

Attorney Christa O. Westerberg  
cwesterberg@pinesbach.com

January 18, 2018

**BY HAND-DELIVERY**

Dane County Zoning & Land Regulation Committee  
City-County Building, Room 116  
210 Martin Luther King, Jr. Blvd.  
Madison, WI 53703

Re: CUP # 2405, Rocky Rights LLC/Wade Cattell, Eilenfeldt, application for non-metallic mining on 35 acres zoned A1-EX

Dear Chair Kolar and Members of the Zoning and Land Regulation Committee:

This letter is submitted on behalf of Alex and Jamie Tukiendorf in opposition to proposed conditional use permit (“CUP”) #2405 for a non-metallic mine in the Town of Cottage Grove. The Tukiendorf family lives immediately south of the existing Rocky Rights/Wade Cattell (“Cattell”) non-metallic mine site, as well as a concrete batch plant approved on the same property permitted by conditional use permit #2175 in 2011. Mr. Cattell seeks to expand this operation on 35 acres to the north of the existing site, on property belonging to Kirk & Heidi Eilenfeldt.

The non-metallic mining CUP should be denied because it fails to meet Dane County’s ordinances and Cottage Grove’s comprehensive plan, and because the application process has suffered from material procedural flaws. The existing Cattell concrete batch plant and mine site have already reduced neighboring property values and raised persistent compliance concerns. This mine site is intended to supply material for the concrete batch plant and would extend its life and the accompanying disturbances to neighbors. For these reasons, we respectfully request that you deny the CUP.

**I. The application does not meet in Dane County and Cottage Grove legal standards.**

*A. Dane County Ordinance § 10.255(2)(h)*

The Dane County Zoning Code requires an applicant to meet six standards to obtain a CUP, including:

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;
- [...]

Dane Co. Ord. § 10.255(2)(h).

Mr. Cattell has the burden to show he will meet these standards by substantial evidence. Wis. Stat. § 59.69(5e)(b)2.

This applicant failed to show he will meet these standards providing on a cursory discussion of each. Further, the well-documented history of issues with the current mining operation and concrete batch plant provides ample evidence that these factors cannot be satisfied. The existing Cattell operation already causes nuisance conditions for the neighbors, including excessive noise from heavy trucks, machinery, banging truck gates, and back-up beepers; dust; and lights. These conditions disturb neighbors' sleep, reduce their ability to be outdoors on their property and to keep windows open, and generally reduce enjoyment of their property. These conditions have generated complaints from the Tukiendorfs and other neighbors. (*See, e.g., Attachments 1 (Ex. A, J), 2 at 3-4, Attachment 3 at 3, 7-9, 14.*)

A new non-metallic mine would prolong the life of the concrete plant and the disturbances for these neighbors, while creating additional disturbances for a new set of neighbors north of the existing mine site. The application vaguely states it is for extracting 30,000-50,000 tons of aggregate a year, though "municipal work could increase this amount." The operation would use the same driveway that passes 80 feet from the Tukiendorfs' home, and the existing driveway is a substantial source of truck noise, disturbance, and dust for the family. The application incorrectly notes there have been no operational violations or material complaints at the existing site, a claim addressed further below.

The existing operation has had a tangible effect on property value. These effects are explained in the attached request to revoke CUP #2175, which the Tukiendorfs were recently forced to file to address loss of property value from the concrete plant and associated mine site. (See **Attachment 1**.) As the request explains, the Tukiendorfs purchased their home for \$255,300 in 2005. They had no problem with the mine operation at that time, which was then owned by Cattell's predecessor. Recent assessments conducted since the CUP was approved in 2011 have valued the Tukiendorfs' property at \$177,900 (Town assessor) and \$121,320 (private assessor). The private assessor noted the Cattell operation and opined that the Tukiendorfs' property was "so impacted by the adjacent uses that any practical use . . . as residential is implausible." (**Attachment 1, Exhibit C at 24**.) He determined the property would now be better used for industrial purposes. The Tukiendorfs' neighbors to their immediate east have also experienced significant property value declines. (**Attachment 1, Ex. E**.)

Expanding the mining operation with a new CUP will extend the life of the concrete batch plant, which, along with operations at the mine site itself and supporting roads, will further impact the property values of neighbors like the Tukiendorfs. The application thus fails to meet § 10.255(2)(h)(1) and (2). Indeed, the Town of Cottage Grove rejected a prior version of this mine expansion for this very reason in 2016. (**Attachment 2 at 1-2, 4-5**.) Despite this history, Mr. Cattell's application provides only self-serving, conclusory statements that he will satisfy the County's standards, which are not sufficient to meet his burden.

The CUP should be denied.

*B. Dane County Ordinance § 10.123(5)*

The CUP would turn a current A-1 Ex (exclusive agriculture) 35-acre site into an industrial site, significantly expanding the existing, 52-acre mine. Mr. Cattell cannot meet the five additional conditions that apply to conditional uses in this zone, and in fact, his application does not even mention these conditions. He has not met his burden to show the County's conditions are met, Wis. Stat. § 59.69(5e)(b)2., and the application should be denied for this reason alone.

Further, the available evidence shows the applicants could not show the additional conditions for an A-1 Ex District are satisfied. These conditions require:

- (a) The use and its location in the A-1 Exclusive Agriculture zoning district are consistent with the purposes of the district.

- (b) The use and its location in the A-1 Exclusive Agriculture zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
- (c) 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.
- (d) 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.
- (e) Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

Dane Co. Ord. § 10.123(5). The proposed CUP could not possibly meet these standards because there is nothing about a non-metallic mine that is consistent with preserving productive agricultural land for food and fiber, much less other purposes of the A-1 Exclusive Agriculture zoning district.<sup>1</sup> One farmer to the east of the existing mine site expressed concern of subsidence at the property line, which affects his ability to work his land and excessive dust drifting to his fields. (**Attachment 3** at 14, Viney comments, 8/23/17.)

---

<sup>1</sup> These purposes are:

1. Provide for a wide range of agriculture and agricultural accessory uses, at various scales. The A-1(EX) district accommodates as permitted uses all activities typically associated with the primary production and harvesting of crops, livestock, animal products or plant materials. [...]
2. Allow for incidental processing, packaging, storage, transportation, distribution or other activities intended to add value to agricultural products produced on the premises or to ready such products for market. [...]
3. Allow for other incidental activities, compatible with agricultural use, to supplement farm family income and support the agricultural community.
4. Preserve productive agricultural land for food and fiber production.
5. Preserve productive farms by preventing land use conflicts between incompatible uses.
6. Maintain a viable agricultural base to support agricultural processing and service industries.
7. Reduce costs for providing services to scattered non-farm uses.
8. Pace and shape urban growth.
9. Meet the criteria for certification as a Farmland Preservation Zoning District under s. 91.38, Wis. Stats.

Furthermore, there is no evidence the applicant considered alternative locations, the applicant does not explain how existing agricultural land within the parcel will be used or the pace at which it will be reclaimed, or whether there will be conflicts with scattered non-farm uses in the area.

Combined with the existing 52-acre nonmetallic mine and concrete batch plant, the CUP would leave Cottage Grove with an 87 acre industrial site in a rural setting currently characterized by farms and residences. The applicant here has not demonstrated compliance with Dane Co. Ord. § 10.123(5) and the application should be rejected.

C. *Town of Cottage Grove Comprehensive Plan*

Under Town of Cottage Grove Ordinance § 15.20.1.2, “[a]ny program or action of the Town Board that affects land use shall be consistent with the comprehensive plan.” Although state law does not require a town to make CUP decisions consistent with its comprehensive plan, Cottage Grove has elected to do so through § 15.20.1.2. *See also* Town of Cottage Grove Comprehensive Plan, Ch. 3, Fig. 1 (listing the comprehensive plan as a document used to review CUP requests). The Plan notes that mineral extraction is currently rare in the Town, taking up only 121 acres. (*Id.*, Conditions and Issues at 25.)

Economic Development Policy #8(b) of the Town of Cottage Grove Comprehensive Plan, which pertains to non-metallic mining, provides that the Town “will consider all relevant plan policies” and “apply the requirements of the Town Non-Metallic Mining Regulations (Chapter 17 of the Town Code of Ordinances)...when considering applications for conditional use permits.” Furthermore, it states,

new extraction uses will not be allowed if they would substantially impair or diminish the value and enjoyment of other property in the area, impede the normal and orderly development and improvement of the surrounding property for uses permitted in vicinity, present a safety hazard, or impair significant or critical wildlife habitat.

Neither the Town Plan Commission nor Town Board even considered the Comprehensive Plan to determine whether the proposed CUP would be consistent with it, and the evidence cited above shows it is not. The Dane County Zoning Staff Report incorrectly states the CUP will be consistent with the Town plan, without considering the provisions identified above.

The proposed CUP would contradict the Town’s Comprehensive Plan on its face, yet the point was never even addressed by decision-makers. The application must be denied.

## II. The CUP application process has been procedurally flawed.

The application and approval process leading to ZLR's consideration of this CUP has been flawed and prejudicial to neighbors, and the CUP must be denied as a result.

The Dane County Circuit Court recently ruled that procedural protections must be strictly followed in CUP decisions, when it overturned a quarry CUP in *Johnson v. Dane Co. Bd. of Supervisors et al.*, Case No. 14-CV-2917. There, the Town of Albion rushed through a CUP approval without regard for its own ordinances or procedural rules. The court, after chastising the Town for a "confusing, disorganized, and potentially incomplete" record, concluded that early procedural defects had "frustrated [the neighbors'] right to be heard at a meaningful time and in a meaningful way in defense of their own property interests" and "therefore, the later stages of the permitting process...rely upon and are tainted by a flawed procedure and evidentiary record." (August 30, 2016 Decision and Order at 10.) It found that County staff compounded these problems by presenting this Committee and the ZLR with incomplete information as it considered the CUP, and "proceed[ing] to work towards the ultimate outcome of molding the form of approval, rather than ensuring all parties had received due process." (*Id.* at 12.)

This CUP process has suffered multiple procedural irregularities.

First, the applicant initially and repeatedly tried to have the Town approve its CUP without first applying to the County, as required by Dane County Ord. § 10.255(2)(b) and (c). This process began in March of 2017, when the Town received a "Notice of Land Use Change." It recommenced in the summer and continued over several Plan Commission meetings until October 25, 2017, when the Town finally recognized (at the repeated urging of this firm and echoed by Dane County Zoning staff) that this process may be defective. (*See Attachment 3 at 12-15.*) Mr. Cattell finally applied with the County on November 9, 2017. By this time, public attention was attenuated and the issue had been confused.<sup>2</sup>

Second, the application is incomplete, omitted requiring information that would have helped explain this operation's impact on neighbors. For example, the County's ordinances require a detailed operational plan with information such as "anticipated noise, odors, dust, soot, runoff or pollution" and measures to mitigate those effects;

---

<sup>2</sup> The County has also not received a full record. The Town Action Report is only three pages and reflects the final Plan Commission and Town Board votes late last year. However, the Town Board Chair indicated the full record of this proceeding would extend back to the earliest application for the current pit. The record available to the Committee so far does not reflect this information. Attachment 3 includes the minutes of these meetings.

number of employees; and “anticipated daily traffic, types and weights of vehicles” and any needed road improvements. Dane County Ord. § 10.255(e)(2). Mr. Cattell’s one-page, bullet point “operating plan” omits this information, despite noise and truck traffic being significant issues. It also omits an explanation of how the additional CUP standards for an A-1 Ex zoning district in Dane Co. Ord. § 10.123(5) will be satisfied.

This information still has not been given to the County or the Town, even though case law mandates that “a court should measure the sufficiency of a conditional use application at the time that notice of the final public hearing is first given. Such a rule ensures that interested individuals will have a meaningful opportunity to express informed opinions at the public hearings.” *Weber v. Town of Saukville*, 209 Wis. 2d 214, 237–38, 562 N.W.2d 412, 421 (1997) (emphasis added).

Third, notice of the Town Plan Commission and Town Board meetings where the CUP would be considered was exceedingly short, further impacting public notice and comment opportunities. The County received the application November 9, 2017, and the Town Plan Commission considered it less than a week later, on November 15, 2017. The Town Board meeting was December 4, 2017. Public notice of these meetings was generally only provided a few days in advance, and they were not clearly noticed as public hearings where residents could provide input. (See **Attachment 3 at 1, 6-7, 11.**)

Fourth, the Tukiendorfs have not been fairly involved in the process. For example, we only learned through an Open Records request in November that Dane County Zoning Administrator Roger Lane had written a letter to the Town months before, on August 28, dismissing Mr. Tukiendorf’s concerns about the existing pit and concrete plant and implying that he is the only person who has complained. We then responded to Mr. Lane and to Dane County Assistant Corporation Counsel David Gault refuting these assertions, which still not been completely resolved. (See **Attachment 4.**) Regardless, the correspondence directly from the County to the Town was highly prejudicial for the CUP process and unfair to Mr. Tukiendorf, in addition to being untrue for the reasons explained in Attachments 1 and 4 hereto.

These procedural defects have improperly affected the process surrounding this CUP, and the Committee should not approve it.

**III. Compliance and oversight issues of the existing operations further show that the CUP should not be granted and will not be enforced effectively.**

The applicant’s track record with the existing mine and concrete batch plant have worsened the existing project’s impacts and raise serious concerns that the applicant will not comply with this CUP if granted.

The concrete batch plant CUP, granted in 2011, contains numerous conditions, including restrictive days and hours of operation; specific soil erosion, landscaping, and fencing requirements; and compliance with local, state and federal regulations including DNR particulate emissions standards. Mr. Cattell has not consistently followed these restrictions, particularly as to hours of operation and dust control from haul roads and driveways. (**Attachment 1 at 2-3, Exs. A, B, G-J.**) The proposed CUP for the mine site contains some of the same conditions—for example, as to dust control from haul roads—raising concern that this provision will not be enforced at the new site, either, to the neighbors' detriment.

The hours of operation issues have been compounded by the County's overly-generous interpretation of the permit. For example, the CUP provides that the plant may operate 6 AM-6 PM Monday through Friday, 6 AM-4 PM on Saturdays, and that operation out of those hours "shall be limited to no more than 6 projects not to exceed 30 total days/year," and shall require seven days' notice to the Town and neighbors. Mr. Dan Everson has interpreted this as allowing the plant to operate at any time outside of designated hours up to 30 days/year. This has permitted intolerable noise, light, and other intrusion at all hours. The County says it does not have Zoning staff working on weekends to inspect violations at those times.

As to the existing mine site, the Tukiendorfs acknowledge it is an existing non-conforming use. However, it is not without limits. It received an erosion control plan and approval from Dane County Land & Water in 2012 that called for reclamation to begin on the northern half of the site (the area closest to the expanded mine area) in 2014. Reclamation has not occurred, to the dismay of the site's neighbors. (*E.g.*, **Attachment 3 at 2, 4**, comments of Otto Otteson and Andrea Enriques.) It also requires a fence and tracking pad, which would reduce dust, but has neither. (*See Attachment 4.*)

Mr. Tukiendorf and his neighbors have long questioned the site's compliance with and the County's enforcement of the erosion control plan. (*E.g.*, **Attachment 2**, comments of Andrea Enriquez, 4/22/15 Town Board meeting.) More recently, when Mr. Tukiendorf has raised this issue, Dane County Zoning staff—astonishingly—claimed that the operator did not need to comply with its erosion control permit. (Comments of Dan Everson, Town of Cottage Grove Plan Commission meeting, November 15, 2017; *see also Attachment 4.*) Corporation Counsel has since changed course and described the violations as "technical deviations" and therefore not "material." (*See Attachment 4 at 20-21.*) The Tukiendorfs experience the effects of these violations every single day, which are, in fact, material.



This thorough record shows that opposition to the proposed CUP is not an isolated conflict between individual landowners. It is rooted in evidence and experience. Many neighbors and other residents have already been affected by the Cattell mining site and concrete batch plant, but the County consistently gives Mr. Cattell the benefit of the doubt. These issues will continue and worsen with the expansion of the mining site. The proposed CUP to expand the site yet further should be denied.

**IV. The Committee Should Reject the County Staff Memo’s Recommended Conditions That Conflict with and are More Permissive than the Town’s Recommended Conditions.**

The Staff Report for CUP 2405 includes a number of “Potential Conditions” for approval. Unfortunately, and without any explanation, many of these conflict with and are more permissive than the Town’s proposed restrictions:

<b>Issue</b>	<b>Town condition</b>	<b>County Staff condition</b>
Hours of operation	6 AM-6 PM Monday-Friday 6 AM-4 PM on up to 6 Saturdays per year, with 7 days’ notice to Town and neighbors No Sunday operations	6 AM-6 PM Monday through Saturday  No operations Sundays or legal holidays
Fencing	Perimeter fence around the entire property boundary	Safety fence around extraction area only
CUP expiration	10 years	20 years
Prohibited activities	Blasting, crushing, screening, production of asphalt or concrete, storage of recycled material, permanent structures, additional water wells, lighting, vehicle storage, fuel storage	Blasting, drilling, crushing, screening, fuel storage, recycled material storage, permanent structures

Additionally, the Town’s report contained some conditions not addressed in County Staff’s memo at all, including requirements for berm construction and seeding, phased mining and reclamation, and a requirement to return land to agricultural use.<sup>3</sup>

<sup>3</sup> The County also requires the applicant to “develop and operate the site according to the proposed site operations plan,” but as noted above, that plan is so minimal, cursory, and vaguely written as to provide few restrictions. This emphasizes the need for a more detailed plan, as the ordinance requires.

Another problem is that some conditions conflict with those applicable to other aspects of the operation, like the concrete batch plant. That facility can only operate on Saturdays from 6 AM-4 PM, but proposed CUP 2405 would extend Saturday hours to 6 PM. The Town specifically used 4 PM to achieve some consistency across approvals and reduce compliance confusion. The Tukiendorfs have regularly pleaded for more consistent requirements.

