



## Staff Report

### Zoning and Land Regulation Committee

Public Hearing: **February 24, 2015**

Action:  
**Review of Conditional Use Permit  
#1059 – Concrete Batch Plant**

Acres: 45.2 acres

Reason:  
**Review and possible revocation  
of the Conditional Use Permit due  
to violations and concerns**

Petition: **CUP 1059**

Town/sect:  
**Blooming Grove / 14**

Owner:  
**Yahara Materials, Inc  
Buckeye Quarry, LLC**

Location:  
**4315 County Highway  
AB**



### Summary

In 1993, Yahara Materials obtained a conditional use permit to operate a concrete batch plant in the Buckeye Quarry. During the review process, the Town of Blooming Grove and the Regional Plan Commission (staff to ZLR) both expressed concerns that the proposed batch plant may create conflicts with the future urbanization of the area. A condition was placed on the approval to have the Town Board review the operation on an annual basis.

On November 7, 2014, Assistant Zoning Administrator Dan Everson conducted a site inspection at the quarry stemming from a complaint. It was observed that the concrete batch was being operated outside the boundaries of the conditional use permit. With this violation observed and the pending cold weather, the portable concrete batch plant was removed from the property.

Further research was conducted on the approval of the batch plant. Staff checked to see if the conditions of this conditional use permit were being followed. The Town of Blooming Grove was contacted to see if operation was being reviewed on an annual basis. The Town Clerk stated that an annual review has never taken place.

The site inspection conducted in November also revealed another violation occurring at the Buckeye Quarry. It was observed that the quarry operator extracted aggregate materials from an area outside the original ownership boundaries of the registered non-conforming site. It is estimated that operator has extracted approximately 250,000 tons of aggregate from the site.

Also during the past year, Dane County and the City of Madison have been receiving reports on the commercial truck traffic heading west along Buckeye Road. This stems from both aggregate and concrete being hauled from the quarry. It appears that there may be traffic conflicts arising from the amount of concentrated commercial activity from the site.

With the amount of discrepancies found on this property, Zoning Staff felt compelled to alert the Zoning and Land Regulation Committee of these concerns and have the Conditional Use Permit reviewed to see if the conditions of approval are being followed and whether or not the CUP should remain valid.

#### **Dane County Code of Ordinance Section 10.255(2)(m)**

*Revocation of a conditional use permit.* If the zoning committee finds that the standards in subsection (2)(h) and the conditions stipulated therein are not being complied with, the zoning committee, after a public hearing as provided in subs. (2)(f) and (g), may revoke the conditional use permit. Appeals from the action of the zoning committee may be as provided in sub. (2)(j).

**(h) Standards.** No application for a conditional use shall be granted by the town board or zoning committee unless such body shall find that all of the following conditions are present:

1. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general 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 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.

#### **Staff:**

There has been a significant amount of development in the area through out the previous 22 years. Staff feels that any future operation of a concrete batch plant should be reviewed so that it is compatible with the existing neighborhood and current traffic patterns.

#### **2/24 ZLR Public Hearing minutes**

The Committee postponed action on the item.

Speaking in opposition to revocation: Tim Geoghegan, Michael Lawton, Bill White

Individuals speaking in opposition to revocation of CUP 1059 for a concrete batch plant stated that the use is currently in compliance with applicable ordinance standards and permit conditions. Speakers indicated concern with the manner in which the revocation process was taking place, stating also that other permits that have been revoked involved "consistent violators", whereas the applicant has worked to bring uses into compliance when violations have been found. Speakers also noted that many of the concerns expressed by neighboring residents had to do with operation of the non-conforming mineral extraction site on the property, not the concrete batch plant.

Speaking in favor of revocation: County Board Supervisor Robin Schmidt, Jeff DuFrane, Tonya Hamilton-Nisbet, Tiffani Roltgen, William Taylor

Individuals speaking in favor of revocation of CUP 1059 for a concrete batch plant stated that the use did not meet several required standards applicable to conditional uses, including negative impacts to public health, safety, and welfare, diminished enjoyment of their properties, and inadequate measures to address traffic congestion and safety due to heavy truck traffic in nearby residential neighborhoods associated with the operation of the use.

#### **3/11 ZLR meeting:**

The Committee postponed action until the May 12th meeting.

The Committee would like County Staff to obtain input from the Town and obtain documentation from the City of Madison with the regards to specific conditions or concerns that they would have with the batch plant. Supervisor Matano expressed again that the conditional use permit should be revoked due to the complaints and the duration of the land use. Supervisor Miles stated that he would like to see the conditions of approval be revised to reflect current concerns keeping in mind that the batch plant has been located there over the past for 22 years. Supervisor Bollig agreed with Supervisor Miles.

**Staff Update:**

County Staff has check with Corporation Counsel in regards to amending the conditions of an existing conditional use permit. Assistant Corporation Counsel David Gault stated that the ZLR Committee could amend the conditions of a conditional use permit in his letter dated March 16, 2015. See attached letter.

The Committee had asked Staff to contact the Town of Blooming Grove with regards to amending the conditions on Conditional Use Permit #1059. The Town of Blooming Grove held a meeting on April 14, 2015 to review the CUP for the concrete batch plant. The Town requests that the CUP be revised to add two addition conditions:

- When night work is being conducted, the lighting for the concrete batch plant is to be directed down into the quarry away from residential areas and public right-of-ways, and
- the operator shall designate haul routes designed to reduce impacts on the surrounding neighborhood, and the operator will notify the Town of Blooming Grove and the City of Madison of the designated traffic routes in January of each year.

The Committee had asked Staff to contact the City of Madison with regards to suggested conditions regarding the batch plant. The City responded with a letter dated March 24, 2015, which states, " The City would welcome any restrictions the ZLR Committee might consider to ensure that the batch plan operates with the least impact possible on its surroundings, including limits on the hours of operation, direction of travel for vehicles coming to and from the site, and practices to limit dust and loose aggregate from leaving the site".

**5/12 ZLR meeting:**

The Committee approved 2 additional conditions to the existing CUP.

1. When night work is being conducted, the lighting for the concrete batch plant is to be directed down into the quarry away from residential areas and public right-of-ways.
2. This conditional use permit for the operation of a concrete batch plant shall expire on December 31, 2016.

**Staff Update:**

The amended conditional use permit was sent back to the Town for review. The Town of Blooming Grove rejected the changes to the CUP. Pursuant to 10.255(2)(c)4., the amended CUP is deemed denied. The Town of Blooming Grove would be more comfortable with an expiration date of 2025. See attached Town Action Report.

The Committee may wish to place this matter on a future agenda for review.

Please note that the attorneys for Yahara Materials, Whyte Hirschboeck Dudek, have submitted objections to the Dane County Board and the Dane County Circuit Court with regards to the ZLR Committee changing the conditions of an existing conditional use permit. They claim that the Dane County Zoning Code does not have any provisions to change an existing conditional use permit. Further, they feel that the ZLR Committee actions the unilaterally amend an existing CUP is unlawful.