



DANE COUNTY PLANNING & DEVELOPMENT

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DATE 12/30/2020

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TO: Zoning and Land Regulations Committee
Roger Lane, Zoning Administrator

Zoning
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FROM: Brian Standing, Senior Planner

CC: Todd Violante, Director of Planning and Development
Jennifer Hanson, Town of Oregon

RE: Summary of Concerns Regarding CUP #2510

Pursuant to Wisc. Stat. 59.69(5e), The applicant for a conditional use permit must demonstrate that the application and all requirements and conditions established by the county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. County Staff have compiled a list of concerns that were raised as part of the public hearing held on Conditional Use Permit Application #2510. The Committee should decide if the concerns that are listed below are reasonable and that additional information is warranted, or if the concerns are of such a nature that mitigating conditions are not feasible. Staff has included recommendations where appropriate.

1. Volume of Traffic: The applicant stated at the public hearing that they anticipated the proposed asphalt plant would either not increase, or perhaps even reduce, the traffic associated with the existing mineral extraction site. However, they did not quantify what those impacts might be. The applicant should set a definitive, numeric limit on the volume of truck traffic per day, and include this information in a revised Operational Plan.
2. Air Pollution: Concerns were raised about whether or not the proposed plant would comply with recently revised EPA standards on asphalt production (see here: <https://www.epa.gov/stationary-sources-air-pollution/hot-mix-asphalt-facilities-new-source-performance-standards-nsps>). Concerns were also raised about the effect of high winds on the dispersal of dust, particulates and other pollutants. The applicant should revise the Operational Plan to specifically address these issues.
3. Water pollution: Concerns were raised about the potential for arsenic pollution in private and/or municipal wells. A suggestion was made that the applicant pay for local well monitoring. The applicant should provide evidence of steps taken to minimize or eliminate arsenic emissions, runoff or groundwater contamination in the asphalt production process.
4. Odor Control: Some members of the public questioned how effective proposed odor-controlling technologies would be at minimizing nuisance odors to neighboring properties. Applicant should provide evidence that similar plants using proposed technologies have successfully met performance standards described in [NR 429, Wisconsin Administrative Code](#).
5. Pollutant Monitoring: The applicant should revise the Operations Plan to identify ongoing monitoring practices that will be implemented to ensure compliance with pollution regulations and permit conditions. Information about how to access such monitoring data should be made available to the public.
6. Compliance with Existing CUP 2334 Standards: Some in attendance questioned whether the existing mineral extraction operation was operating in compliance with CUP 2334 standards, particularly with respect to dust control. The Zoning Division should inspect the mineral extraction site and verify whether permit conditions continue to be met.

7. Noise: The applicant stated that the noise of the proposed asphalt plant would be “similar” to that of the existing mineral extraction site. Members of the public asked if that meant that the total noise level would then double. Proposed conditions on the permit should be amended to set an absolute, peak noise level, **from all combined operations on the site**, of no more than 75 decibels, as measured from the property line.
8. CUP Termination Date: Members of the public proposed a shorter initial Conditional Use Permit term, to evaluate the impact of the asphalt plant, before a longer-term permit is approved.
9. Hours of Operation: The applicant should revise the Operational Plan to identify the specific activities (and their potential traffic, noise and other impacts) that would occur during “start-up,” “shut-down” and “maintenance and repair” periods. Permit conditions should make clear that performance standards continue to apply while these activities are taking place. At least one member of the public testified that they would prefer a 7:00 a.m. plant operation start time.
10. Property Values: Representatives from Payne and Dolan testified that similar asphalt plants did not result in a diminution of value in neighboring properties. The applicant should provide assessment or appraisal information to verify this claim.
11. Public Contact for Applicant: Payne and Dolan should identify a particular individual the public may contact with concerns about plant operations or impacts. This information should be updated as staff changes, and should be included in posted information at the site and online.
12. Additional Public Hearings: Some members of the public asked if there could be additional public hearings in the Town of Rutland or the Village of Brooklyn on this proposal. Given the COVID-19 pandemic, it may be difficult for these entities to hold in-person hearings. The ZLR committee should decide if there is additional information or testimony that could be provided at subsequent hearings that was not available at the 12/22/2020 ZLR public hearing.
13. Similar Asphalt Plants Elsewhere: Members of the public asked if Payne and Dolan operates other, similar, asphalt plants, particularly at a similar distance to residential neighborhoods. The applicant should identify similar sites. If feasible, the ZLR may wish to consider a site visit of such operations.
14. Summary of Village of Brooklyn’s Extraterritorial authority: Members of the public requested a written summary of the Village of Brooklyn’s regulatory authority beyond its municipal boundaries.
 - a. The Village of Brooklyn may object to **land divisions, but not CUPs** within 1.5 miles of its boundaries under its current ordinances.
 - b. If the Village chose to do so, it could, in cooperation with the Town of Oregon, enact a extraterritorial zoning ordinance under [s. 62.23\(7\)\(a\), Wis. Stats.](#) which could give the Village direct authority over CUPs. To date, however the Village has not done so.

CUP STANDARDS:

In order for an applicant to obtain a Conditional Use Permit, the Zoning and Land Regulation Committee must find that all of the following standards are met for the proposed land use:

1. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare.
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.
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.
4. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made; and
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; and
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 permit is located in the FP Farmland Preservation Zoning District, the land use shall meet the requirements found under 10.220(1)(b).