The Tukiendorfs oppose granting the CUP, but were the Committee inclined to grant it despite the evidence above, the Town's proposed conditions should not be watered down.

Thank you for the opportunity to submit this letter, and for your consideration. Please deny CUP 2405.

Sincerely,

PINES BACH LLP



Christa O. Westerberg  
Leslie A. Freehill

COW:hmm  
Enclosures

cc: Roger Lane (via e-mail)  
Alex & Jamie Tukiendorf (via e-mail)

**TO:** Dane County Zoning & Land Regulation Committee  
**FROM:** Christa O. Westerberg  
on behalf of Alex & Jamie Tukiendorf  
**DATE:** January 17, 2018  
**RE:** Request to revoke Dane County conditional use permit #2175

---

On behalf of its clients, Alex and Jamie Tukiendorf, this firm requests the revocation of Dane County Conditional Use Permit #2175, issued to Raymond P. Cattell, Inc., for a concrete batch plant (the "Plant") located at 2294 U.S. Highways 12 and 18 in the Town of Cottage Grove, Dane County. The request is based on the permittee's failure to meet the standards of Dane County Ordinance § 10.255(2)(h) and continuing compliance concerns.

I. Factual Background

A. The Concrete Plant and 2011 CUP

The Cattell conditional use permit (CUP) has a brief and troubled history. Granted in 2011, it permits the operation of a large, concrete batch plant on 2 acres within a larger, non-conforming non-metallic mine site. At the time, Mr. Cattell promised the Town of Cottage Grove Plan Commission that he would not do highway work--a concern, since highway work frequently entails night operations -- and that he would close and lock a gate to the site when it was not in operation. (**Exhibit A.**)

The CUP contains several conditions, including limits on days and hours of operation; specific soil erosion, landscaping, and fencing requirements; and compliance with local, state and federal regulations including DNR particulate emissions standards.<sup>1</sup>

---

<sup>1</sup> The 12 enumerated conditions of the CUP are:

1. The applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations.
2. The applicant shall apply for and receive all other required local, state and federal permits.
3. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. Monday through Friday, and some Saturdays when necessary from 6:00 a.m. to 4:00 p.m. Operation outside of those times will require at least 7 days' notice to the Town and immediate neighbors, and shall be limited to no more than 6 projects not to exceed 30 total days/year.
4. CUP 2175 shall not become effective until a permit for connection to state trunk highway has been issued from the Wisconsin Department of Transportation (WisDOT); and operations may not begin until all improvements, as defined in the permit for connection to state trunk highway, have been completed.

The Tukiendorfs' home, along with two others, sits on a two-acre parcel directly south of the Cattell property. The driveway used by the trucks hauling material to and from the plant is only 80 feet to the west of the Tukiendorfs home.



Since 2011, the dust, noise, and truck traffic from the Plant have prevented the Tukiendorfs from sleeping, spending time outdoors, keeping their windows open, or generally enjoying their home. Trucks roar up the driveway and track mud, which later

5. The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
6. Trucks shall not use "jake" brakes.
7. 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.
8. Landscaping/screening: The berm along the southern boundary of the mineral extraction operation area shall be uniformly graded with pine trees at least 3 feet high, incorporating neighbor input; berms shall be built on the east boundary of the mineral extraction operation; and the berm on the western boundary must be built in such a way that maintains the access easement.
9. Install fence on northern boundary of the mineral extraction operation.
10. The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076.
11. Operations shall cease no later than twenty-five (25) years from the date of CUP approval, with a review by the town once every 5 years. The town will report the outcome of their review to Dane County Zoning.
12. 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 this approval, such approval is subject to amendment or revocation.

dries and becomes dust that blows eastward across the Tukiendorfs' property. (E.g., **Exhibit B.**) Once at the plant, the trucks' back up beepers and banging truck gates are extremely loud, and can easily be heard within the Tukiendorfs' home. Other equipment at the plant contributes to this noise, like crushers and dryers. These disturbances are highly unpleasant and distressing to the Tukiendorf family.

#### B. The Tukiendorfs' Loss of Property Value

The Tukiendorfs purchased their home in 2005 for \$255,300, assuming it would be the home where they finished their careers and retired. They were told the existing non-metallic mine (then owned by Cattell's predecessor) had little material left and would soon close, and the Tukiendorfs did not find the mine site bothersome after they moved in.

Since the CUP was issued in 2011 and concrete plant constructed, noise and other impacts have substantially increased, and the Town of Cottage Grove assessor has continually reduced the assessed value of the Tukiendorf property. As of 2013, the property was still assessed at \$255,300.00. In 2014, after Mr. Tukiendorf complained about the plant, it was reduced by \$29,200.00, and in 2017, it was reduced by another \$48,200.00. The total loss according to the County is \$77,400.00, or -33% from the pre-concrete plant value. (**Exhibit D.**) The assessor has applied similar reductions to property belonging to the Tukiendorfs' neighbors. (**Exhibit E.**)

In September 2017, the Tukiendorfs hired appraiser Craig D. Hungerford of Real Estate Dynamics, Inc., to conduct an appraisal of their property. Mr. Hungerford has over thirty years of appraisal experience and is well-respected in the industry. After a site visit and analysis, he found that "the [Tukiendorfs'] property is so impacted by the adjacent uses that any practical use of the property as residential is implausible." (**Exhibit C**, Executive Summary.) He further found,

The house is no longer considered to have utility as a residential property. To sell the property the seller will be required to complete a Real Estate Condition Report which will reveal the current and historic conditions on and surrounding the property which a reasonable future residential use buyer will not find acceptable.

(**Exhibit C** at 21.) As a result, Mr. Hungerford found the highest and best use of the Tukiendorfs' property is now as an industrial use – not a residence. Using the sales comparison approach, Hungerford calculated that the total market value of the Tukiendorfs' property is now just \$121,320. The \$121,320 reflects \$106,000 in property value as an industrial site and \$15,320 salvage value for the home.

The Town's assessments are not based on site visits and, thus, are not as accurate as Hungerford's valuation, but both together provide undisputed evidence that the concrete batch plant has substantially reduced the Tukiendorfs' property value.

### C. Site Compliance History

The Tukiendorfs have made numerous complaints about the plant to the Town of Cottage Grove, sheriff's office, Dane County Zoning Department, Dane County Land & Water, and this very committee. Separately, it has complained to the Department of Natural Resources (DNR) and the Environmental Protection Agency. These complaints are well-documented but have not always resulted in relief for the Tukiendorfs.

One of the most persistent problems has been the facility's hours of operation. The CUP permits the plant to run from 6 AM to 6 PM on weekdays, 6 AM to 4 PM on Saturdays "when necessary," and operation outside of those times up to 30 total days each year with seven days' notice to the neighbors. This is already a significant time range which permits all the noise, dust, and disturbance associated with the plant during most waking hours and many times when neighbors are trying to sleep. The Tukiendorfs have also witnessed the facility operate outside of these hours and have repeatedly complained to the Town and County, with few results. (See, for example, **Exhibit J**.) The facility has not consistently provided seven days' notice to neighbors, but when it has, it has confirmed it is doing highway work, contrary to its prior representations. (**Exhibit F**.)

The Tukiendorfs have also complained about dust. The DNR agreed in 2013 that the facility generated too much dust (**Exhibit G**), and took action which has reduced but not eliminated the dust problem. Dane County claimed that since the dust was generated from a private drive that it did not have jurisdiction over the problem.

The Tukiendorfs requested that this Committee modify the CUP in 2013 to address the concrete plant's excessive noise and hours of operations. The Committee discussed these concerns at its meeting on May 28, 2013, and delegated to Dane County zoning staff the task of addressing excess noise. (**Exhibit H**.) Mr. Tukiendorf was not included in any subsequent discussions of the problem, and nothing came of the Committee's direction.

Dane County Zoning has at times claimed it cannot address complaints since the problematic activities are for the non-conforming mine site and not the concrete batch plant. The Tukiendorfs literally have a front-row seat to the site and can confirm the concrete plant is a significant source of the problems they have experienced. Further,

there may be other activities occurring on-site that are not authorized either by the CUP or the mine site's non-conforming status under Dane County Ord. § 10.21, but that exacerbate the impacts to neighbors. In an email recently obtained under the Open Records law, Mr. Cattell stated that "[w]ith regards [sic] to the entire property we do have other operations that have no connection [sic] to the CUP [i.e.] Recycle (asphalt, concrete, Sand fill, dumping, and topsoil sales.)" (**Exhibit I.**) These activities may be occurring outside of hours authorized in the Town's non-metallic mine permit or the County's CUP. Additionally, it is unclear whether the recycling is in fact unconnected to the batch plant and associated CUP requirements, since the recycling may be for reuse in concrete mixtures as envisioned in Dane County Ord. § 10.21(1)(e).

Overall, the Tukiendorfs have been frustrated by lack of compliance with the CUP, and with the Dane County Zoning Department's unwillingness to investigate and enforce problems with the CUP, having written off complaints as just coming from one person and dismissing violations.<sup>2</sup> This is not only untrue—the Tukiendorfs and other neighbors have made complaints to the Town, County, and others (for example, **Exhibit J**)—but is also a poor reason to permit non-compliance with the County's ordinances. Zoning laws are in place to protect everyone, in neighborhoods big and small.

## II. The County Should Revoke the Concrete Plant CUP

Wisconsin counties, including Dane County, have broad authority to revoke conditional use permits. "A CUP is merely a type of zoning designation, not a piece of property." *Rainbow Springs Golf Co. v. Town of Mukwonago*, 2005 WI App 163, ¶ 18, 284 Wis. 2d 519, 529, 702 N.W.2d 40, 45. As its name suggests, a CUP is necessarily conditional and the permittee continually must meet the conditions contained therein. *Sills v. Walworth Cty. Land Mgmt. Comm.*, 2002 WI App 111, ¶ 7, 254 Wis. 2d 538, 547, 648 N.W.2d 878, 882. Once obtained, the permittee maintains no vested rights in the CUP. *Rainbow Springs*, 2005 WI App 163, ¶ 12, 284 Wis. 2d 519, 526, 702 N.W.2d 40, 43.

The Dane County Ordinances provide direct authority for the Zoning Land Regulation (ZLR) committee to revoke a CUP:

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

---

<sup>2</sup> County staff have also offered, as reasons the County has not taken action on the existing site, that there's no inspector working on the weekends, Dane County needs concrete, it's too bad these homes are so close to the facility, Mr. Cattell is not as bad as some operators, and the facility is well-located on a highway and in a sparsely populated area. These dismissive comments do not address the root problem.

revoke the conditional use permit. Appeals from the action of the zoning committee may be as provided in sub. (2)(j).

Dane Co. Ord. § 10.255(m). The six standards of § 10.255(2)(h), in turn, are clear and unequivocal. A permittee is under a continuous obligation to show:

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.

Dane Co. Ord. § 10.255(2)(h)(2). Notably, the ordinance does not allow a balancing of these standards to constitute compliance; each standard must be met individually.

Here, by the Town's assessment and further supported by the Hungerford appraisal, the Cattell site has substantially impaired and diminished the value of the Tukiendorf property by one-third to one-half of its value before the CUP. It is beyond dispute that § 10.255(2)(h)(2) is not met in this case and, thus, the CUP should be revoked.

Additionally, the Tukiendorfs' experiences show § 10.255(2)(h)(1) and (3) are not met, either. The plant is detrimental to and endangers the public health, safety, comfort or general welfare, by reducing the use and enjoyment of the Tukiendorfs' property and that of their neighbors, and creating dust and noise that crosses over the property line. The plant has also impeded the development and improvement of neighbors' properties as residences. The CUP should be revoked for these reasons as well.



Other municipalities have revoked CUPs on similar or lesser grounds, and the Wisconsin courts have upheld their decisions. In *Delta Biological Resources, Inc. v. Board of Zoning Appeals*, the court agreed the City of Milwaukee could deny a CUP reapplication for a plasma center where neighbors reported the center increased the number of loiterers in the area and impaired the public convenience and protection of health and property. 160 Wis. 2d 905, 914-15, 467 N.W.2d 168 (Ct. App. 1991). The court pointed to the City's own ordinance requiring that the CUP use "will not impact adversely on adjoining property or the neighborhood in general" and will "operate[] in a manner so that the public health, safety and welfare is protected." *Id.* at 911. In light of the violations brought to the zoning board's attention by neighbors, the court upheld the decision to deny the CUP reapplication, stating "we cannot say that [the board's] decision is not reasonably supported by the record." *Id.* at 913.

Similarly, a Wisconsin court upheld a municipality's outright denial of a concrete batch plan CUP based specifically on impact to surrounding property values. The town in *Carew Concrete & Supply Co. v. Town of Humboldt* drew on its experience with another concrete batch plant within its jurisdiction to conclude that the CUP being considered would also adversely impact neighbors' property values. 2001 WI App 75, ¶ 14, 242 Wis. 2d 472, 625 N.W.2d 360 (unpublished). The court held this was reasonable, constituting credible evidence to support the denial. *Id.* at ¶ 14.

The Tukiendorfs have presented definitive and compelling evidence that their home has lost as much as half of its value due to the Cattell Plant. The standards of Dane Co. Ord. § 10.255(2)(h) are no longer met, and the CUP should be revoked under Dane Co. Ord. § 10.255(m). Additionally, the CUP was not properly issued to begin with, as Mr. Cattell applied to the Town of Cottage Grove for its permit first, without applying to the County first as required by Dane County Ord. § 10.255(2)(e).

Finally, Dane County's CUP revocation procedure requires a public hearing. Dane Co. Ord. § 10.255(2)(m). Local zoning decisions require due process protections like public notice and hearing "to give owners of property involved and other interested parties a fair opportunity to be heard." *Weber v. Town of Saukville*, 209 Wis. 2d 214, 234, 562 N.W.2d 412, 420 (1997). We urge the ZLR to hold a public hearing on this revocation request in order to facilitate a fair and impartial review of the Cattell CUP, and to exercise its oversight over Dane County zoning staff on this matter to date.

In sum, the Cattell CUP violates the law in Dane County. As the Wisconsin Supreme Court has cautioned, "[c]onditional uses...may well create special problems and hazards if allowed to develop." *State ex rel. Skelly Oil Co. v. Common Council, City of Delafield*, 58 Wis. 2d 695, 700-01, 207 N.W.2d 585, 587 (1973). The Cattell Plant's seven years of operation have created problems and hazards that are incompatible with the

Dane County Zoning & Land Regulation Committee  
January 17, 2018  
Page 8

surrounding uses and that have caused substantial property value loss to the Tukiendorfs.

For these reasons, the ZLR should revoke the Cattell CUP and hold a public hearing for these purposes.

Thank you for your consideration.

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
JUNE 22, 2011

1. Notice of the meeting was posted at Town Hall, Gaston Road at Brown Thrush, American Way and USH 12 & 18 at County BN. A quorum was present with Silvin Kurt, Kris Hampton, Steve Anders, David Muehl, Phillip Bultman, Kristi Williams and Wilmer Larson in attendance. A list of other attendees is available in the Clerk's office.
2. Chair Silvin Kurt called the meeting to order at 7:00 p.m.
3. Approve minutes of previous meetings: **MOTION** by Williams/Bultman to approve the minutes of the May 25, 2011 Plan Commission meeting as printed. **MOTION CARRIED 7-0.**
4. Public Concerns: None.
5. Wade Cattell, Applicant, Sun Prairie Sand & Gravel, landowner – 2294 US Highway 12 & 18, parcel 0711-341-8600-0: Conditional Use Permit for a Concrete Batch Plant on 2 acres: Mr. Cattell said he is looking to relocate due to the economy, and plans to run a clean operation. He had an email expressing that WDOT has no issues relating to the entrance on U.S. Hwy 12 & 18. He presented an overview of the operation, including new berms on the east, west and south, with the north fenced. He said the manufacturing process will not produce any dust, and roads will be watered to control dust from truck traffic. The operation will use the existing well at a rate of about 6,000 gal/day.

Anders pointed out problems with the current non-metallic mining operation on the site, including a break in the east berm that allows run-off from the site during heavy rains, along with water flowing on the property to the north. He asked about gate maintenance, and Cattell said the gate will be closed and locked when the plant is not in operation. He estimated 2-6 trucks would be hauling on an average day, with 100 loads per week on average. He said this would be less truck traffic than the current operation. Hours of operation would be 6 a.m. to 6 p.m. usually. The plant would not make much noise, a generator would only be temporary until power could be brought in.

Larson questioned how long the material on the site will last, and whether the operation would continue after that point using trucked-in materials. Cattell's answer: for intents and purposes – yes. Larson asked for input on the actual amount of gravel on the site, to help determine whether the site is a good fit. Muehl suggested limiting incoming materials to limit the duration of truck traffic. Bultman also asked what the time frame for operation would be once on site materials were exhausted. It was noted that this is a non-conforming site so mining can continue indefinitely.

Cattell said existing material on the site will last 30-40 years at the planned workload. He occasionally recycles some material from job sites, so this site would be advantageous. He would not want to be limited, but once this site is exhausted, he will probably move on. Regrading will be done as needed to clean up the site and ensure that all water stays captive on the site.

Duane Swalheim, owner of land to the west, said he heard that borings made by Yahara were not suitable for a cement plant.

Donald Viney, owner of land to the east, said that tiling has been needed, and washouts from run-off are terrible. Traffic could also be an issue.

Noel Johnson, 2272 US Hwy. 12 & 18, thinks traffic will be an issue, especially with highway rebuilding. Cattell said he does not do, nor does he have any intents to do highway work.

An unnamed resident said he thought there would be a reclaimed pit, not a concrete plant, and he is concerned about well water.

Kirk Eihlenfeldt, owner of property to the north, wants to make sure the easement to his property is maintained with access, and said there is water flowing north from the pond.

