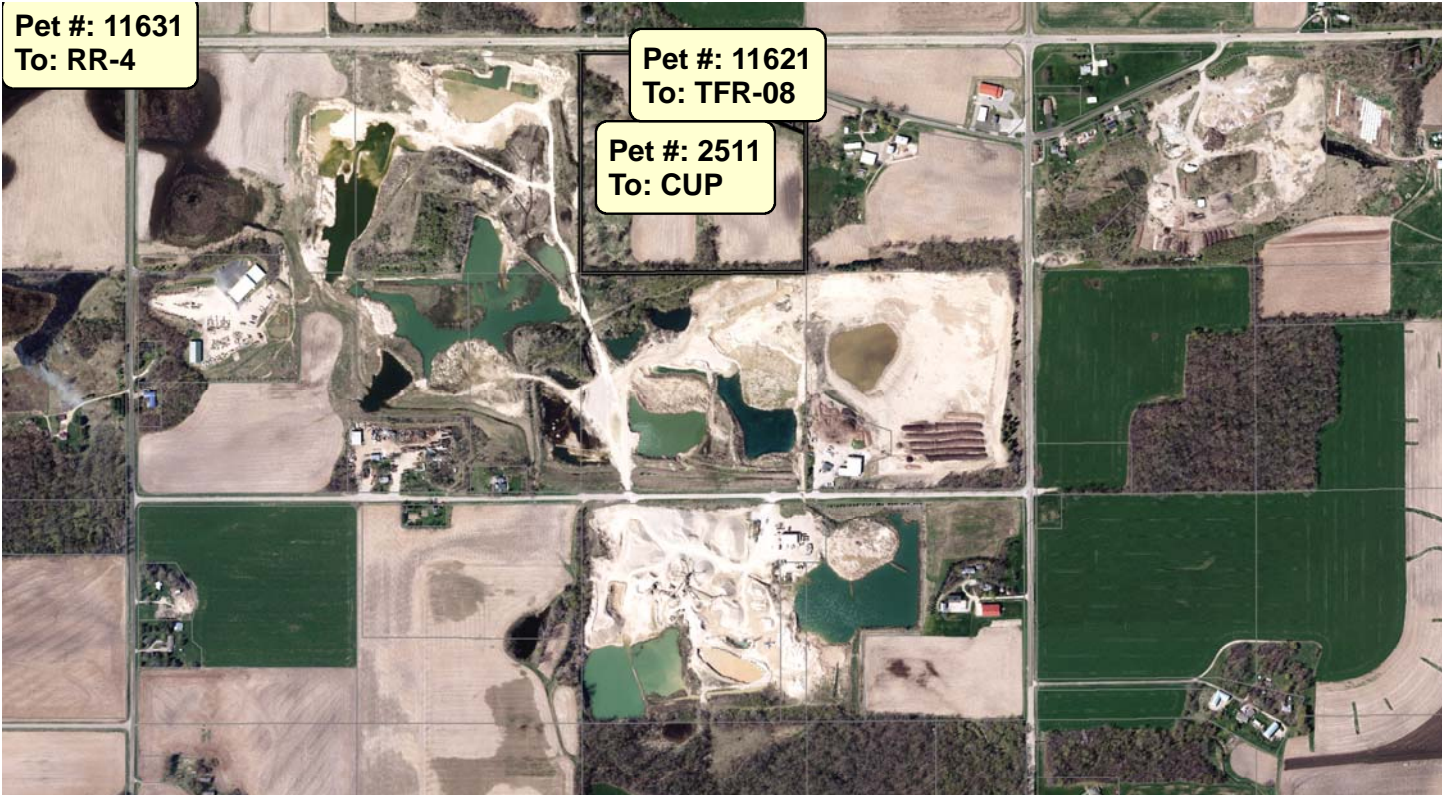


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| Staff Report  Zoning and Land Regulation Committee | <i>Public Hearing:</i> December 22, 2020 | CUP 02511 | |
| | <i>Zoning Amendment Requested:</i> TO CUP: Mineral extraction Zoning district RM-16 (Rural Mixed Use) | | |
| | <i>Size:</i> 30 Acres | <i>Survey Required.</i> | <i>Town/Section:</i> VIENNA, Section 22 |
| | <i>Reason for the request:</i> Non-metallic mineral (sand & gravel) extraction. | | <i>Applicant</i> 4 D FARMS LLC (owner); operator is Madison Sand and Gravel |
| | | <i>Address:</i> 5379 CTH V | |



DESCRIPTION: This application is for a conditional use permit (CUP) for a sand and gravel mineral extraction operation. The operator is Madison Sand & Gravel Company. The site is in the Rural Mixed-Use (RM-16) zoning district. As you can see from the image above, this conditional use permit (CUP) application will expand an existing mineral extraction operation. The remainder of the operation is in non-conforming (NC) status, and because this proposal is for land outside of the NC boundaries it requires a CUP.

