



Staff Report

Public Hearing: **April 24, 2018**

Petition: **CUP 02413**

Zoning Amendment:
TO CUP: Mineral extraction

Town/sect:
DUNKIRK, Section 18

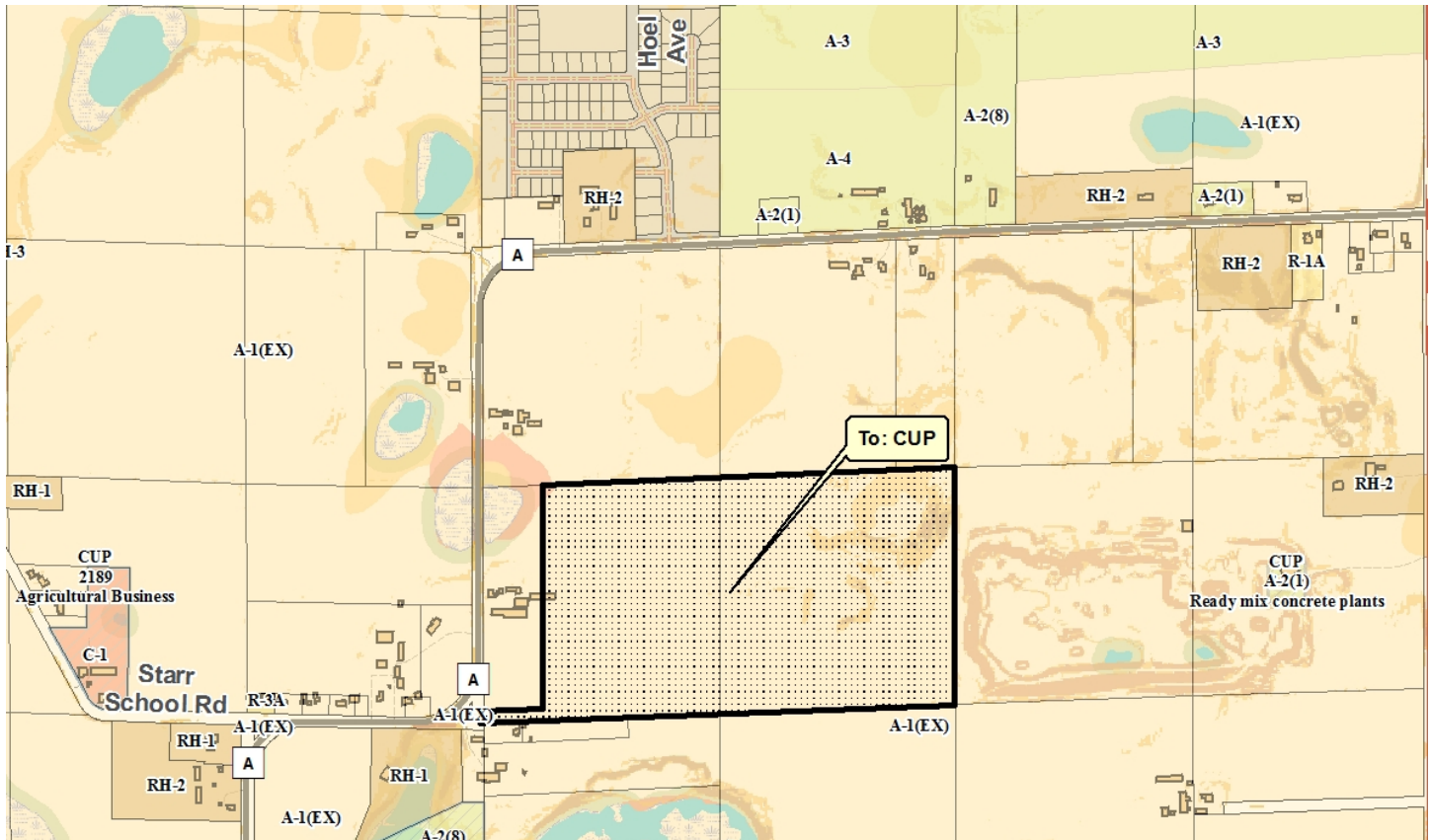
Acres: 70.05
Survey Req. No

Applicant
MARK S ROSENBAUM

Reason:
The applicant wishes to expand an existing mineral extraction operation

Location:
3159 CTH A

Zoning and Land Regulation Committee



PROPOSAL SUMMARY & BACKGROUND

Owner/Applicant: Mark Rosenbaum is the owner and operator.