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
JUNE 22, 2011

The Plan Commission considered the conditions per section 10.255(2)(h), and found them all to be satisfied. **MOTION** by Bultman/Hampton to recommend approval of the Conditional Use Permit for a concrete batch plant on two acres zoned A-2 for with the following conditions:

- No use of jake brakes by trucks
- An email must be furnished from the WDOT allowing for continued truck ingress/egress.
- Inquire with the WDOT regarding a "Truck Entrance" sign on west bound Hwy 12 & 18.
- The berm to the south is to be uniformly graded with pine trees at least 3 feet high, with existing neighbor's input.
- Berms to the west and east, and a fence to the north, are to be completed.
- Owner to work with neighbors to straighten out meandering berm and restore/maintain easement to the property to the north.
- All work to be completed prior to the beginning of operation of the batch plant.
- Acceptable work hours of 6 a.m. to 6 p.m., and some Saturdays. Operation outside of those times will require at least 7 days' notice to the Town and neighbors.

**MOTION CARRIED 6-1** (Larson opposed.)

6. Walter J. Olson, vacant land on Kennedy Road, parcels 0711-101-8501-0 and 0711-034-9001-0: Discussion only regarding options to rezone from A-1EX to R-1 to create 4 residential lots: Olson said he wants to "test the market": to gauge the demand for the whole 24 lots. He presented additional alternatives A & B, and stated he hopes to transfer development rights from land he owns in the Village of Deerfield. Hampton said it is OK to proceed, especially if the lawsuit goes away, and it doesn't matter where the development rights come from.
7. Per Dane County ZLR Committee request: Reconsider rezone of 2 acres from A1-EX to RH-1 for new single family residence for Dave Hanson, applicant, Marc Lea Farms, LLC, Landowner, parcels 0711-2728-000-9 and 0711-2718-500-5 at 2257 Nora Road: Hampton updated the commission on the recent denial by the Dane County ZLR committee due to a negative impact on the rustic road. He provided the rustic road regulations, which do not limit development on rustic roads. Hampton had discussed the driveway length with the Fire and EMS Chiefs, who had no concerns as long as the driveway is maintained. **MOTION** by Hampton/Larson to approve the rezone of 2 acres from A-1EX to RH-1 for a new single family residence, with the same conditions that the Town Board approved on April 18, 2011 (The road right-of-way along all of Hanson's property is to be dedicated to the Town.) **MOTION CARRIED 4-3** (Anders, Bultman and Williams opposed.)
8. ADJOURNMENT: **MOTION** by Hampton/Kurt to adjourn. **MOTION CARRIED 7-0**. The meeting was adjourned at 9:26 P.M.

Submitted by: Dave Muehl  
Approved 9-28-2011



Exhibit B - 1







**Jun 7, 2013 3:23 PM**





THE APPRAISAL OF PROPERTY AT 2292  
US HIGHWAY 12 & 18, TOWN OF  
COTTAGE GROVE, WISCONSIN

---

Prepared for: Alex and Jamie Tukiendorf

September 13, 2017

**Real Estate Dynamics, Inc.**

448 West Washington Avenue  
Madison, WI 53703

Exhibit C - 1

Attachment 1, pg. 15

THE APPRAISAL OF PROPERTY AT 2292  
US HIGHWAY 12 & 18, TOWN OF  
COTTAGE GROVE, WISCONSIN

---

Prepared for: Alex and Jamie Tukiendorf

September 13, 2017

**Real Estate Dynamics, Inc.**

448 West Washington Avenue  
Madison, WI 53703

Exhibit C - 2

Attachment 1, pg. 16

# ***Real Estate Dynamics, Inc.***

---

September 13, 2017

Mr. Alex Tukiendorf  
2292 US Highway 12/18  
Cottage Grove, WI 53527

Re: Appraisal of the market value of the fee simple interest of a two acre improved property located at 2292 US Highway 12/18 in the Town of Cottage Grove, Wisconsin

Dear Mr. Tukiendorf:

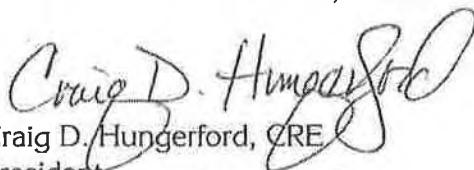
At your request, Real Estate Dynamics, Inc. (REDI) has appraised the market value of your 2.0 acre improved property. The property is owned by you and your wife Jamie of Cottage Grove, WI. The property was appraised for the purpose of documenting the change in market value given the proximity of the property to the relatively new and adjacent concrete batch plant and historical gravel quarry.

The date of value is August 15, 2017. We have performed a highest and best use analysis as a prelude to our value estimate in which we address the use issues facing the property, within the constraints of market forces. Craig Hungerford inspected the property on August 15, 2017. We estimate the market value to be \$121,320.

The report summarizes our methodology, data, analysis and conclusions. If we can be of any additional service, please feel free to contact us.

Sincerely,

REAL ESTATE DYNAMICS, INC.

  
Craig D. Hungerford, CRE  
President

## Executive Summary

---

- Real Estate Dynamics, Inc. (REDI) has estimated the market value of a 2.0 acre property improved with a single family residence owned by Alex and Jamie Tukiendorf with frontage on US Highway 12 & 18, and located in the Village of Cottage Grove, Dane County, Wisconsin. The property is identified as parcel number 0711-342-9800-0.
- The purpose of the report is to estimate market value. Further, this report was written to assist the owners and their agent(s) with documenting damages to the property resulting from the operation of a concrete batch plant which was approved for use through a conditional use permit on July 12, 2011.
- The subject property is improved with a one story 1,704 square foot single family residence.
- The subject property is zoned RH-1, Rural Homes District. This zoning district for single family homes with agricultural uses allowed.
- Subsequent to the operation of the plant, the subject property owners have filed numerous formal complaints regarding the operation of the plant. Specifically, hours of operation and dust and noise from the trucks and general operation that have prevented the owner from keeping windows open, sleeping, spending time outdoors, and generally enjoying the use of their property.

- Regardless of zoning, the property is so impacted by the adjacent uses that any practical use of the property as residential is implausible.
- Given the property's location and surrounding uses, we believe that an industrial use supplemental to or complementary with the existing uses of a gravel pit and concrete batch plant would be most appropriate and most probable for the subject property as improved. *Therefore, the highest and best use of the subject site is as industrial use.*
- The Sales Comparison Approach is used to estimate value.
- The total just compensation due to the owner as of August 15, 2017 is \$121,320.

VALUE SUMMARY	
Comparable Sales Approach	\$106,000
Salvage Value	\$15,320
<b>Total Market Value</b>	<b>\$121,320</b>

Table of Contents

Introduction ..... 1

    Scope of Work ..... 1

        Interest(s) Valued and Definitions ..... 1

        Date of Value ..... 2

        Scope of Analysis ..... 2

        Special Valuation Assumptions ..... 3

        Statement of Competency ..... 3

        Market Exposure Period ..... 3

    Definition of Value ..... 4

    Property Rights Appraised ..... 5

Description and Analysis of the Subject Property ..... 6

    Subject Property Characteristics ..... 6

        Size and Shape ..... 6

        Topography and Flooding ..... 6

        Environmental Concerns ..... 6

        Utilities ..... 6

        Linkages ..... 6

        Zoning ..... 7

        Surrounding Uses/Conflicts ..... 7

    Subject Property Improvements ..... 9

    Property History and Assessments ..... 10

        Property History ..... 10

        Assessment ..... 10

    Area Characteristics ..... 11

        Neighborhood ..... 11

        Village of Cottage Grove ..... 11

        City of Madison and Dane County ..... 11

    Conclusion ..... 13

Highest and Best Use ..... 14

    Subject Property As Improved ..... 15

        Legal Constraints ..... 15

        Physical Constraints ..... 16

Financial Constraints .....	16
Maximal Productivity Constraints .....	16
Valuation of the Subject Property .....	17
Comparable Sales Approach .....	18
Comparable Sale 1 .....	18
Comparable Sale 2 .....	19
Comparable Sale 3 .....	19
Comparable Sale 4 .....	19
Comparable Sale 5 .....	20
Reconciliation of Comparable Sales .....	20
Salvage Value/Deconstruction Value .....	20
Reconciliation and Summary .....	21
Certification of Value .....	22

## List of Appendices

- A. General Assumptions and Limiting Conditions
- B. Qualifications
- C. Zoning Code
- D. Subject Property Maps and Photographs
- E. Legal Description
- F. Comparable Sales Map and Photographs
- G. Supporting Documents



# Introduction

---

Real Estate Dynamics, Inc. (REDI) has estimated the market value of a 2.0 acre property improved with a single family residence owned by Alex and Jamie Tukiendorf with frontage on US Highway 12 & 18, and located in the Village of Cottage Grove, Dane County, Wisconsin. The property is identified as parcel number 0711-342-9800-0. A complete legal description of the property is located in Appendix E. The date of value is August 15, 2017.

Craig D. Hungerford inspected the subject property on August 15, 2017. Subject property maps and photographs are provided in Appendix D.

## SCOPE OF WORK

This document and supporting analysis is to function as the basis for estimating market value. Authorized by Alex Tukiendorf, this appraisal has been prepared to estimate market value and assist the owners and their agent(s) with concerns over damages resulting from the operation of a concrete batch plant that was approved for use through a conditional use permit on July 12, 2011.

## INTEREST(S) VALUED AND DEFINITIONS

We have estimated the market value of the Fee Simple Estate of the subject parcel as of August 15, 2017. This is defined in the Appraisal of Real Estate, 12th Edition, published by the Appraisal Foundation as follows:

A fee simple estate implies absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat.

A leased fee estate is an ownership interest held by a landlord with the right of use and occupancy conveyed by lease to others; the rights of lessor (the leased fee owner) and leased fee are specified by contract terms contained within the lease.

This report has been written in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation and is considered to be an **Appraisal Report**. This report is subject to the **Statement of Assumptions and Limiting Conditions** contained in Appendix A.

DATE OF VALUE

The market value conclusions presented herein are based on economic conditions prevailing in the four weeks preceding the date of value and perceptions of future events existing as of August 15, 2017.

SCOPE OF ANALYSIS

We have investigated the overall health of the Town of Cottage Grove and Dane County area markets for sales data from similar market rate sales. We have applied one of the three approaches to value, the Sales Comparison Approach to value the property. Consideration was given primarily to overall investment similarity, property type and location. Adjustments were considered for market conditions (time) in the Sales Comparison Approach to help set a market-based framework for comparison. The Cost and Income Approaches to value are typically not considered by buyers and sellers of properties similar to the subject property.

The organization of this report parallels our valuation process and summarizes our methods, data, analyses, and conclusions. This introductory section defines the problems and provides an overview of our primary assumptions. The following section provides a physical description of the site and demographic data on the surrounding area. The next section describes the Highest and Best Use analysis for the property. Finally, the Valuation of the subject properties describes our

valuation processes, including the method(s) of approach, data used, and estimated values for the property.

This appraisal is subject to General Assumptions and Limiting Conditions presented in Appendix A. Craig D. Hungerford and other members of the Real Estate Dynamics, Inc. staff have prepared this report in accordance with appropriate valuation standards.

SPECIAL VALUATION ASSUMPTIONS

There are no extraordinary assumptions or hypothetical conditions impacting this analysis and valuation.

Other general assumptions are as follows:

1. We have relied on the plat and the Dane County DCIMap program to confirm the acreage of the subject property and comparable sales.
2. We are unaware of any current environmental issues with respect to the subject property. We have not made any adjustments to value to account for such concerns.
3. If any of these assumption change or are deemed incorrect, we reserve the right to make changes or adjustments to our report and/or values.

STATEMENT OF COMPETENCY

Craig D. Hungerford has valued a wide variety of residential, commercial, and vacant properties in Wisconsin over the past 32 years.

MARKET EXPOSURE PERIOD

A reasonable exposure period is the amount of time necessary to expose a property to the open market in order to achieve a sale. The estimate of a reasonable exposure time is not intended to be a prediction of a date of sale. Furthermore, exposure time is always

presumed to occur prior to the effective date of the appraisal. Implicit in this definition are the following characteristics:

1. The property is actively exposed and aggressively marketed to potential purchasers through marketing channels commonly used by sellers of similar property.
2. The property is offered at a price reflecting the most probable markup over market value used by sellers of similar property.
3. Sale is consummated under the terms and conditions of the definition of Market Value.

After speaking with local Realtors and reviewing prior transactions, the market exposure period, or the length of time necessary for the subject property to be exposed to the market prior to an arm's length sale occurring at the market value as concluded herein, is six months to one year.

#### DEFINITION OF VALUE

Market value as used in this analysis is defined as:

the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;

4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.<sup>1</sup>

#### PROPERTY RIGHTS APPRAISED

The right or interest being valued is a fee simple interest in the subject property. A fee simple estate is defined as an absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.<sup>2</sup> Except for standard utility easements, any mortgages on the property, and those noted in this report, there are no other known encumbrances on this project.

---

<sup>1</sup> The Appraisal Institute, *The Appraisal of Real Estate*, Twelfth Edition 2001, p. 23. Definition taken from *Federal Register*, Vol. 55, No. 163, August 22, 1990, p.p. 34228 and 34229.

<sup>2</sup> The Appraisal Institute, *The Appraisal of Real Estate*, Twelfth Edition, 2001, p. 69.

# Description and Analysis of the Subject Property

---

## **SUBJECT PROPERTY CHARACTERISTICS**

The subject property is defined as one parcel with number 0711-342-9800-0 totaling 2.0 acres. The property is improved with a one story 1,704 square foot single family residence.

### SIZE AND SHAPE

The subject property is rectangular in shape with 178 feet of frontage along US Highway 12 & 18. The subject property land is 87,120 square feet.

### TOPOGRAPHY AND FLOODING

The site topography is generally level with elevations ranging from 936 to 924. The subject property is not located in a flood zone.

### ENVIRONMENTAL CONCERNS

There are no known environmental concerns with respect to the subject property. REDI has not performed or reviewed a Phase I environmental review.

### UTILITIES

Well water, on-site septic, telephone, and electric utilities are available to the site.

### LINKAGES

The property is adjacent to US Highway 12 & 18 and has legal access from the adjacent private road and shared gravel drive. The private road provides the property access to US Highway 12 & 18. US

Highway 12 & 18 provides access west to Madison and east to Deerfield and Cambridge.

ZONING

The subject property is zoned RH-1, Rural Homes District. This zoning district is for single family homes with agricultural uses allowed. Permitted uses include: single family homes, agricultural uses, utility services, home occupations, incidental uses and accessory buildings, community living arrangements for less than 9 people and foster homes for less than 5 children. The minimum lot width is 150 feet and the minimum lot size is 2 acres.

SURROUNDING USES/CONFLICTS

Surrounding uses include a gravel quarry, concrete batch plant, single family homes and farms with structures. To the east and west are single family developments and southwest is another large business park with industrial, commercial and retail uses. The nearest significant development is two miles north on CTH N to a residential subdivision and west on US Highway 12 & 18 3.5 miles to Yahara Hills golf course.

The owner purchased the subject property in 2005. At that time, they were given verbal assurances from the seller that the gravel quarry had little material remaining and might have no more than a 10 year supply of material. The subject property is adjacent to a non-conforming (NC) mineral extraction site. NC sites are mineral extraction operations that were registered with Dane County in the late 1960s in advance of an ordinance change requiring a conditional use permit (CUP) for new mineral extraction sites. While the assurance from the seller was non-binding, there was a reasonable expectation that the gravel pit would eventually cease operation.

On July 12, 2011, a concrete batch plant was approved for use through a conditional use permit within the gravel pit in close proximity to the subject property. Conditional Use Permit #2175 details 12 conditions that the operator Rocky Rights, LLC must follow

as shown in Appendix G. Further, the County has six general standards that must be met for a CUP to be issued. Items 1 and 2 appear to be relevant in this case.

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;

Subsequent to the operation of the plant, the subject property owners have file numerous formal complaints regarding the operation of the plant. Specifically, hours of operation and dust and noise from the trucks and general operation that have prevented the owner from keeping windows open, sleeping, spending time outdoors, and generally enjoying the use of their property. As of April 19, 2015, there have been six Public Nuisance Complaints to the Cottage Grove Police Department, five written complaints and eleven phone complaints to various entities. Some attempts have been made to address the noise and dust concerns by the operator; however, the owner states that these efforts have been unsatisfactory. Regarding the hours of operation, item 3 of the conditions states:

3. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. Monday through Friday, and some Saturdays when necessary fro 6:00 a.m. to 4:00 p.m. Operation outside of those times will require at least 7 days notice to the Town and immediate neighbors, and shall be limited to no more than 6 projects not to exceed 30 total days/year.

The owner has filed complaints that the concrete plant owner was operating outside these parameters including later on Saturday, Sunday early morning hours and during the day, with no 7 day notice. Subsequently, the County zoning administrator stated that operating 24 hours a day outside of the normal hours and days of operation was permissible 30 days a year, even though those times are not explicitly stated in the CUP and that interpretation was considered discretionary



authority which allows large trucks to operate within 80 feet of the residence bedroom at 2:30 a.m.

Finally, the batch plant has insufficient gravel resources from the existing pit and the owner has been hauling in gravel from another location, thus adding to the traffic and noise. The gravel pit owner is proposing a northern addition to the pit to solve localized supply issues and access to the new pit would continue to be from US Highway 12 & 18 past the subject property.

### **SUBJECT PROPERTY IMPROVEMENTS**

The subject improvements are residential dwelling unit with a 2.0 acre landscaped site.