OBSERVATIONS: The current use on the land is agricultural crops mixed with wooded areas. Surrounding land uses are non-metallic mining operations to the west and south, a couple of single family residential lots to the north, and farmland to the north and east. There is a duplex in the northeastern corner of the property that is being rezoned to TFR-08, via petition #11621. Also in the northeastern corner, but on a separate parcel, is a single family residence.



DESCRIPTION OF OPERATION:

Operations on site will be excavating and hauling of material. An excavator and loader will be on site performing operations. This material will then be trucked across Norway Grove School Road for processing. Hours of operation shall be 6 a.m. to 6 p.m. Monday through Saturday, and there will be 20-30 employees at any given time. No structures will be built on the property.

There will be no on site blasting, drilling, crushing, washing, fuel storage, asphalt batching, or concrete mixing. Materials stored on site will be stockpiled sand and gravel, and there will be no hazardous materials stored onsite. The subject property will be accessed from adjoining land that is owned by Madison Sand & Gravel, therefore no road improvements will be needed. Noise from the operation activities will be mitigated with berms, dust will be controlled via water trucks, and runoff will be contained within the pit.

TOWN PLAN: The subject property is in the *Agricultural Preservation* land use district of the town of Vienna Comprehensive Plan. Because a considerable number of mineral extraction operations exist in the town, the plan also contains policies specific to mineral extraction. A portion of those polices are below:

Agricultural Goal 4 (Mineral Extraction): Develop additional local siting, nuisance and

reclamation restrictions on active and potential quarrying operations with an emphasis on encouraging the reclamation of existing facilities within the Town of Vienna.

Objective 4.0:

Establish a set of local policy guidelines to evaluate new and expanded mineral extraction operations in relation to their impact on the Town, both as an individual site and in conjunction with the total number of approved and open sites within the Town of Vienna.

Policies:

4.1 Evaluation of Proposed Quarry Sites – The Town of Vienna will evaluate any proposed quarry use to see if it is consistent with the Town Comprehensive Plan and neighboring uses.

4.1.1 Compatibility with Agricultural Uses – That it is not an activity that will limit the use of surrounding land for agricultural purposes.

4.1.2 Compliance with Farmland Preservation Agreement and Regulations – That it is not an activity which will conflict with agricultural operations subject to a farmland preservation agreement (or zoning certificate) on the subject property.

4.1.3 Compatibility with Existing or Planned Uses – That it is not an activity that will conflict with 1) existing agricultural operations on other properties, 2) existing or planned residential uses, or 3) existing or planned commercial uses.

4.2 Acreage Cap Guideline – The Town of Vienna establishes a policy guideline that no more than 975 acres be approved for mineral extraction sites within the Town at any one time unless the owner/operator of a site enters into a an agreement with the Town of Vienna that address the appearance, access, impacts, potential nuisances, overall safety, and the timely reclamation of proposed sites. This guideline does not automatically limit the maximum number of open acres nor automatically approve a proposed site that falls within the acreage guideline.

COUNTY ZONING ORDINANCE

Compliance with Standards Required for Granting Conditional Uses: Chapter 10 provides eight standards for granting a CUP in Section **10.107(7)(d)(1)**, as follows:

1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare.
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.
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.
4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.
5. That adequate measures have been or will be being taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the conditional use shall conform to all applicable regulations of the district in which it is located.
7. That the conditional use is consistent with the adopted town and county comprehensive plans.
8. If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the finding described in Section 10.220(1)

CONDITIONS: If the permit is approved, staff recommends that all of the following conditions be applied to CUP 2511. The conditions below are divided into four sections. The first section are those required of *all* conditional use permits. The second set of conditions below are *standard* for all conditional use permits *for mineral extraction*. The third set of recommended conditions are based on the *specifics of this site and proposed operation*, and the fourth set of conditions are from the *town of Vienna's Town Action Report*. If approved by ZLR, staff recommends that all four sets of conditions below be applied to CUP 2511.

ONE: Standard CUP Conditions. The town board and zoning committee shall impose, at a minimum, the following conditions on any approved conditional use permit, which are common across all CUPs:

- 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.

