

Summary of Challengers' Objections to CUP 2563

6/22/2022

We object to CUP 2563, which is a copy of the rejected CUP 2496, on the ground that, like its predecessor, it fails to meet all the standards in Dane County's zoning ordinances for an open pit mine conditional use.

Specifically, the CUP 2563 application is a standard recitation of statutes and regulations the applicant promises to adhere to. While stating those is necessary, it is not sufficient without addressing the environmental, economic, and quality of life issues of the proposed use. As laid out in Act 67, that means demonstrating with objective data, facts, and metrics that indeed the use is not unduly disruptive to neighborhood living standards and property values.

Noise. The amount of noise generated from the existing, nearly exhausted quarry, which will continue indefinitely in the expansion, was measured in the objectors' submission (Spelter statement pages 6-7). These readings exceeded levels found to increase cardiovascular effects over long-term exposure (Spelter page 8) and deemed a "serious annoyance" by the World Health Organization (Spelter page 9).

The applicant's consultant acknowledged that noise pollution from the quarry is affected by several factors but conducted no tests nor provided fact-based analysis to quantify the effects. The application merely stated that berms would be built, trucks would be fitted with mufflers and crushing would be conducted at the quarry floor but it presented no data on what that means for actual noise generation.

It was emphasized that crushing will be at the bottom of the quarry and that "helps a lot with noise and everything so we believe it blends directly into it", again failing to back up the "belief" with measured data (testimony of attorney Sweeney at 1:36:45).

Objectors of the CUP highlighted as especially disturbing the high-pitched beeps of reversing moving equipment (testimony of Thomas Eugster at ~2:15:40). Applicant's consultant acknowledged there are lower pitched options for reverse motion signaling but made no affirmative commitment to installing such, nor any indication that the status quo will change if the permit is approved.

Objectors' measurements indicated that noise emissions can be mitigated by distance from the source. A 375' buffer reduced the average noise level by 13.1 decibels in the environmental conditions that existed when the measurements were taken (Spelter page 7). The application on the other hand specifies only a 20' setback from the northern fence line which is even less than the current 33' deed-restricted setback on the western side of the present quarry facing the same property.

The application claims that "berms offer an aesthetic, sound, and wind buffer" (application page 4) but failed to specify the dimensions of these berms nor document in decibels the expected reduction in the noise level which is what really matters. Furthermore, no mention is made of their inability to block the sight lines into the activity which the current berms fail to do (testimony of Mary Knutson at ~ 2:23:50).

Ground waves. The applicant presented data that intended to represent "Peak Particle Velocities" of past blasts but in fact were combinations of various peak and irrelevant sub peak waves all combined with readings from different locations. This methodology is inconsistent with the standards and misleads actual peak blast waves produced.

Objectors pointed out the singular surroundings around this permit involving a cemetery and a 175-year-old house built by the original settler whose stone foundations will be subject to increasing shocks as the quarry advances toward it (Spelter pages 5, 23). At its extremity, blasting will occur within 600' of this structure. That is equivalent to the distance to the Hanson house located across the street from the existing quarry where ground waves were regularly measured due to its proximity. Indicative was the blast on June 5, 2020 which produced a peak velocity that was essentially at the limit of permissible wave strength (Spelter page 24). The applicant's blasting specialist failed to address the cumulative impact of blast waves on the vulnerable structures surrounding the site and how they will modulate their blasts to avoid damage. A Church in the Town of Deerfield suffered structural damage from such blasts that led to a blasting ordinance that lowered the allowable peak velocity to less than half what the applicant plans to operate under (Spelter page 5).

Dust. The application contains an "Emission Control Plan" that lists eight emission control "options". Most involve shrouding piles or watering materials as they are processed or transported. As compared to the theory, the actual practice was shown to be inadequate, creating a thick haze at the site and neighboring downwind properties during dry and windy days (Spelter pages 10-11).

Compatibility with Town Plan. Rutland's Town plan emphasizes pedestrian and cyclist safety and an accompanying goal to reduce non-local traffic through residential areas. Since restarting the pit, truck traffic has increased along Center Road which has transformed into a largely residential thoroughfare, making it increasingly unsafe to walk or bike on (testimony of Maureen Rowe at ~2:35:00).

Testimony cited one pedestrian fatality and a truck accident both on Center Road (testimony of Gail Simpson at ~2:40:00). Testimony from a nearby pit operator stated that Center Road is an unsafe road and not suited to truck traffic due to steep grades, blind driveways and blocked views due to trees (testimony of Gail Simpson at ~2:40:00). Further indication of its incompatibility is the Town's request that truck traffic from the pit be halted when bicycle rallies are held.

The Town plan promotes economic development consistent with Town residents' needs but this quarry's products are already abundantly available from several existing nearby quarries (Maureen Rowe at ~2:35:00).