<b>Year Constructed</b>	2005
<b>Number of Buildings</b>	One one-story building with a full basement
<b>Gross Building Area</b>	1,704 SF above ground living area
<b>Foundation</b>	Concrete
<b>Framing</b>	Wood
<b>Exterior Walls</b>	Vinyl siding
<b>Windows</b>	Casement, double hung
<b>Interior Walls</b>	Painted drywall, ceramic tile
<b>Roof</b>	Asphalt shingle
<b>Flooring/ceiling</b>	Drywall/Plaster

<b>Building Layout</b>	Main floor: kitchen, dining, living room, 3-bedrooms, 2-full bath
<b>HVAC</b>	Forced air LP gas and central air
<b>Finishes</b>	Hardwood flooring, tile, vinyl, carpet. Doors: solid core 6 panel wood. Chrome finish plumbing fixtures, recessed light and standard fixtures, laminate countertops, and standard appliances.
<b>Plumbing/Electrical</b>	200 amp service and 50 gallon water heater
<b>Parking</b>	3 car garage, gravel drive and parking area

## PROPERTY HISTORY AND ASSESSMENTS

### PROPERTY HISTORY

The subject property has been owned by Alex and Jamie Tukiendorf for more than five years. They originally purchased the property in June 2005. There have been no recent arms-length transactions involving the subject property.

### ASSESSMENT

The subject property's total assessment from Access Dane for 2017 is shown as follows.

SUBJECT PROPERTY ASSESSMENT				
Parcel #	Acres	Improvements	Land	Total
0711-342-9800-0	2	\$177,900	\$25,000	\$202,900

The 2017 assessment was reduced \$48,200 and the 2014 assessment was reduced \$29,200 for a total reduction of \$77,400. The owner has expressed concerns to the assessor regarding the

activities of the adjacent concrete plant and these reductions were provided.

## AREA CHARACTERISTICS

### NEIGHBORHOOD

The subject is located on US Highway 12 & 18 in the Town of Cottage Grove, Dane County, Wisconsin. The subject property is surrounded by farmland, some residential development and a concrete batch plant with the adjacent gravel pit.

### VILLAGE OF COTTAGE GROVE

As of 2016, Cottage Grove's population was 3,956 people. Since 2000, it has had a population growth of 12.23%. The median home cost in Cottage Grove is \$253,200. Home appreciation in the last 10 years has been 3.73%. Cottage Grove's cost of living is 16.2% higher than the U.S. average. Cottage Grove public schools spend \$12,610 per student. The average school expenditure in the U.S. is \$12,383. There are about 14.1 students per teacher in Cottage Grove. The unemployment rate in Cottage Grove is 3.3% whereas the U.S. average is 4.4%. Recent job growth is positive. Cottage Grove jobs have increased by 1.77%.

### CITY OF MADISON AND DANE COUNTY

As of 2017, Madison's population is 248,951 people. Since 2000, it has had a population growth of 30.16%. The median home cost in Madison is \$215,400. Home appreciation in the last 10 years has been 3.89%. Madison's cost of living is 9.6% higher than the U.S. average. Madison public schools spend \$14,412 per student. The average school expenditure in the U.S. is \$12,383. There are about 12.6 students per teacher in Madison. The unemployment rate in Madison is 3.4% whereas the U.S. average is 5.2%. Recent job growth is positive. Madison jobs have increased by 1.77%.

Madison is the largest city in the county and the second largest in Wisconsin. It is the state capital and the location of the state's largest

and only Big 10 campus, the University of Wisconsin-Madison. With its economic base grounded in these two institutions, as well as its location on a chain of lakes, Madison is recognized among the Nation's cities for having a high quality of life.

The following tables and information, which is compiled from the Dane County Workforce and Economic Profile 2015 prepared by the Wisconsin Department of Workforce Development, summarize labor force trends in Madison, Dane County and Wisconsin. Wisconsin lost 137,000 jobs during the recent downturn which is almost 5% of the job base since the recession began in December of 2007.

Wisconsin's total non-farm jobs have increased by 200,000 from February 2010 through October 2015. Employment concentrations in the largest industries for Dane County can be seen in the following chart.

Industry	2014 Dane County
Education & Health	80,053
Trade, Transportation, Utilities	51,467
Professional & Business Services	44,443
Leisure & Hospitality	30,073
Public Administration	23,963
Manufacturing	23,363
Financial Activities	21,604
Information	13,476
Construction	13,024
Natural Resources	1,833

The largest employers in the Madison Area are listed in the following table.

Employer	2016 Employees
UW Hospital and Clinics	1000+
American Family Insurance	1000+
Dean Health Systems	1000+
Cuna Mutual Holdings	1000+
WPS Health Insurance	1000+
Epic Systems	1000+
Meriter Health Services	1000+
TDS Telecommunications Corp.	1000+
Covance Laboratories	1000+
UW Medical Foundation	1000+

**CONCLUSION**

Compared to most Midwestern cities of similar demographics, the Madison MSA has a disproportionately high percentage of its workforce in government and service sectors and a low percentage in manufacturing. With strong economic growth in service and technology oriented business (bio- and genetic engineering and medical) and an emphasis on quality of life, Madison MSA continues to weather the economic storm better than most communities in Wisconsin. Dane County continues to return faster to stronger growth and with healthier economic development than most areas in Wisconsin for the foreseeable future.

# Highest and Best Use

---

Five attributes determine the full value potential for real estate. They are: (1) utility, (2) effective demand, (3) relative scarcity, (4) transferability, and (5) an environment of law and order so no sense of loss will occur due to legal or political uncertainty. Generally accepted appraisal principles hold that "real estate should be appraised at its highest and best use for market valuation purposes."<sup>3</sup> The term highest and best use is defined in Real Estate Appraisal Terminology as:

The reasonable and probable use that will support the highest present value, as defined, as of the effective date of appraisal.

Alternatively, that use, from among reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, and which results in highest land value.

The definition immediately above applies specifically to the highest and best use of land. It is to be recognized that, in cases where a site has existing improvements on it, the highest and best use may very well be determined to be different from the existing use. The existing use will continue, however, unless and until land value in its highest and best use exceeds the total value of the property in its existing use.

Implied within these definitions is recognition of the contribution of that specific use to community environment or to community development goals in addition to wealth maximization of individual property owners. Also implied is that the determination of highest and best use results from the appraiser's judgement and analytical skill, i.e., that the use determined from analysis represents an opinion, not a fact to be found. In appraisal practice, the concept of highest and best use represents the premise upon which value is based. In the context of most probable selling price (market value), another appropriate term to reflect highest and best use would be

---

<sup>3</sup>Jerome Dasso and Alfred Ring, Real Estate Principles and Practices, 10th ed., Prentice Hall, Inc., Englewood Cliffs, N.J., p. 404.

most probable use. In the context of investment value, an alternative term would be most profitable use.<sup>4</sup>

One method for selecting highest and best use is a sequential application of the following four analytic steps:<sup>5</sup>

1. Physically Possible: The site must possess adequate size, shape and soil conditions to support the proposed use.
2. Legally Permissible: The proposed use of the property must conform to all local and state zoning and use restrictions for the site.
3. Financially Feasible: The proposed use must be capable of providing a net return to the property owner.
4. Maximally Productive: Of those legally permissible, physically possible, and financially feasible uses, the highest and best use for a property is that use which provides the greatest net return to the property owner over a period of time.

Typically, the criteria are applied to the site to determine its highest and best use as if vacant and as improved. In cases of vacant land valuation, the latter step is excluded.

#### **SUBJECT PROPERTY AS IMPROVED**

The analysis begins with a description of the legal constraints affecting the property.

#### **LEGAL CONSTRAINTS**

The subject property is zoned RH-1, Rural Homes District. This zoning district for single family homes with agricultural uses allowed.

---

<sup>4</sup>Byrl N. Boyce, Real Estate Appraisal Terminology, Revised Edition, AIREA, SREA, Ballinger, Cambridge, Mass., 1981, p.p. 126-127.

<sup>5</sup>The four criteria test is discussed in the Appraisal of Real Estate, Twelfth Edition, p. 307-308, Copyright 2001, by the American Institute of Real Estate Appraisers (now known as the Appraisal Institute).

Permitted uses include: single family homes, agricultural uses, utility services, home occupations, incidental uses and accessory buildings, community living arrangements for less than 9 people and foster homes for less than 5 children. The property is adjacent to a gravel pit and a concrete batch plant that is zone A-1 exclusive and A-2 with CUPs for gravel mining and concrete production.

#### PHYSICAL CONSTRAINTS

Site topography is conducive to single family use or access for extractive use and we assume soil conditions are sufficient to support these uses.

#### FINANCIAL CONSTRAINTS

Of the physically possible and legally permissible uses such as residential, all may be expected to generate a net return to a property owner. These uses require capital improvements; therefore, at some acquisition price the property can be expected to generate a net return. Residential properties are frequently sold, traded, or leased, thereby generating a net return to the property owner.

#### MAXIMAL PRODUCTIVITY CONSTRAINTS

The maximally productive use is determined by that use which generates the greatest demand and net return. Regardless of zoning, the property is so impacted by the adjacent uses that any practical use of the property as residential is implausible. As previously discussed, the adjacent activity of the concrete batch plant, the impacts from general operation in terms of noise and dust, the serious and detrimental impacts from after hours operation that have an air of being arbitrary and capricious, we preclude a reasonable person from wanting a residence in this location. Given the property's location and surrounding uses, we believe that an industrial use supplemental to or complementary with the existing uses of a gravel pit and concrete batch plant would be most appropriate and most probable for the subject property as improved. *Therefore, the highest and best use of the subject site is as industrial use.*



## Valuation of the Subject Property

---

The Cost, Sales Comparison, and Income Approaches to valuation have been considered for this appraisal. All three approaches were considered to directly value the subject property.

The Cost Approach simulates the build versus buy alternative available to some buyers. The Sales Comparison Approach is an analysis of comparable transactions which simulates buyer and seller behavior. In applying the Income Approach, the appraiser simulates the investment analysis of the most probable buyer group to derive an estimate of the price that they would be willing to pay.

The Sales Comparison Approach simulates buyer and seller behavior. The assumption that buyers and sellers will make a reasonable effort to educate themselves about current market behavior is implicit in this approach. Well informed purchasers are less likely to bid a sale price that significantly exceeds prices they would have to pay for property of equivalent utility in the same marketplace. Likewise, sellers who are informed will know the minimum price they may reasonably expect to receive upon sale of the property. The Sales Comparison Approach reflects the spectrum of information available to and the decision process used by these parties to act prudently.

As previously stated, we have prepared this report after considering all three approaches to value. We have applied one approach to value; the Sales Comparison Approach, to value the property. Consideration was given primarily to overall investment similarity, property type and location. The Cost Approach and Income Approach to value are typically not considered by buyers and sellers of vacant land properties similar to the subject property.

## COMPARABLE SALES APPROACH

We have valued the land as though vacant and available according to its highest and best use, which is for industrial use to support the existing gravel pit and concrete batch plant. We focused our search on sales in areas of east Dane County or immediately adjacent areas including but not limited to, Stoughton, Belleville, Sun Prairie, and Evansville. Five sales were found and they are presented in the table below.

There has been modest sales activity in the past three years. The sales represent suitable alternative sites for industrial uses. We have considered the site size differences in pricing per square foot between the sales and the subject site as smaller sites tend to sell for higher unit prices than larger properties and concluded there was no consistent quantifiable adjustment. Further, we considered an adjustment for market conditions and concluded that based on the improving economy there was a price and time relationship that would warrant an adjustment of 1.275%. We relied on the changes in the CPI from 2014 to 2017.

LARGE COMPARABLE SINGLE FAMILY LAND SALES					
Location	Acres	Sale Date	Sale Price	\$/Acre	Adj \$/Acre
1. 300 Business Park Cir Stoughton, WI	1.64	2/26/16	\$52,804	\$32,198	\$32,824
2. Lot 21 Bell West Plat Belleville, WI	1.94	6/16/17	\$109,758	\$56,576	\$56,727
3. 1870 Haynes Dr Sun Prairie, WI	3.70	9/16/16	\$210,000	\$56,757	\$57,453
4. 820 Progress Way Sun Prairie, WI	1.50	6/30/14	\$92,000	\$61,333	\$63,865
5. 410 Water St Evansville, WI	1.78	3/23/17	\$120,000	\$67,416	\$67,796

### COMPARABLE SALE 1

Comparable Sale 1, a 1.64 net acre site located at 300 Business Park Circle in Stoughton, Wisconsin, sold for \$52,804 on February 26,

2016, or \$32,198 per acre and \$32,824 per acre adjusted. This 2.24 acre parcel has a perpetual conservancy easement of .6 acres resulting in 1.64 net usable acres. The parcel is within a city-owned planned industrial development on the northeast side of the city. The location of Comparable Sale 1 is considered to be similar to the subject. Overall, the comparable is similar to the subject property reflecting a price that is inferior to the subject property.

COMPARABLE SALE 2

Comparable Sale 2, a 1.94 acre site located at Lot 21 in the Bell West Plat in Belleville, Wisconsin, sold for \$109,758 on June 16, 2017, or \$56,576 per acre and \$56,727 per acre adjusted. This parcel is planned for light manufacturing use with business park zoning. The location of Comparable Sale 2 is considered to be similar to the subject property. Overall, the comparable is similar to the subject property and the business/light industrial use reflects a price that is similar to the subject property.

COMPARABLE SALE 3

Comparable Sale 3, a 3.7 acre site located at 1870 Haynes Drive in Sun Prairie, Wisconsin, sold for \$210,000 on September 16, 2016, or \$56,757 per acre and \$57,453 per acre adjusted. This parcel is planned for a We Energies service center use with urban industrial zoning. The location of Comparable Sale 3 is considered to be similar to the subject property. Overall, the comparable is similar to the subject property and the business/light industrial use reflects a price that is similar to the subject property.

COMPARABLE SALE 4

Comparable Sale 4, a 1.5 acre site located at 820 Progress Way in Sun Prairie, Wisconsin, sold for \$92,000 on June 30, 2014, or \$61,333 per acre and \$63,865 per acre adjusted. This parcel is the site of a metal and pipe fabrication company with urban industrial zoning. The location of Comparable Sale 4 is considered to be similar to the subject property. Overall, the comparable is similar to the subject property and the business/light industrial use and a more

urban location size reflects a price that is superior to the subject property.

COMPARABLE SALE 5

Comparable Sale 5, a 1.78 acre site located at 410 Water Street in Evansville, Wisconsin, sold for \$120,000 on March 23, 2017, or \$67,416 per acre and \$67,796 per acre adjusted. This parcel is the site of a new post office facility with small scale industrial zoning. The location of Comparable Sale 5 is considered to be similar to the subject property. Overall, the comparable is similar to the subject property and the business/light industrial use and a more urban location size reflects a price that is superior to the subject property.

RECONCILIATION OF COMPARABLE SALES

All comparables suggest a price range for the subject property as industrial use. The range of adjusted data is from \$32,824 to \$67,796 per acre with a mean of \$55,733 and a midpoint of \$50,310 per acre. Comparables 1 and 3 are the most similar to the subject property, as they represent the most rural locations and conversely Comparables 2, 4, and 5 represent the most urban locations. Sizes are similar to the subject and there is not a price size adjustment that is warranted. No properties are adjacent to a concrete plant or stone quarry; however, all properties reflect industrial and/or business park zoning. The size and location of the subject property suggests a price between the midpoint and the mean of the range data or \$53,000 per acre rounded. Therefore, applying \$53,000 per acre to the 2.0 acres of subject property yields a value of \$106,000.

SALVAGE VALUE/DECONSTRUCTION VALUE

There is likely some salvage and/or deconstruction value to the home given its relatively recent construction. Deconstruction is a process where the home is taken apart and materials are saved for use elsewhere. The cost or salvage value of deconstruction is approximately twice the cost of traditional demolition according to lifeofanarchitect.com. They estimate as follows:

On average, the cost to demolish a house is about ½ as much as it is to deconstruction a house (i.e. \$15,000 for demolition vs. \$30,000 for deconstruction.)

Based on Marshall Valuation Service the cost of demolition for a Class D wood frame house is on average \$4.50 per square foot. Multiplying this unit cost times 1,704 square feet results in a demolition cost of \$7,660 rounded. Doubling this cost or \$15,320 is an estimate of the deconstruction cost or the salvage value which is equal to the amount some one would pay to acquire the home for deconstruction.

#### RECONCILIATION AND SUMMARY

The following table summarizes the results of our valuation analysis and shows the total estimated market value. We have considered all approaches and conclude that the value derived by the sales comparison approach is the most reliable estimate. The house is no longer considered to have utility as a residential property. To sell the property the seller will be required to complete a Real Estate Condition Report which will reveal the current and historic conditions on and surrounding the property which a reasonable future residential use buyer would find unacceptable. Therefore, we conclude that the total market value of the subject property is \$121,320.

VALUE SUMMARY	
Comparable Sales Approach	\$106,000
Salvage value	\$15,320
<b>Total Market Value</b>	<b>\$121,320</b>

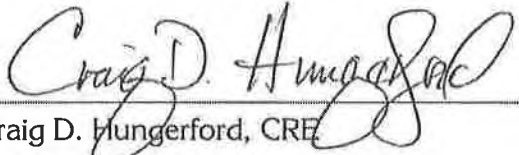
## Certification of Value

---

We certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved.
- Our compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and the Uniform Standards of Professional Appraisal Practice.
- Craig Hungerford made a personal inspection of the property that is the subject of this report.
- The appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.

- No one provided significant professional assistance to the undersigned. However, technical assistance was provided by other members of the Real Estate Dynamics, Inc. staff in regards to data collection, report writing, property description, and cost estimates.
- We have performed no valuation services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.



Craig D. Hungerford, CRE  
President  
Real Estate Dynamics, Inc.