TWO: Standard Mineral Extraction CUP Conditions. The following are conditions for all mineral extraction 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, 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.
- 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 Town and Committee will set an expiration date for the conditional use permit based on the quantity of material to be removed and the expected duration of mineral extraction activities.
 - a) Extensions. Due to uncertainty in estimating duration for mineral extraction, conditional use permit holders who have operated without violations, may have the duration of their permit extended for a period not to exceed five years, based on an administrative review by the zoning administrator, in consultation with the town board. No more than one such extension shall be granted over the lifespan of the conditional use permit, and all conditions shall remain the same as the original permit. Further extensions or any modifications of conditions shall require re-application and approval of a new conditional use permit.
- 4) Reclamation shall meet all requirements of Chapter 74 of the Dane County Code of Ordinances. In addition, all reclamation plans must meet the following standards:
 - a) Final land uses after reclamation must be consistent with any applicable town comprehensive plan, the Dane County Comprehensive Plan and the Dane County Farmland Preservation Plan.
 - b) Final slopes shall not be graded more than 3:1 except in a quarry operation.
 - c) The area shall be covered with topsoil and seeded to prevent erosion.
 - d) The area shall be cleared of all debris and left in a workmanlike condition subject to the approval of Dane County
 - e) Highwalls shall be free from falling debris, be benched at the top, and certified by a civil engineer to be stable.
- 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 public right of way.
- 8) 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.
- 9) The Town and Committee will assign hours of operation appropriate to the particular application. No operations of any kind shall take place on Sundays or legal holidays. The committee and town board may approve limited exceptions to normal hours of operations for projects associated with Wisconsin Department of Transportation or municipal road projects requiring night work. [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 specifics for this operation 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) 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.
- 12) The operator shall require all trucks and excavation equipment to 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) 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.
- 16) Additional conditions for particular circumstances. Where any of the following circumstances apply, the zoning committee and town board shall also impose the following conditions on any approved conditional use permit for mineral extraction:
 - a) Blasting:
 - (1) Blasting Schedule. 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. Schedules for blasting need not conform to hours of operation for the overall mineral extraction project.
 - (2) Notice of Blasting Events. 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 500' of the mineral extraction site to either receive or stop receiving such notices at any time.
 - (3) Other standards. All blasting on the site must conform with all requirements of SPS 307, Wisconsin Administrative Code, as amended from time to time, or its successor administrative code regulations.
 - (4) Fly rock shall be contained within the permitted mineral extraction area.
 - b) Fuel storage. All fuel storage must comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment.
 - c) Mineral extraction at or near groundwater. 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.

THREE: Conditions Unique to CUP 2511. Potential conditions of approval specific to CUP 2511 (note that these conditions are subject to deliberation and modification by the Zoning and Land Regulation Committee):

- 1) Operations shall cease no later than 20 years from the date of CUP approval.
- 2) Hours of operation shall be from 6:00 a.m. to 6:00 p.m., Monday through Saturday.
- 3) There shall be no blasting, crushing or washing.
- 4) There will be no hauling routes – material must be trucked to the existing operation areas and will not utilize any roads except what is already permissible (crossing Norway Grove School Road) per current operations.

TOWN ACTION AND CONDITIONS: The town contracts with an engineer to review all applications for mineral extraction. They use his review to inform them in determining appropriate conditions. The town Plan Commission approved 3:1 and the Town Board 5:0 with one condition, as follows **(FOUR):**

Madison Sand & Gravel (MSG) will upgrade some of the fencing around the residential property that borders the site to a 4x4 wire mesh; MSG will locate wells for the five homes in close proximity to the site, test the wells prior to the start of operation and test them annually to ensure the safety of the water quality. Homes include: Parcel 0909-221-8002-0; 0909-221-8960-0; 0909-221-8560-4; 0909-154-9270-5; 0909-154-9210-7. MSG will help repair any of the 5 wells located if one fails. There will be seventeen 5-gallon bucket trees planted around the property line. Operation hours will be from 6am to 6pm, Monday-Saturday and no washing, crushing or blasting will take place. Ten 5 gallon bucket trees will be added by the wetland on Highway V, along the berm, as a sound barrier for the house across the road. The Plans submitted at the Plan Commission and Town Board have been updated to reflect these conditions as of 10/05/20. Please note, both meetings had surrounding neighbors in attendance. Some of these conditions were added as part of MSG and property owner's discussions and agreements.

STAFF RECOMMENDATION: Staff recommends approval with all of the conditions, one through four, described above.

Questions? Call Pam Andros 608-261-9780 or email andros@countyofdane.com

12-3-2020