Size, zoning, use of existing parcel: 70 acres, A-1EX Agricultural zoning, agricultural use.

Rezone/CUP desired: Expansion of an existing legal nonconforming (NC) mineral extraction site.

History: There is a long history of mineral extraction operations at this location. The NC portion of the operation was registered in 1969.

DANE COUNTY PLANNING STAFF COMMENTS

Operations Plan: The applicant is proposing expansion of an existing mineral extraction site into a 70 acre area located directly west of the existing operation. The material to be extracted is sand and gravel. There will be no drilling or blasting on the site. Ten years into the operation, if space allows, crushing and/or screening would take place from Spring to Fall. Because equipment will be fueled at the existing sand & gravel operation, there will be no fuel stored on this site. There will also be no permanent or temporary structures located at this site. The applicant says that trucking to and from the site is not expected to differ from the current operations on the Rosenbaum Crushing & Excavating site.

Initial extraction will take place above the water table, but over time, as demand warrants, material will be extracted from below the water table. This is similar to the operations at the existing site.

No harmful chemicals are used in the processing of the sand and gravel and a spill prevention and control plan will be in place prior to extracting materials from below the water table. The permit period requested is 40 years.

The operation will be done in phases, (moving from the existing operation westward) with sand and gravel being extracted from approximately 3-5 acres at one time and reclaiming that area before moving on. As a result, a large portion of the parcel will remain in agricultural use during the mineral extraction operation. The operations plan includes installation of an 8' berm with 1:1 side slopes along the western boundary of the property. Staff recommends that this berm be extended to the south and wrap around the corner similar to how it is designed at the NW corner of the property.



Hours of Operation: The hours of operation will be 6 a.m. to 6 p.m. Monday through Friday.

Proposed Future Land Use: The proposed use after reclamation includes a man-made lake and extensive wildlife habitat. The plan will be in keeping, and an extension of, the reclamation plan issued for the existing operation (permit 74-50).

Surrounding Area Characteristics: The area surrounding the operation is in agricultural use, and some scattered single family residential uses.

Sensitive Environmental Features: There are no sensitive environmental features on the site, but there is a small area of wetlands west of the site along CTH A.

Town Plan: The *Future Land Use* map of the *Town of Dunkirk Comprehensive Plan* shows the subject property in the *Agricultural Preservation* land use district. Non-residential uses do not count against the density policy. This proposal is consistent with the town and county comprehensive plans.

Town Action: The town voted unanimously in favor of this petition with no conditions.

Compliance with County Ordinances: The applicant will have to meet requirements of Chapter 74, Nonmetallic Mining Reclamation, and Chapter 14 (Stormwater and Erosion Control) of the Dane County Code of Ordinances (DCCO). The applicant is submitting a reclamation plan for the expansion area, and staff is requiring that the new reclamation plan be submitted for the entire site in order to correct outdated material. As is required in an exclusive agriculture zoning district, the site will be reclaimed for agricultural use.

Chapter 10: According to S. 10.123(5), the ZLR Committee must also find that the following factors are met before approving any conditional use permit in the A-1 EX (exclusive agriculture) zoning district:

1. The use and its location in the A1 Ex zoning district are consistent with the purposes of the district.
2. The use and its location in the A-1 Ex zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
3. 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.
4. 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.
5. Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

Chapter 10 also provides **six standards for granting a CUP** in Section 10.255(2)(h) of the zoning ordinance. 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.

Staff has prepared a list of conditions that may be used in order to meet the six standards as listed above to allow the conditional use on the property. Please note that the conditions may need to be changed or additional conditions added to address potential nuisances that may come to light during the public hearing.

April 24th ZLR Public Hearing

The ZLR Committee postponed action on this application due to public opposition. Todd Leis stated that he was concerned regarding ground water contamination, lake levels, reduction on land values, and noise.