APPENDIX A

---

General Assumptions and Limiting Conditions



## GENERAL ASSUMPTIONS AND LIMITING CONDITIONS

- No investigation was made for environmental hazards such as underground fuel tanks, asbestos, urea-formaldehyde foam insulation, dump sites, or other hazardous materials, and no responsibility is assumed for hazardous waste water quality or adequacy of the septic system.
- Where the property being considered is part of a larger parcel or tract, any values reported relate only to the portion being considered and should not be construed as applying with equal validity to other portions of the larger portion or tract.
- Opinions expressed regarding legal attributes of the subject property are based on the consultant's best judgement given the available information and do not represent professional legal counsel. No warranty or representation is made regarding the accuracy of these legal opinions.
- We have made no survey of the property. If a survey should show a difference in acreage, the value should be adjusted accordingly.
- Data will be included only if believed reliable, but its accuracy cannot be guaranteed. No warranty or representation is made regarding the accuracy of data, and information submitted may be subject to errors, omissions, changes of price, prior sales, leases, financing, or withdrawals without notice.
- Any projections of future rents, expenses, net operating income, mortgage debt service, capital outlays, cash flows, inflation, capitalization rates, discount rates, or interest rates are intended solely for analytical purposes and are not to be construed as predictions of Real Estate Dynamics, Inc. They represent only the judgment of the authors as to the assumptions likely to be used by purchasers and sellers active in the marketplace, and their accuracy is not guaranteed.
- Conclusions of the analysis assume competent management and responsible ownership of the property.
- Conclusions of the analysis will represent the best judgement of the consultant given all available data. Real Estate Dynamics, Inc. will not alter conclusions at the request of any person or corporation.

- To the best of our knowledge and belief, the statements of fact contained in this report, upon which the analyses, opinions and conclusions expressed herein are based, are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved.
- Our compensation is not contingent upon the reporting of a predetermined opinion or direction in value that favors the cause of the client, the amount of any value estimates, the attainment of a stipulated result, or the occurrence of a subsequent event.
- REDI staff provided professional assistance to the person(s) signing this report.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

---

APPENDIX B

Qualifications

## Craig D. Hungerford, ASLA, CRE

448 West Washington Avenue  
Suite 200  
Madison, WI 53703

Telephone: (608) 255-4676 x11  
Fax: (608) 255-7384  
E-Mail: craig@realestateproswisconsin.com

---

### EXPERIENCE

TRIO DEVELOPMENT, LLC, Real Estate Development, Madison, WI

Partner, 2004 to Present

- Development Manager

REAL ESTATE DYNAMICS, INC., Real Estate Consulting, Madison, WI

President/Partner, 1989 to Present

- Consultant, Feasibility Analyst, Appraiser, and Expert Witness

Vice President/Partner 1986 to 1989

- Consultant, Market Analyst, and Appraiser

LANDMARK RESEARCH, INC., Real Estate Consulting, Madison, WI

Appraiser/Real Estate Analyst, 1984 to 1986

UNIVERSITY OF WISCONSIN-MADISON, Guest Lecturer, Madison, WI

Guest Lecturer, 1985 to Present

- Residential Development
- Market Analysis for Retail Centers
- Valuation of Unique Properties
- Advanced Consulting and Appraisal Seminar
- Residential Tax Credit Development
- Real Estate Valuation

UNIVERSITY OF WISCONSIN-MILWAUKEE, Instructor, Milwaukee, WI

Instructor, 1985 to 1986

- The Real Estate Process

EARTHWORKS, Landscape Architecture, River Falls, WI

Landscape Architect, 1978 to 1980

---

### EDUCATION

UNIVERSITY OF WISCONSIN-MADISON

Masters of Science May 1984

- Real Estate Appraisal and Investment Analysis

Masters of Arts May 1984

- Landscape Architecture

UNIVERSITY OF WISCONSIN-MADISON

Bachelor of Science May 1977

- Major: Landscape Architecture

---

### PROFESSIONAL AFFILIATIONS/BOARDS

American Society of Landscape Architects (ASLA)

The Counselors of Real Estate (CRE)

Attic Angel Prairie Point Board Member

---

APPENDIX C

Zoning Code

## RH-1 Rural Homes District

Zoning district for single family homes with agricultural uses allowed – CH. 10-Zoning 10.09

### Permitted Uses 10.09(1)

- o Single family homes – one per parcel
- o Agricultural uses
- o Utility services
- o Home occupations
- o Incidental uses and accessory buildings
- o Community living arrangements for less than 9 people
- o Foster homes for less than 5 children

### Conditional Uses 10.09(2)

- o Daycare centers
- o Community living arrangements for 9 or more people
- o Bed & Breakfasts
- o Governmental uses
- o Religious uses
- o Dependency living arrangements
- o Schools

### Setbacks and Height Requirements for Structures 10.09(3); 10.16; 10.17

#### Front setback for all structures from highway centerline / right-of-way line (whichever is greater)

State or Federal Highway: 100/42 feet minimum

County Highway: 75/42 feet minimum

Town Road: 63/30 feet minimum

Subdivision streets platted prior to ordinance: 20 feet minimum

All other streets: 30 feet minimum from right-of-way

#### Maximum Height: For homes and accessory buildings:

Two and one-half stories or 35 feet (mean of roof)

#### Side yard:

25 feet total, with no single side less than 10 feet minimum

Rear yard for homes: 50 feet minimum

For uncovered decks/porches: 38 feet minimum

#### Side yard and Rear yard for accessory buildings:

10 feet minimum with no livestock

50 feet minimum when housing livestock OR

100 feet minimum when housing livestock and within 100 feet of an abutting R-Residence district

### Minimum Requirement for Lot Width & Area

Minimum width: 150 feet at location of structure

Minimum Area: 2 acres

### Maximum Lot Coverage: All buildings and structures

Maximum building coverage of lot: 10% of lot area

### Accessory Buildings Requirements 10.04(1); 10.16(6)

Any number of detached accessory buildings associated with a permitted or conditional residential use is permitted, provided that the following conditions are met:

- o A principal residential use (home) exists or is under construction before a Zoning Permit for an accessory building may be issued.
- o Sanitary fixtures are prohibited in accessory buildings.
- o No living spaces are allowed in accessory buildings.
- o Reduced setbacks may be used for accessory buildings. The building must be located in the rear yard and must be at least 10 feet away from the principal building.
  - o Minimum 4-foot side yard and rear yard setbacks on lots 60 feet or more in width
  - o Minimum 2.5-foot side yard and rear yard setbacks on lots less than 60 feet in width

NOTE: A Zoning Permit is required for every building larger than 120 square feet in size. Zoning Permits are not required for accessory buildings equal to or less than 120 square feet on non-permanent foundations, provided they meet setback, height, and lot coverage requirements.

### Livestock 10.09(1)

- o The number of livestock kept is limited to one (1) animal unit for each full acre.
- o An animal unit is defined as the equivalent of 1 cow; 4 hogs; 10 sheep or goats; 100 poultry or rabbits; 1 horse, pony, or mule; or an equivalent combination thereof.
- o All structures housing livestock must be located 50 feet from each side and rear lot line, EXCEPT they must be 100 feet from a lot line abutting an R-Residence Zoning District (in most cases).

**Legend**

**Proposed Zoning**



**Tax Parcel Boundary**



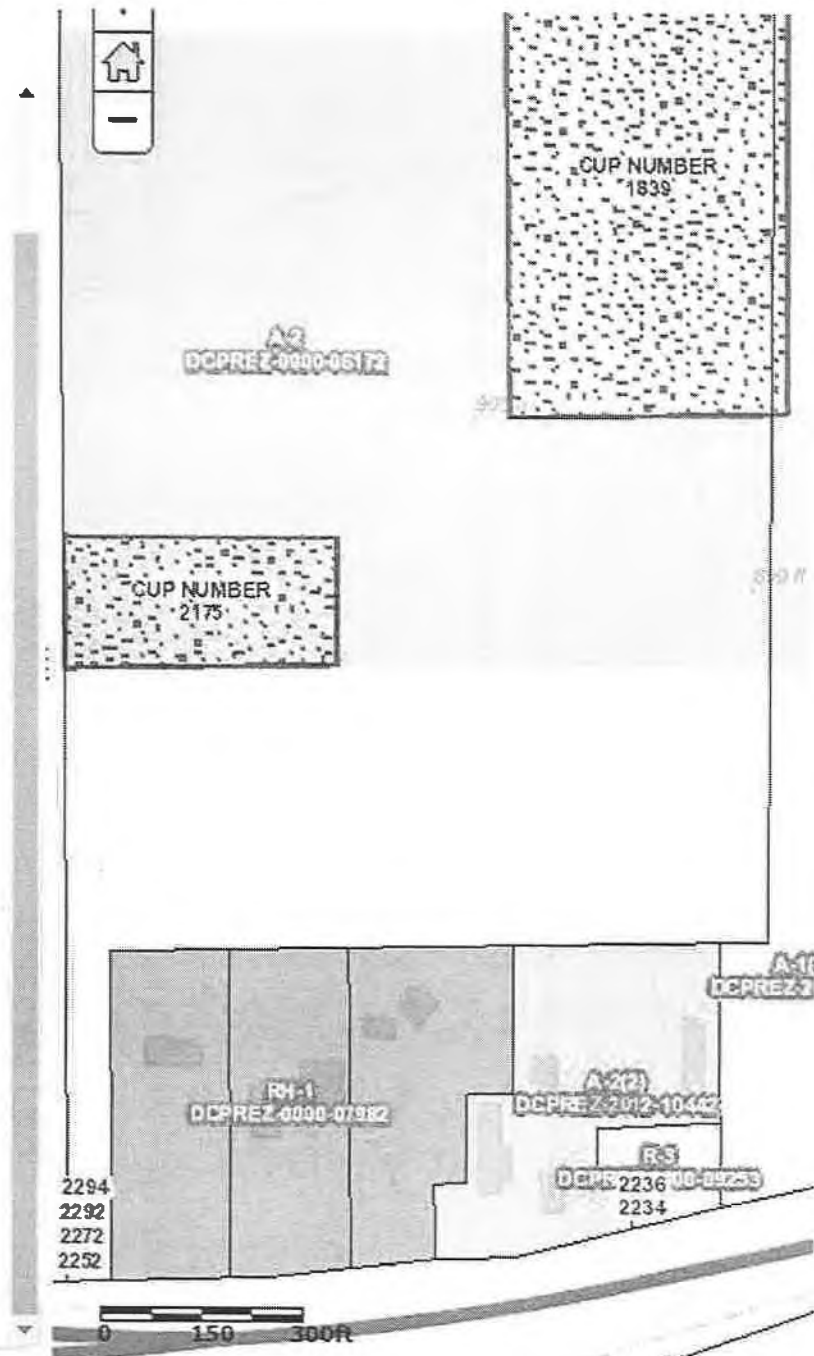
**Conditional Use Permit**



**DeedRestriction**

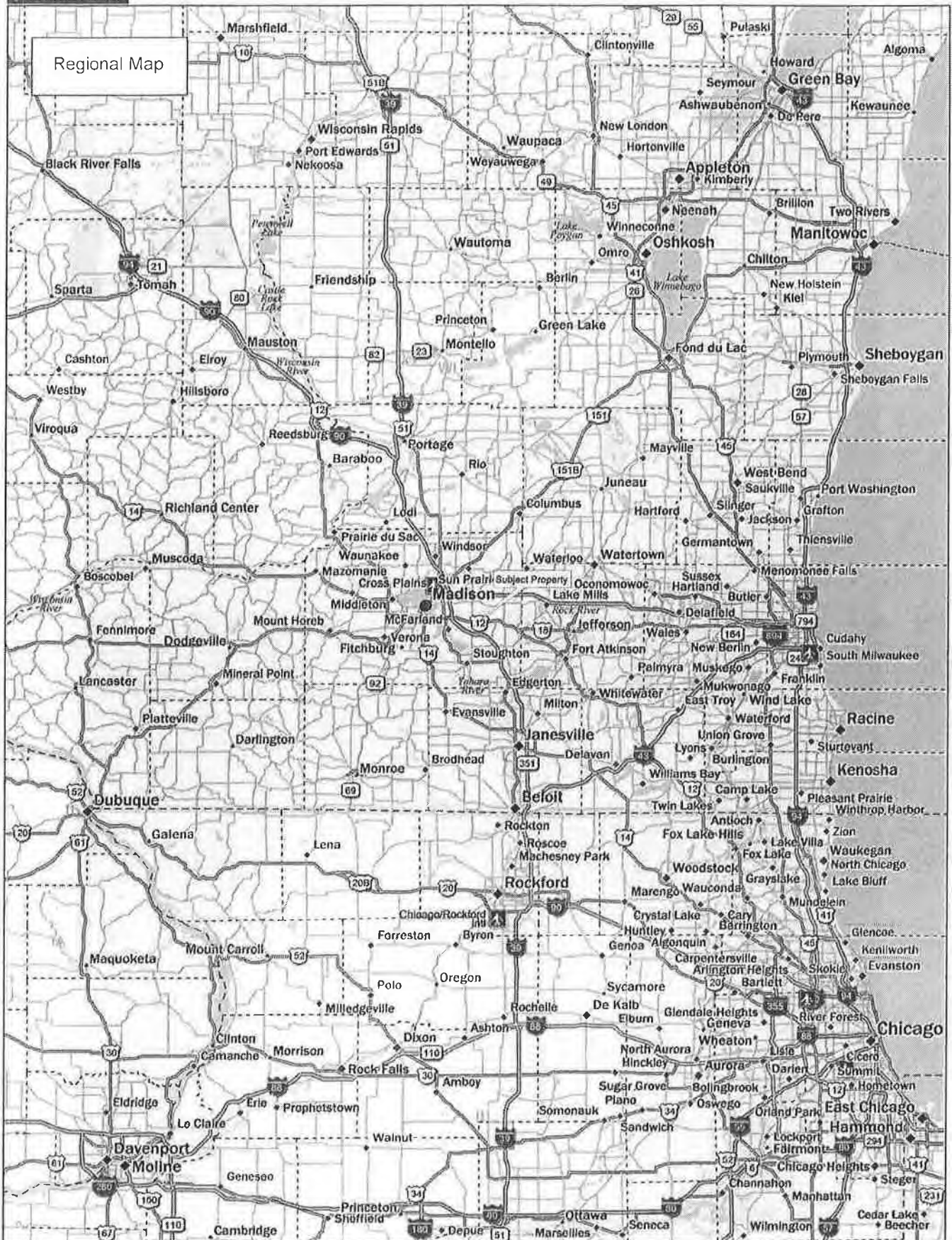
**Zoning District**

- A-1 or A-1EX Agricultural
- A-2, A-2(1), A-2(2), A-2(4), A-2(8), A-3 Agricultural
- A-4
- A-B Agricultural Business
- B-1 Local Business
- C-1 Light Commercial
- C-2 Heavy Commercial
- CO-1 Conservancy
- ETZ
- EXP-1 Expo
- LC-1 Limited Commercial
- M-1 Industrial
- NONWTLND
- PUD Planned Unit Development
- R-1, R-1A, R-2, R-3
- R-3A, R-4
- RE-1 Recreational
- RH-1, RH-2, RH-3, RH-4





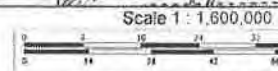




Data use subject to license.

© DeLorme, DeLorme Street Atlas USA® 2015.

www.delorme.com



1" = 25.25 mi

Exhibit C - 41

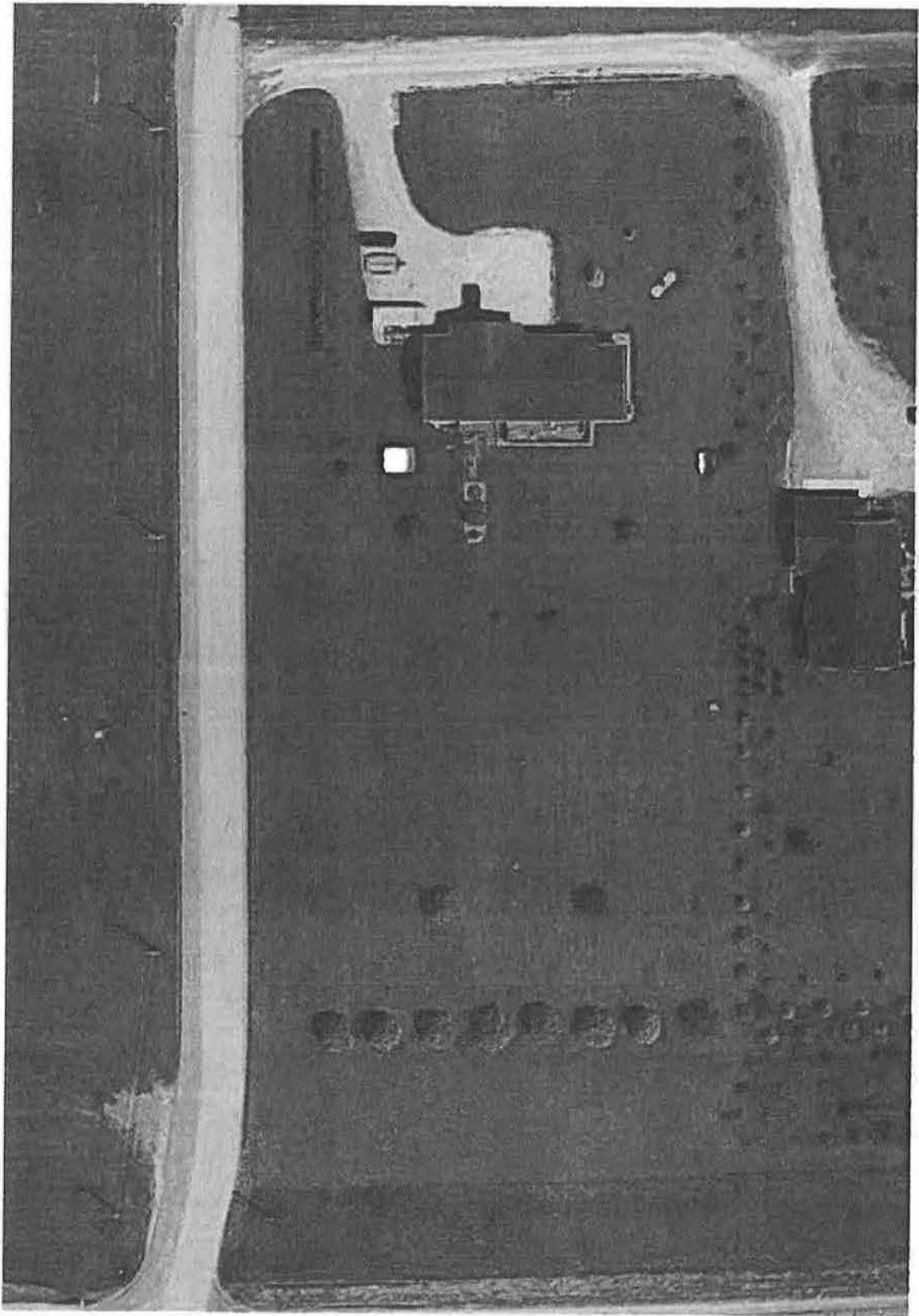


Exhibit C - 42

2P-167-204



### BIRRENKOTT SURVEYING, INC.

P.O. Box 237  
1677 N. Bristol Street  
Sun Prairie, WI. 53590  
Phone (608) 837-7463  
Fax (608) 837-1081

## PLAT OF SURVEY

### SURVEYOR'S CERTIFICATE:

I, Daniel V. Birrenkott, hereby certify that this survey is in compliance of Wisconsin Administrative Code. I also certify that I have surveyed and mapped the lands described hereon and that the map is a correct representation in accordance with the information provided.