Development potential. Applicants assert their use does not inhibit the normal and orderly development of neighboring properties for agriculture while ignoring their move up the value chain as homesteads. As evidence they offered aerial photographs showing subdivisions next to open pits (Courter at 1:16:30).

This has zero probative value. They did not indicate where those sites were, their size, or their state of activity all of which affect their suitability for nearby development. They are also irrelevant because the adjacent properties near the CUP here are not candidates for subdivisions, but rather only for development as rural residences. An expanded pit severely undercuts neighboring property owners' development potential as indicated by value comparisons with properties farther away from the quarry.

Property Values. Peace, quiet, and tranquility are subjective concepts to which economic values can nevertheless be attributed by measuring peoples' willingness to pay. Objectors provided data specific to this site that showed the negative effect the existing quarry had on nearby property values which its enlargement will prolong well into the extended future.

Evidence was presented that the residence to the North of the quarry (formerly Kessenich's) had been placed on the market on two occasions and failed to attract a single legitimate offer (testimony of Bill Boerigter at 2:10:20), before finally having to be sold at a discount to the quarry operator (Spelter page 12).

Bare land sales next to and farther away from the existing pit were compared and those adjacent to the pit were found to have sold at an average per acre discount of 45% (Spelter page13). By contrast, applicants attorney stated "...appraisers that say there has been absolutely zero diminution of values. You have real estate people who say there is. Most of the studies that people have picked up off the internet we have rebuked numerous times because they are not really legitimate, we have dealt with that on numerous occasions" (Sweeney at 1:37:30).

Objector's data were not "picked off the internet" but were based on transactions recorded with the Register of Deeds. The studies that they dismissed as "not really legitimate" and rebuked "numerous times" were not cited nor the rebukes provided, and in any event were irrelevant to the data presented by the objectors which they ignored. Their arguments were not fact-based but merely assertions presented without evidence, contrary to Act 67's requirements.

Applicant's attorney stated that existing properties next to conditional uses must in "No foreseeable manner be substantially, substantially that's an important word, impaired or diminished" (Sweeney 1:36:10).

"Substantially" is a vague term defined as "Of real worth and importance, considerable value, not seeming or imaginary" (West's Encyclopedia of American Law. Ed 2). We agree that "substantially" is an important qualifier and provided evidence that the value losses associated for nearby properties were of real worth, of considerable value and certainly not imaginary, amounting to between \$175K and \$300K in the case of the Kessenich residence and \$292K in the case of the 46-acre field (in 2020 dollars, Spelter page 13). The last evidence was substantiated by the applicant himself whose offer to buy Spelter's field for \$363K amounted to 50 cents on the dollar relative to its value if quarrying ceased.

Moreover, testimony was provided that three splits exist on the property that would become adjacent to the CUP (testimony of Tom Eugster at ~2:16:00). That would create an "adverse material fact" that would have to be disclosed to buyers whose impact we do not know but can speculate based on the Kessenich experience of no legitimate offer received in two attempts to sell. Rural residential parcels in Rutland were selling for about \$250K in 2021 whereas if the development right would have to be transferred recent values for such ranged between \$50K and \$100K.

Under the standard of what a reasonable person would conclude, such losses would be difficult to dismiss as insubstantial and thus the application fails to meet standards #2 and #3.

Conclusion: We recognize the private property rights of any landowner to develop and operate businesses so long as those do not unduly infringe on the rights of neighboring residents. Mr Hahn and his son rely on character references from mainly non-Rutland supporters to evoke sympathy, and mere assertions in lieu of factual evidence that their activity does not deny their neighbors' rights. We are not absolutists, but we are faced with a CUP that has too great a footprint relative to its surroundings. It is a carbon copy of its failed predecessor and does not address elements that demonstrably affect our ability

to enjoy and develop our properties. Therefore, we must oppose this application in the form in which it is currently presented.

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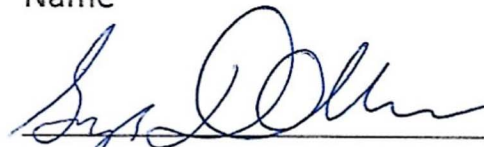
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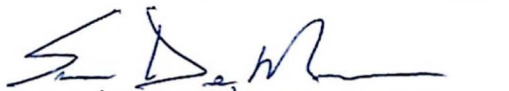
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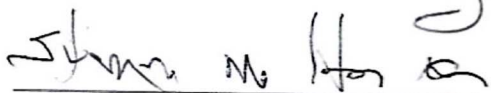
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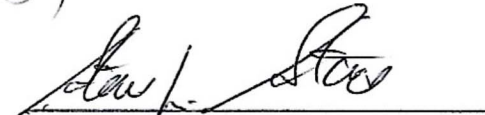
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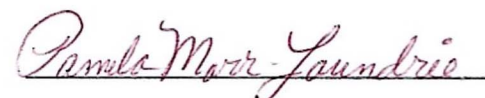
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