Staff Update

County Staff has reviewed the concerns of Mr. Leis and have discussed the issues. There is a very low potential for ground water contamination from the extraction of sand and gravel. There are no chemicals used in the extraction. Condition #7 prohibits the operator from storing vehicles or fuel within the CUP boundary further reducing the potential of ground water contamination. Water is not used for the extraction of sand and gravel and the extraction will not affect the water table.

The extraction operation will have a minimal effect on the adjacent properties. Condition #7 prohibits blasting, production of concrete, and lighting in the CUP boundary. Condition #3 requires an 8-foot berm around the operation to screen the quarry from view. The sand and gravel from the CUP area will be moved via conveyor belt to the lands to the east for processing. All major vehicle activity for the operation is located on the east side of the property which is 4000 feet from the homes to the west. Hauling access to/from the site is restricted to State Highway 138. The site is prohibited from being access from County Highway A.

County Staff feel that the suggested conditions adequately address concerns and minimizes the potential impact the operation will have on neighboring properties. Staff suggests approval with 22 conditions.

RECOMMENDED CONDITIONS

The following list of conditions is based upon a list of conditions that are traditionally used for similar operations in Dane County, customized for this specific site and proposal. This list of recommended conditions are those that were shared with the town.

POTENTIAL CONDITIONS OF APPROVAL FOR CUP 2413:

1. The applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
2. The applicant shall apply for and receive all other required local, state and federal permits.
3. The operator shall develop and operate the site according to the proposed site operations plan. Once extraction operations have reached 1,320 feet from the eastern boundary of the CUP area, 8' berms with 1:1 side slopes must be constructed for screening. The berms must be seeded in 14 days. When operations move beyond that point, the berms must be moved and reconstructed along the western

edge of the site, wrapping around the NW and SW corners. The berms will be 8' with 1:1 slopes and shall be seeded in 14 days.

4. Operations shall cease no later than forty (40) years from the date of CUP approval.
5. The operation shall be conducted in phases with sand and gravel being extracted from approximately 3-5 acres at one time and reclaiming that area before moving on to the next phase.
6. Reclamation shall be completed as required by Chapter 74 of the DCCO and NR135. The plan shall be an amendment to the reclamation plan for the existing site (NC site), showing the existing site and the expansion area (CUP#2413), treating it as one overall operation.
7. The following are prohibited on this 70 acre site: blasting, drilling, production of asphalt or concrete, storage of recycled material, permanent structures, additional water wells, lighting, vehicle storage or fuel storage.
8. 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. The operator will follow the Dust Control Plan.
9. Haul roads must be maintained for dust control.
10. The operator and all haulers shall access the CUP site through the existing access point (971 State Hwy 138).
11. The access to the driveways shall have gates securely locked when the extraction site is not in operation. The site shall be signed "NO TRESPASSING."
12. Hours of operation shall be as follows:
 - a. 6 am to 6 pm Monday through Friday
 - b. No operations shall take place on Saturdays, Sundays, or legal holidays
13. There shall be a safety fence around the entire extraction area at all times. This fence shall include "NO TRESPASSING" signs at regular intervals of at least 200' around the entire perimeter.
14. All vehicles shall be stored on lands three (3) feet above highest water table elevation to prevent against groundwater contamination from leaks or spills.
15. The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed current industry standards for noise abatement. Trucks will be routed to avoid unnecessary back-ups.
16. The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076.
17. No minerals shall be excavated within 20 feet of the property boundaries with the exception of the east property line.
18. There shall be no alteration of topography within 5 feet of the property line, with the exception of the east property line.
19. Dane County and the Town of Dunkirk 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 may commence. The liability insurance policy shall remain in effect until reclamation is complete. Copies of appropriate insurance policies shall be filed with the Town of Dunkirk.
20. The owner/operator must post a copy of this conditional use permit #2413, including the list of all conditions, on the work site.
21. 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. Unless the operation is in reasonable compliance with these terms of approval, such approval is subject to amendment or revocation.
22. If any portion of these conditions is held invalid the remainder of these conditions and provisions shall not be affected thereby.

(Questions? Contact Pam Andros – 261-9780)