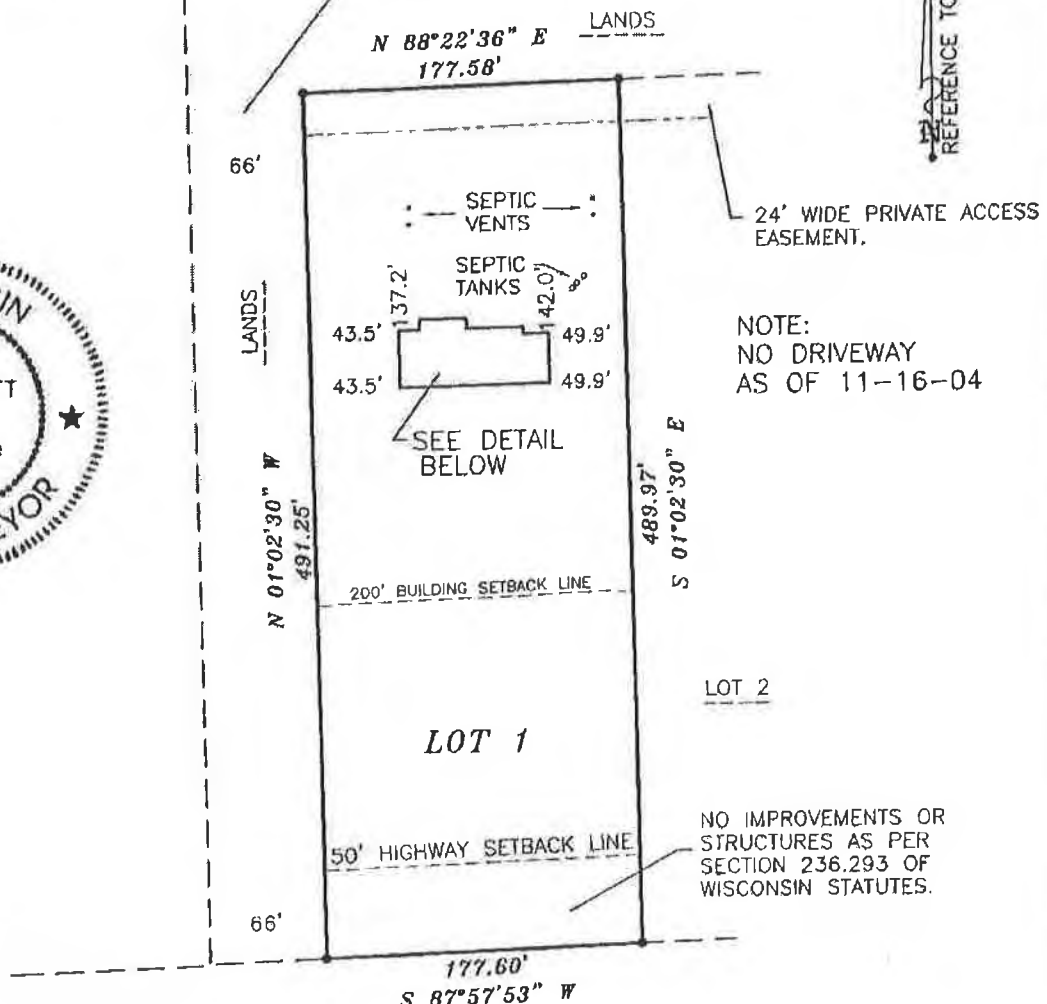
*[Signature]* 11-18-2004  
Daniel V. Birrenkott  
Wisconsin Registered Land Surveyor No. S-1531.

### Description:

LOT 1, CERTIFIED SURVEY MAP NUMBER 9984, LOCATED IN THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 34, T7N, R11E, TOWN OF COTTAGE GROVE, DANE COUNTY, WISCONSIN.

A NON-EXCLUSIVE ACCESS EASEMENT OVER THIS PARCEL TO BE PROVIDED VIA SEPERATE DOCUMENT TO PROVIDE HIGHWAY ACCESS FOR LOTS 1-3.

REFERENCE TO C.S.M. 9984.



U.S. HIGHWAYS 12 & 18  
(WIDTH VARIES)

### Legend:

Scale: 1 inch = 100 feet

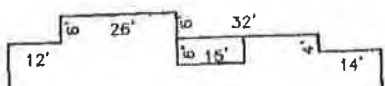





Exhibit C - 43






### MAP DATA

FEMA Special Flood Hazard Area: No  
Map Number: 55025C0470G  
Zone: X  
Map Date: January 02, 2009  
FIPS: 55025

### MAP LEGEND

-  Areas inundated by 500-year flooding
-  Areas inundated by 100-year flooding
-  Velocity Hazard

-  Protected Areas
-  Floodway
-  Subject Property

Powered by CoreLogic

Subject Property





Front Elevation



Rear Elevation



Access Road



Gravel Pit and Concrete Plant Access



Subject Driveway and Concrete Plant Access



Access Drive and Berm



Kitchen



Dining Area

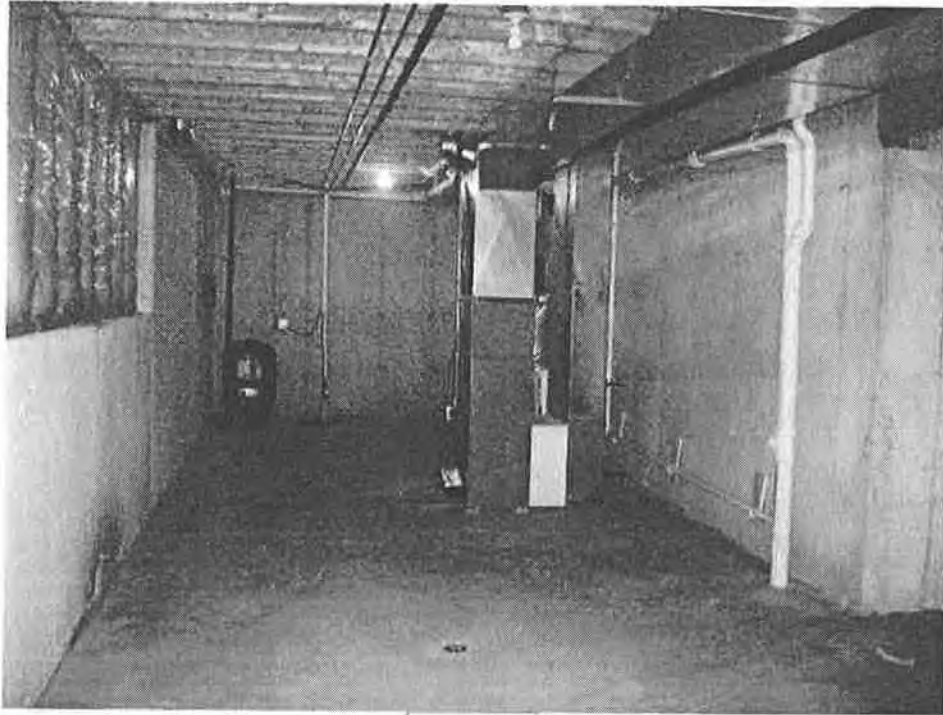




Laundry Room



Bathroom



Basement



Garage



Concrete Truck Exiting

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

---

APPENDIX E

Legal Description

Legal Description

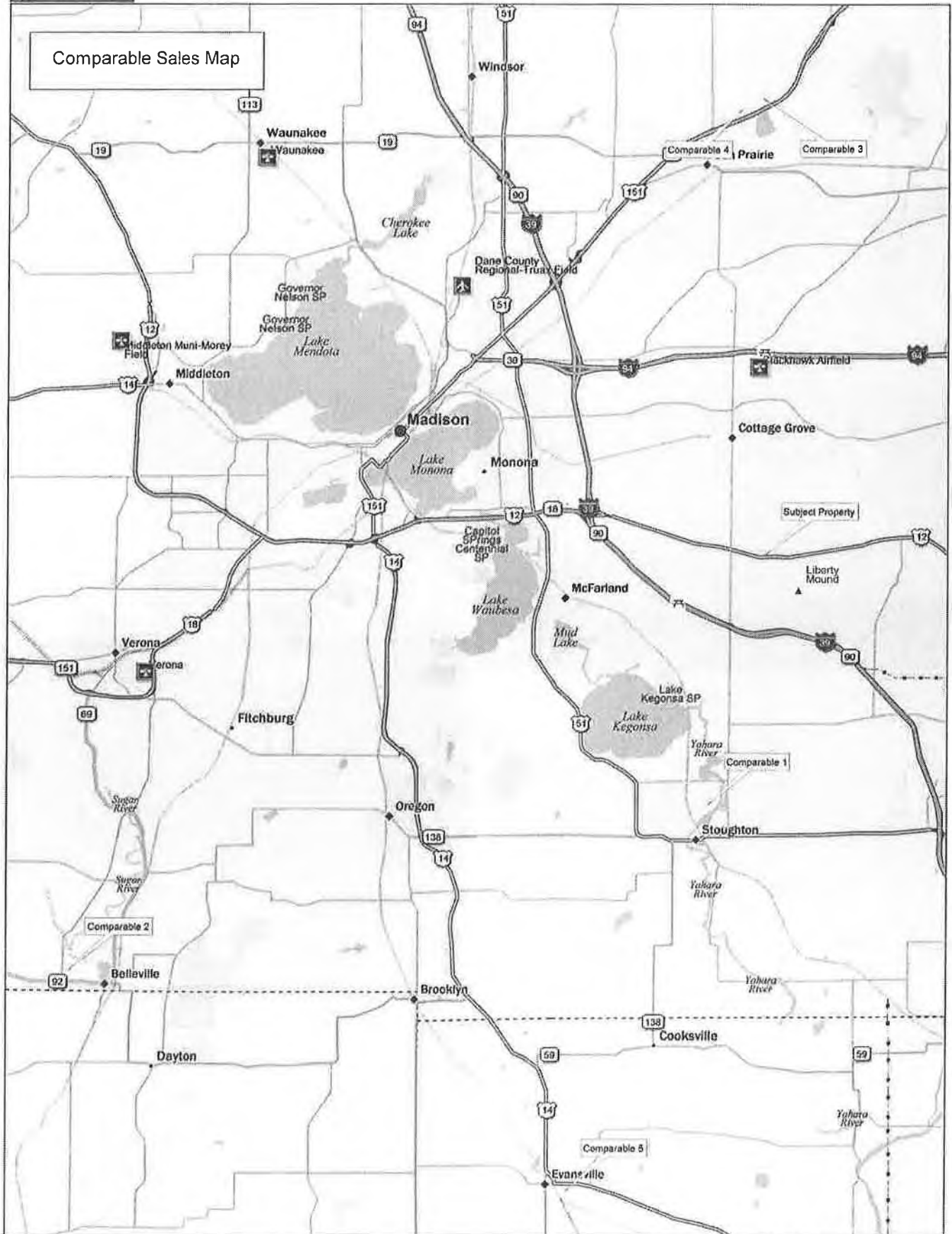
LOT 1 CSM 9984 CS58/144&145 3/14/01 DESCR AS SEC 34-7-11 PRT SE1/4NW1/4  
(2.000 ACRES)

APPENDIX F

---

Comparable Sales Map and Photographs

Comparable Sales Map



Data use subject to license.

© DeLorme. DeLorme Street Atlas USA® 2015.

www.delorme.com

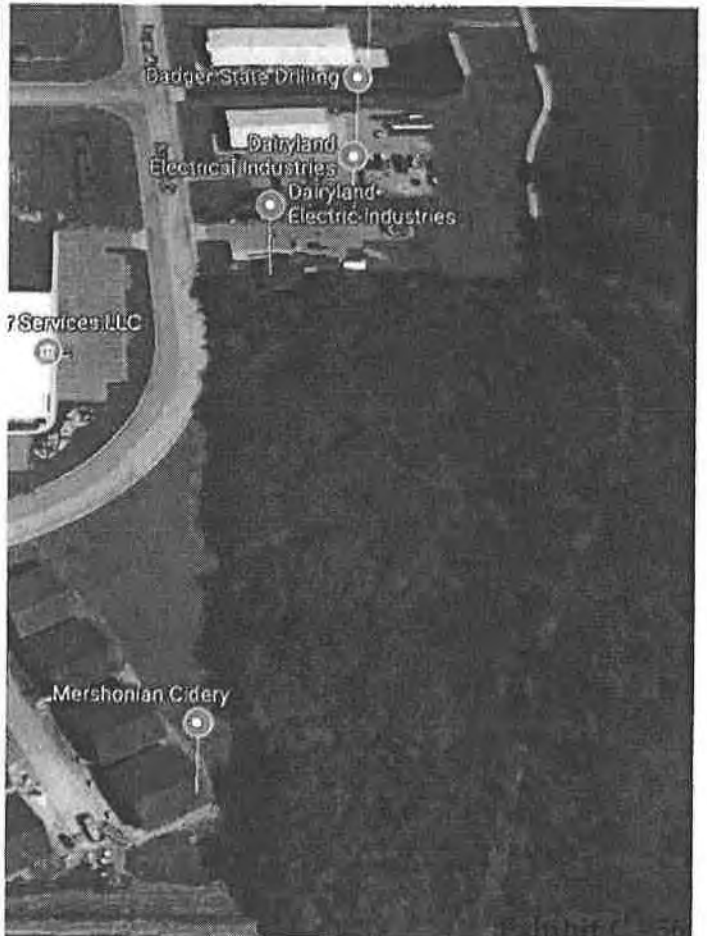


Scale 1 : 225,000



1" = 3.55 mi **Exhibit C - 55**

Comparable 1: 300 Business Park Circle





Comparable 2: Lot 21 Bell West Plat

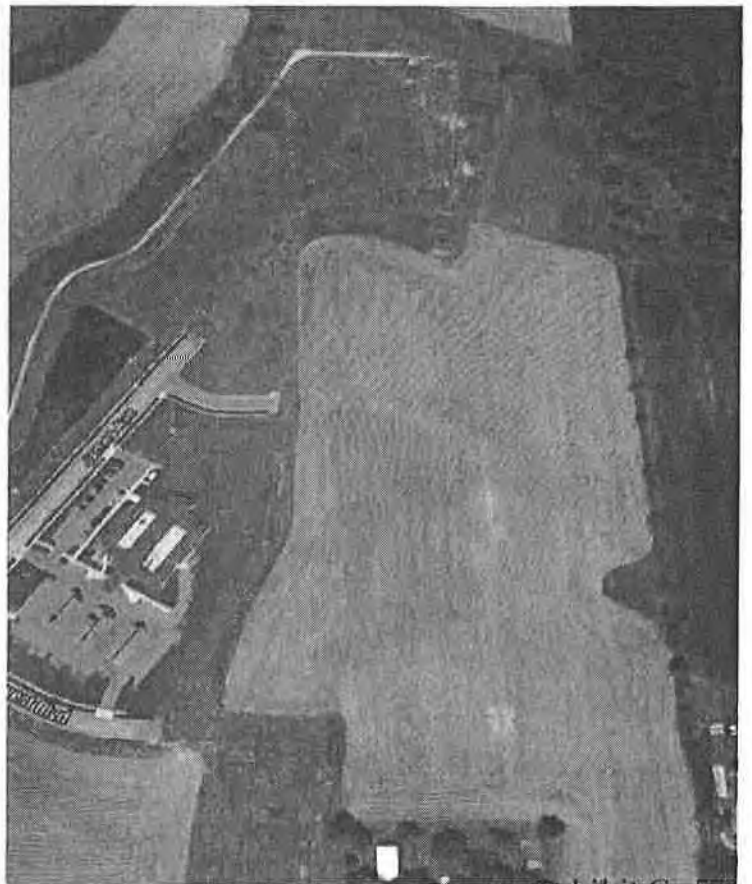


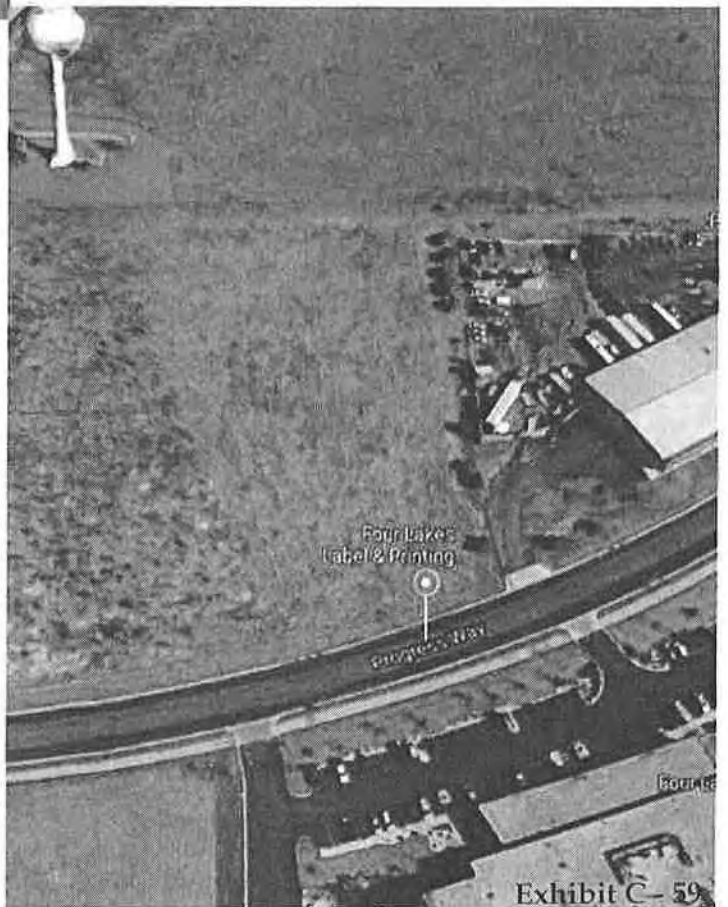
Exhibit C - 57

Comparable 3: 1870 Haynes Drive



Exhibit C - 58

Comparable 4: 820 Progress Way



Comparable 5: 410 Water Street

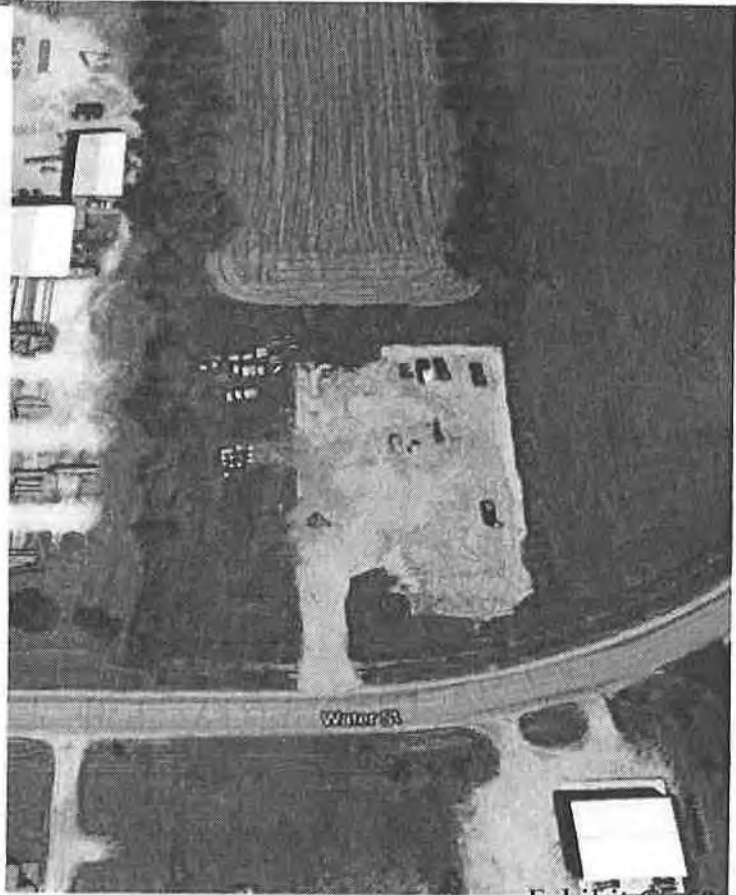
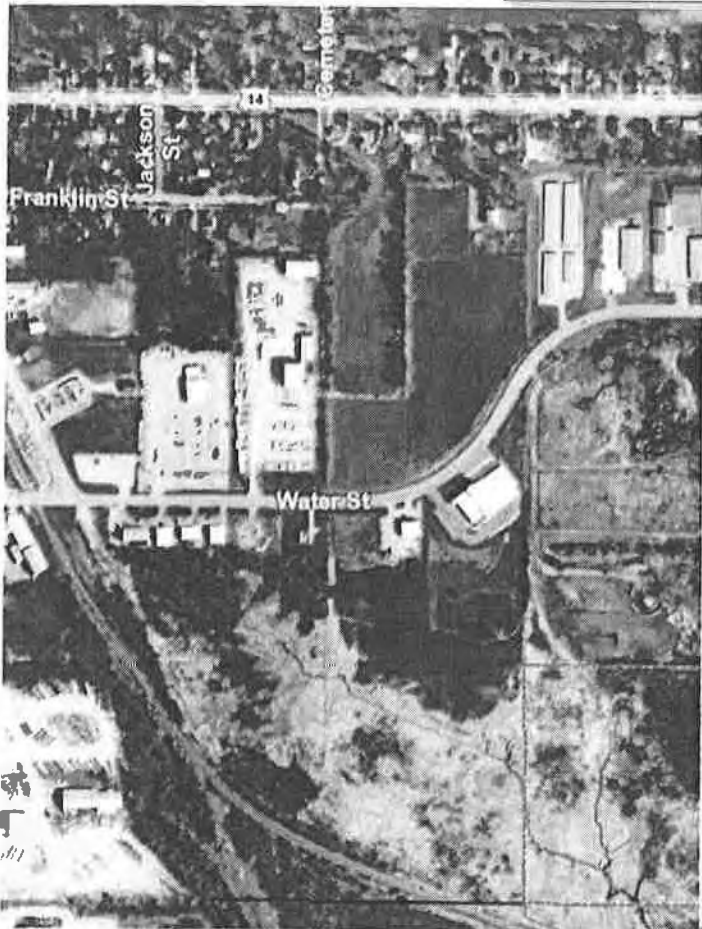


Exhibit C - 60

APPENDIX G

---

Supporting Documents



Dane County Zoning Division

City-County Building  
210 Martin Luther King, Jr., Blvd., Room 116  
Madison Wisconsin 53703  
(608) 266-4266/266-9083 Fax (608) 267-1540

**DANE COUNTY**  
**CONDITIONAL USE PERMIT #2175**

THE ZONING AND LAND REGULATION COMMITTEE OF THE DANE COUNTY BOARD PURSUANT TO SECTION 10.255(2) OF THE DANE COUNTY CODE OF ORDINANCES DOES HEREBY:

GRANT Conditional Use Permit #2175 for a concrete batch plant pursuant to Dane County Code of Ordinance Sections 10.126(3)(a), and subject to any conditions contained herein.

EFFECTIVE DATE OF PERMIT: JULY 12, 2011

THE CONDITIONAL USE SHALL BE LOCATED ON THE PROPERTY DESCRIBED AS FOLLOWS: 2272 US Highway 12/18, Town of Cottage Grove, Dane County

**LEGAL DESCRIPTION:**

Part of the E 1/2 NE 1/4 and W 1/2 NW 1/4 Section 34, Town of Cottage Grove described as follows: Commencing at the Northwest corner of NE 1/4 of said Section then South 773.94 feet; thence West 670 feet; thence South 950 feet to the point of beginning. Beginning at this point, the 2 acre plant site shall be described as thence North 200 feet, thence East 425; thence South 200', thence West 425; back to the point of beginning and containing the 2 acres, being part of Section No. 34.

Tax Parcel # 0711-341-8600-0

**CONDITIONS:**

1. The applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations.
2. The applicant shall apply for and receive all other required local, state and federal permits.
3. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. Monday through Friday, and some Saturdays when necessary from 6:00 a.m. to 4:00 p.m. Operation outside of those times will require at least 7 days notice to the Town and immediate neighbors, and shall be limited to no more than 6 projects not to exceed 30 total days / year.
4. CUP 2175 shall not become effective until a *permit for connection to state trunk highway* has been issued from the Wisconsin Department of Transportation (WisDOT); and operations may not begin until all improvements, as defined in the *permit for connection to state trunk highway*, have been completed.
5. The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.

II:\Zoning\ZLR\Conditional Use Permits\CUP #2175.doc



6. Trucks shall not use "jake" brakes.
7. 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.
8. Landscaping/screening: The berm along the southern boundary of the mineral extraction operation area shall be uniformly graded with pine trees at least 3 feet high, incorporating neighbor input; berms shall be built on the east boundary of the mineral extraction operation; and the berm on the western boundary must be built in such a way that maintains the access easement.
9. Install fence on northern boundary of the mineral extraction operation.
10. The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076.
11. Operations shall cease no later than twenty-five (25) years from the date of CUP approval, with a review by the town once every 5 years. The town will report the outcome of their review to Dane County Zoning.
12. 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 this approval, such approval is subject to amendment or revocation.

THE ZONING AND LAND REGULATION COMMITTEE AFTER PUBLIC HEARING  
AND IN THEIR CONSIDERATION OF THE CONDITIONAL USE PERMIT MADE THE  
FOLLOWING FINDINGS OF FACT:

1. That the establishment, maintenance and operation of the proposed conditional use will not be detrimental to or endanger the public health, safety, morals comfort or general welfare.
2. That the uses, values, and enjoyment of other property in the neighborhood for purposes already permitted will not be substantially impaired or diminished by the establishment, maintenance, and operation of the proposed conditional use.
3. That the establishment of the proposed 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 will be made.
5. That adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the proposed conditional use does conform to all applicable regulations of the district in which it is proposed to be located.

EXPIRATION OF PERMIT

In addition to any time limit established as a condition in granting this CUP, Section 10.25(2)(n) of the Dane County Code of Ordinances provides that any use for which a conditional use permit has been issued, upon its cessation or abandonment for a period of one year, will be deemed to have been terminated and any future use shall be in conformity with the ordinance.





< Parcel Parents

Parcel Summary		More +
Municipality Name	TOWN OF COTTAGE GROVE	
Parcel Description	LOT 1 CSM 9984 CS58/144&145 3/14/01 DESC...	
Owner Name	🔒	
Primary Address	2292 US HIGHWAY 12 & 18	
Billing Address	2292 US HIGHWAY 12 & 18 COTTAGE GROVE WI 53527	

Assessment Summary		More +
Assessment Year	2017	
Valuation Classification	G1	
Assessment Acres	2.000	
Land Value	\$25,000.00	
Improved Value	\$152,900.00	
Total Value	\$177,900.00	

Show Valuation Breakout

**Open Book**  
 Open Book dates have passed for the year  
 Starts: ~~04/20/2017 - 08:00 AM~~  
 Ends: ~~04/20/2017 - 10:00 AM~~  
 About Open Book

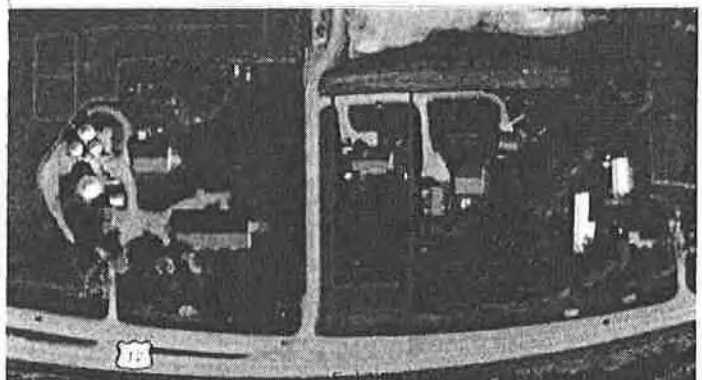
**Board Of Review**  
 Starts: 05/31/2017 - 07:00 PM  
 Ends: 05/31/2017 - 09:00 PM  
 About Board Of Review

Show Assessment Contact Information ▾

**Zoning Information**  
 For the most current and complete zoning information, contact the Division of Zoning.

**Zoning**  
 RH-1 DCPREZ-0000-07982  
 Zoning District Fact Sheets

**Parcel Maps**



[DCiMap](#)    [Google Map](#)    [Bing Map](#)

**Tax Summary (2016)** More

	E-Statement	E-Bill	E-Receipt
<b>Assessed Land Value</b>			
	\$52,500.00		
<b>Assessed Improvement Value</b>			
		\$173,600.00	
<b>Total Assessed Val</b>			\$226,100
<b>Taxes:</b>			\$4,089
<b>Lottery Credit(-):</b>			\$142
<b>First Dollar Credit(-):</b>			\$75
<b>Specials(+):</b>			\$165
<b>Amount:</b>			\$4,037

**District Information**

Type	State Code	Description
REGULAR SCHOOL	5621	STOUGHTON SCHOOL DIST
TECHNICAL COLLEGE	0400	MADISON TECH COLLEGE
OTHER DISTRICT	09DG	DEERGROVE EMS
OTHER DISTRICT	09CG	COTTAGE GROVE FIRE

**Recorded Documents**

Doc. Type	Date Recorded	Doc. Number	Volume	Page
QCD	01/30/2009	4498894		

Show More ▾

**DocLink**  
 DocLink is a feature that connects this property to recorded documents. If you'd like use DocLink, all you need to do is select a link in this section. There is a fee that will require either a credit card or user account. Click here for instructions.  
 By Parcel Number: 0711-342-9800-0  
 Document Types and their Abbreviations  
 Document Types and their Definitions  
 PLEASE TURN OFF YOUR POP UP BLOCKER TO VIEW DOCLINK DOCUMENTS. If you'r unsure how to do this, please contact your IT support staff for assistance. You will b unable to view any documents purchased if your pop up blocker is on.

## Valuations by Assessment Year

Year	Valuation Date	Valuation Description	Acres	Land Value	MFL Value	Improved Value	Total Value
<u>2017</u>	03/30/2017						
		G1 - RESIDENTIAL	2.000	\$25,000		\$152,900	\$177,900
2017 Total			2.000	\$25,000		\$152,900	\$177,900
<u>2016</u>	05/14/2014						
		G1 - RESIDENTIAL	2.000	\$52,500		\$173,600	\$226,100
2016 Total			2.000	\$52,500		\$173,600	\$226,100
<u>2015</u>	05/14/2014						
		G1 - RESIDENTIAL	2.000	\$52,500		\$173,600	\$226,100
2015 Total			2.000	\$52,500		\$173,600	\$226,100
<u>2014</u>	05/14/2014						
		G1 - RESIDENTIAL	2.000	\$52,500		\$173,600	\$226,100
2014 Total			2.000	\$52,500		\$173,600	\$226,100
<u>2013</u>	08/12/2009						
		G1 - RESIDENTIAL	2.000	\$63,000		\$192,300	\$255,300
2013 Total			2.000	\$63,000		\$192,300	\$255,300
<u>2012</u>	08/12/2009						
		G1 - RESIDENTIAL	2.000	\$63,000		\$192,300	\$255,300
2012 Total			2.000	\$63,000		\$192,300	\$255,300
<u>2011</u>	08/12/2009						
		G1 - RESIDENTIAL	2.000	\$63,000		\$192,300	\$255,300
2011 Total			2.000	\$63,000		\$192,300	\$255,300
<u>2010</u>	08/12/2009						
		G1 - RESIDENTIAL	2.000	\$63,000		\$192,300	\$255,300
2010 Total			2.000	\$63,000		\$192,300	\$255,300
<u>2009</u>	08/12/2009						
<u>2008</u>	06/07/2006						

< Parcel Parents

Parcel Summary		More +
Municipality Name	TOWN OF COTTAGE GROVE	
Parcel Description	LOT 2 CSM 9984 CS58/144&145 3/14/01 DESC...	
Owner Name	ANDREW O JOHNSON	
Primary Address	2272 US HIGHWAY 12 & 18	
Billing Address	2272 US HIGHWAY 12 & 18 COTTAGE GROVE WI 53527	

Assessment Detail		Less -
<< < Newer Older >>		

Assessment Year	2017	2016
Valuation Classification	G1	G1
Assessment Acres	2.000	2.000
Land Value	\$25,000.00	\$52,500.00
Improved Value	\$179,600.00	\$196,800.00
Total Value	\$204,600.00	\$249,300.00
Average Assessment Ratio	N/A	0.9679
Estimated Fair Market Value	N/A	\$257,569
Valuation Date	03/30/2017	05/14/2014

Show Valuation Breakout

**Open Book**  
 Open Book dates have passed for the year  
 Starts: ~~04/20/2017 - 08:00 AM~~  
 Ends: ~~04/20/2017 - 10:00 AM~~  
 About Open Book


**Board Of Review**  
 Starts: 05/31/2017 - 07:00 PM  
 Ends: 05/31/2017 - 09:00 PM  
 About Board Of Review

Show Assessment Contact Information

**Zoning Information**  
 For the most current and complete zoning information, contact the Division of Zoning.

**Zoning**  
 RH-1 DCPREZ-0000-07982  
 Zoning District Fact Sheets

**Parcel Maps**



[DCiMap](#)    [Google Map](#)    [Bing Map](#)

Tax Summary (2016)			More
	E-Statement	E-Bill	E-Receipt
<b>Assessed Land Value</b>	\$52,500.00		
<b>Assessed Improvement Value</b>		\$196,800.00	
<b>Total Assessed Val</b>			\$249,300
<b>Taxes:</b>			\$4,509
<b>Lottery Credit(-):</b>			\$142
<b>First Dollar Credit(-):</b>			\$75
<b>Specials(+):</b>			\$165
<b>Amount:</b>			\$4,457

**District Information**

Type	State Code	Description
REGULAR SCHOOL	5621	STOUGHTON SCHOOL DIST
TECHNICAL COLLEGE	0400	MADISON TECH COLLEGE
OTHER DISTRICT	09CG	COTTAGE GROVE FIRE
OTHER DISTRICT	09DG	DEERGROVE EMS

**Recorded Documents**

Doc. Type	Date Recorded	Doc. Number	Volume	Page
WD	04/27/2001	3312594		

Show More

**DocLink**  
 DocLink is a feature that connects this property to recorded documents. If you'd like use DocLink, all you need to do is select a link in this section. There is a fee that will require either a credit card or user account. Click here for instructions.  
 By Parcel Number: 0711-342-9830-0  
 Document Types and their Abbreviations  
 Document Types and their Definitions  
 PLEASE TURN OFF YOUR POP UP BLOCKER TO VIEW DOCLINK DOCUMENTS. If you're unsure how to do this, please contact your IT support staff for assistance. You will be unable to view any documents purchased if your pop up blocker is on.

# Valuations by Assessment Year

Year	Valuation Date	Valuation Description	Acres	Land Value	MFL Value	Improved Value	Total Value
<u>2017</u>	03/30/2017						
		G1 - RESIDENTIAL	2.000	\$25,000		\$179,600	\$204,600
2017 Total			2.000	\$25,000		\$179,600	\$204,600
<u>2016</u>	05/14/2014						
		G1 - RESIDENTIAL	2.000	\$52,500		\$196,800	\$249,300
2016 Total			2.000	\$52,500		\$196,800	\$249,300
<u>2015</u>	05/14/2014						
		G1 - RESIDENTIAL	2.000	\$52,500		\$196,800	\$249,300
2015 Total			2.000	\$52,500		\$196,800	\$249,300
<u>2014</u>	05/14/2014						
		G1 - RESIDENTIAL	2.000	\$52,500		\$196,800	\$249,300
2014 Total			2.000	\$52,500		\$196,800	\$249,300
<u>2013</u>	08/12/2009						
		G1 - RESIDENTIAL	2.000	\$63,000		\$218,200	\$281,200
2013 Total			2.000	\$63,000		\$218,200	\$281,200
<u>2012</u>	08/12/2009						
		G1 - RESIDENTIAL	2.000	\$63,000		\$218,200	\$281,200
2012 Total			2.000	\$63,000		\$218,200	\$281,200
<u>2011</u>	08/12/2009						
		G1 - RESIDENTIAL	2.000	\$63,000		\$218,200	\$281,200
2011 Total			2.000	\$63,000		\$218,200	\$281,200
<u>2010</u>	08/12/2009						
		G1 - RESIDENTIAL	2.000	\$63,000		\$218,200	\$281,200
2010 Total			2.000	\$63,000		\$218,200	\$281,200
<u>2009</u>	08/12/2009						
<u>2008</u>	05/04/2007						

< Parcel Parents

Parcel Summary		More +
Municipality Name	TOWN OF COTTAGE GROVE	
Parcel Description	LOT 3 CSM 9984 CS58/144&145 3/14/01 DESC...	
Owner Name	CHRISTINE S MOERKE	
Primary Address	2252 US HIGHWAY 12 & 18	
Billing Address	2252 US HIGHWAY 12 & 18 COTTAGE GROVE WI 53527	

Assessment Summary		More +
Assessment Year	2017	
Valuation Classification	G1	
Assessment Acres	2.120	
Land Value	\$30,000.00	
Improved Value	\$142,800.00	
Total Value	\$172,800.00	

Show Valuation Breakout

**Open Book**  
 Open Book dates have passed for the year  
 Starts: ~~04/20/2017 - 08:00 AM~~  
 Ends: ~~04/20/2017 - 10:00 AM~~  
 About Open Book

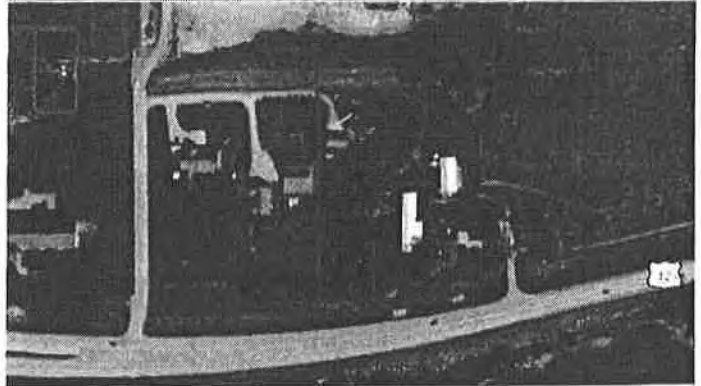
**Board Of Review**  
 Starts: 05/31/2017 - 07:00 PM  
 Ends: 05/31/2017 - 09:00 PM  
 About Board Of Review

Show Assessment Contact Information v

**Zoning Information**  
 For the most current and complete zoning information, contact the Division of Zoning.

**Zoning**  
 RH-1 DCPREZ-0000-07982  
 Zoning District Fact Sheets

**Parcel Maps**



[DCiMap](#)     [Google Map](#)     [Bing Map](#)

Tax Summary (2016)			More
	E-Statement	E-Bill	E-Receipt
<b>Assessed Land Value</b>			
\$52,900.00			
<b>Assessed Improvement Value</b>			
		\$159,900.00	
<b>Total Assessed Val</b>			\$212,800
<b>Taxes:</b>			\$3,849
<b>Lottery Credit(-):</b>			\$142
<b>First Dollar Credit(-):</b>			\$75
<b>Specials(+):</b>			\$165
<b>Amount:</b>			\$3,797

District Information		
Type	State Code	Description
REGULAR SCHOOL	5621	STOUGHTON SCHOOL DIST
TECHNICAL COLLEGE	0400	MADISON TECH COLLEGE
OTHER DISTRICT	09DG	DEERGROVE EMS
OTHER DISTRICT	09CG	COTTAGE GROVE FIRE

Recorded Documents				
Doc. Type	Date Recorded	Doc. Number	Volume	Page
WD	03/04/2009	4514330		

Show More v

**DocLink**

DocLink is a feature that connects this property to recorded documents. If you'd like use DocLink, all you need to do is select a link in this section. There is a fee that will require either a credit card or user account. Click here for instructions.

By Parcel Number: 0711-342-9860-0

Document Types and their Abbreviations

Document Types and their Definitions

PLEASE TURN OFF YOUR POP UP BLOCKER TO VIEW DOCLINK DOCUMENTS. If you're unsure how to do this, please contact your IT support staff for assistance. You will be unable to view any documents purchased if your pop up blocker is on.

# Valuations by Assessment Year

Year	Valuation Date	Valuation Description	Acres	Land Value	MFL Value	Improved Value	Total Value
<u>2017</u>	03/30/2017						
		G1 - RESIDENTIAL	2.120	\$30,000		\$142,800	\$172,800
2017 Total			2.120	\$30,000		\$142,800	\$172,800
<u>2016</u>	05/14/2014						
		G1 - RESIDENTIAL	2.120	\$52,900		\$159,900	\$212,800
2016 Total			2.120	\$52,900		\$159,900	\$212,800
<u>2015</u>	05/14/2014						
		G1 - RESIDENTIAL	2.120	\$52,900		\$159,900	\$212,800
2015 Total			2.120	\$52,900		\$159,900	\$212,800
<u>2014</u>	05/14/2014						
		G1 - RESIDENTIAL	2.120	\$52,900		\$159,900	\$212,800
2014 Total			2.120	\$52,900		\$159,900	\$212,800
<u>2013</u>	08/12/2009						
		G1 - RESIDENTIAL	2.120	\$63,400		\$181,700	\$245,100
2013 Total			2.120	\$63,400		\$181,700	\$245,100
<u>2012</u>	08/12/2009						
		G1 - RESIDENTIAL	2.120	\$63,400		\$181,700	\$245,100
2012 Total			2.120	\$63,400		\$181,700	\$245,100
<u>2011</u>	08/12/2009						
		G1 - RESIDENTIAL	2.120	\$63,400		\$181,700	\$245,100
2011 Total			2.120	\$63,400		\$181,700	\$245,100
<u>2010</u>	08/12/2009						
		G1 - RESIDENTIAL	2.120	\$63,400		\$181,700	\$245,100
2010 Total			2.120	\$63,400		\$181,700	\$245,100
<u>2009</u>	08/12/2009						
<u>2008</u>	06/17/2004						

## RAYMOND P. CATTELL, INC.

2401 Vondron Road  
Madison, WI 53718

Phone (608) 222-3180  
Fax (608) 222-2753

July 30, 2013

To all the Neighbors of The Hellickson Quarry

RE: Updated Night Work Information

We are planning on finishing up the Beltline project next week. We have two or three nights of work left that we anticipate being done from 8/7/13 and 8/9/13. (weather permitting).

If you have any questions please call me at 608-222-3180 Ext 13.

Thanks  
Wade Cattell





State of Wisconsin  
DEPARTMENT OF NATURAL RESOURCES  
South Central Region Headquarters  
3911 Fish Hatchery Road  
Fitchburg WI 53711-5397

Scott Walker, Governor  
Cathy Stepp, Secretary  
Mark Aquino, Regional Director  
Telephone 608-275-3266  
FAX 608-275-3338  
TTY Access via relay - 711



August 6, 2013

Raymond P. Cattell Inc.  
2401 Vondron Road  
Madison, WI 53718  
Attn: Wade Cattell

RE: Letter of Inquiry Regarding Fugitive Dust at Rocky Rights LLC, 2294 U.S.Hwy 12 and 18  
Cottage Grove, WI

Dear Mr. Cattell:

~~I have been forwarded a complaint regarding excessive dust being generated from truck traffic at the above facility. Pictures have also been given to me and it is quite clear that there is a problem.~~

The Department of Natural Resources Air Management program has jurisdiction with air quality. Wisconsin Administrative Code NR 415 outlines steps that all facilities must meet. The appropriate cite is as follows:

**NR 415.04 Fugitive dust.** No person may cause, allow or permit any materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne. Nor may a person allow a structure, a parking lot, or a road to be used, constructed, altered, repaired, sand blasted or demolished without taking such precautions.

(1) Such precautions shall include, but not be limited to:

(b) Application of asphalt, water, suitable chemicals or plastic covering on dirt roads, material stockpiles and other surfaces which can create airborne dust, provided such application does not create a hydrocarbon, odor or water pollution problem.

(c) Installation and use of hoods, fans, and air cleaning devices to enclose and vent the areas where dusty materials are handled.

(d) Covering or securing of materials likely to become airborne while being moved on public roads, railroads or navigable waters.

(f) The paving or maintenance of roadway areas so as not to create air pollution.

Please respond with what preventative measures you are currently using to control dust within 14 days of the date of this letter or what steps you will take to control the dust.

I am hopeful that this situation can be resolved in a timely and reasonable manner. Should you have any questions, I can be reached at 608-768-5693, Monday – Friday from 7:45 to 4:30. My address is P.O. Box 281, Reedsburg, Wi 539598

Sincerely,

Michael Sloat  
Air Management Compliance Inspector  
South Central Region

C: Rick Wenta – Dane County Public Health

Tom Roushar – SCR Air Management



**Motion** by Hendrick / Bollig to certify the plat as non-objectionable with respect to the provisions of S.236.12(2)(b), Wisconsin Statutes; motion carried, 5-0. YGP vote: 1-0.

**3. Certified Survey Maps**

- a. Waiver request for Thomas Johnson, Town of Springdale, Section 1, from Ch. 75.19(6)(b) for proposed lot 2 of a proposed 2-lot Certified Survey Map to have no public road frontage.

**Motion** by Bollig / Hendrick to grant a waiver from Dane County Code of Ordinance Section 75.19(6)(b) to allow proposed lot 2 to have no frontage along a public road conditioned upon the existing easement being maintained; Motion carried 5-0.

**Finding of fact:** This proposal is a minor adjustment to an existing land division that was previously approved.

**VI. RESOLUTIONS**

None.

**VII. ORDINANCE AMENDMENTS**

1. **ORDINANCE AMENDMENT 2, 2013-2014:** Amending Chapter 82 of the Dane County Code of Ordinances, incorporating the Town of Sun Prairie Comprehensive Plan into the Dane County Comprehensive Plan.

See motion above.

2. **ORDINANCE AMENDMENT 3, 2013-2014:** Amending Chapter 82 of the Dane County Code of Ordinances, Incorporating the Town of Roxbury Comprehensive Plan into the Dane County Comprehensive Plan.

See motion above.

3. **ORDINANCE AMENDMENT 4, 2013-2014:** Amending Chapter 82 of the Dane County Code of Ordinances, Incorporating the Town of Black Earth Comprehensive Plan into the Dane County Comprehensive Plan.

See motion above.

4. **ORDINANCE AMENDMENT 5, 2013-2014:** Amending Chapter 11 & 14 of the Dane County Code of Ordinances regarding changes to storm water regulations.

See motion above.

**OTHER BUSINESS**

5. Discussion of neighborhood complaints regarding the hours of operation of a concrete batch plant located at 2294 US Highway 12&18, Section 34, Town of Cottage Grove. The concrete batch plant was approved under Conditional Use Permit #2175. The land owner is Rocky Rights, LLC.

**Motion** by Hendrick / Kolar to suspend the rules of the Zoning and Land Regulation Committee to allow the landowners an opportunity to provide testimony regarding the complaint; motion carried, 5-0. YGP: 1-0.

Ian Pitz, attorney for Rocky Right LLC, explained the operation of the batch plant and mineral extraction site and stated that the operations were being run in compliance with all approvals.

Alex Tukiendorf, 2292 US Highway 12/18, explained that the neighbors were never informed that the concrete batch plant would be running at night.

The Committee asked staff to continue to work with the landowners to resolve the land use conflicts. No action taken by Committee.

**ADJOURN**

**Motion** by Hendrick / Bollig to adjourn the meeting at 8:31pm; motion carried, 5-0. YGP: 1-0.

Roger Lane,  
Recording Secretary

Minutes filed with the County Clerk 05/29/13

Note: These minutes are the notes of the recorder and are subject to change at a subsequent meeting of the committee.

**To:** Grafton, Jennifer

**Subject:** Fwd: Compliant involving hours of Operation Violations - Hellickson Mineral Extraction Site

Hi Jen, see below. Do you know, or can you ask the deputy who responded, if he observed any mining or concrete batch operations taking place when he was there?

Kim Banigan  
Clerk, Town of Cottage Grove  
4058 County Road N  
Cottage Grove, WI 53527

Phone: [608-839-5021](tel:608-839-5021)

Fax: [608-839-4432](tel:608-839-4432)

[www.tn.cottagegrove.wi.gov](http://www.tn.cottagegrove.wi.gov)

Office Hours: 8:00 a.m. to 12:30 p.m., M-F

----- Forwarded message -----

From: **Wade Cattell** <[wcattell@rpcattell.com](mailto:wcattell@rpcattell.com)>

Date: Tue, Apr 18, 2017 at 11:28 AM

Subject: RE: Compliant involving hours of Operation Violations - Hellickson Mineral Extraction Site

To: "Everson, Daniel" <[Everson.daniel@countyofdane.com](mailto:Everson.daniel@countyofdane.com)>

Cc: Kim Banigan <[clerk@towncg.net](mailto:clerk@towncg.net)>, "Charles V. Sweeney" <[CSweeney@axley.com](mailto:CSweeney@axley.com)>

Hi Dan The people in the photo were not working , My guys were working out of town and went to grab their cars to go home. The gate was locked and they had to call the plant operator at home to come over and cut off the lock as the sheriff locked it with a lock that we did not have a key for . There was ABSOLUTLY no operations taking place at that time or after 6PM just a couple guys trying to get home. The picture shows no one doing any kind of quarry operation at all.

With regards to the entire property we do have other operations that have no conection to the CUP.ie Recycle ( asphalt, concrete, Sand fill, dumping, and topsoil sales.)

Any questions please call

Wade Cattell

---

**From:** Everson, Daniel [mailto:[Everson.daniel@countyofdane.com](mailto:Everson.daniel@countyofdane.com)]

**Sent:** Monday, April 17, 2017 12:16 PM

**To:** Wade Cattell <[wcattell@rpcattell.com](mailto:wcattell@rpcattell.com)>

**Subject:** FW: Compliant involving hours of Operation Violations - Hellickson Mineral Extraction Site

Hi Wade,

Please take a look at the photo and respond back to me with regards to what type of work the individuals near the gate are doing.



TOWN OF COTTAGE GROVE  
PUBLIC HEARINGS AND TOWN BOARD MEETING  
JUNE 3, 2013

Licensed Premises limited to: Brick building, porch, deck, dining area, outdoor attached smoking area.

**MOTION CARRIED 5-0**

2. Operators and Managers Licenses: The Clerk stated that all required paperwork is in order for all applicants, and background checks turned up no concerns. **MOTION** by Fonger/Kindschi to approve July 2013-June 2014 Operators and Managers licenses for all applicants (list attached as appendix A). **MOTION CARRIED 5-0.**
- B. Discuss/Consider approval of July 2013 – June 2014 Non-metallic Mining Permits:
1. **MOTION** by Anders/DuPlayee to approve a July 2013 – June 2014 Non-metallic mining permit for Brad Huston of R.G. Huston Company, Inc. to operate the Gaston Road Quarry, 2543 Gaston Road, owned by Huston Holdings, LLC. Operating hours limited to 6:00 a.m. to 6:00 p.m., Monday thru Saturday. **MOTION CARRIED 5-0.**
  2. **MOTION** by DuPlayee/Fonger to approve a July 2013 – June 2014 Non-metallic mining permit for Wade Cattell of Raymond P. Cattell, Inc. to operate the pit at 2294 US Highway 12 & 18, owned by Rocky Rights, LLC. Operating hours to be limited to 6:00 a.m. to 6:00 p.m, Monday thru Saturday.

Discussion: Chris Moerke, 2252 US Highway 12 & 18, asked about the ownership and maintenance of the access road to the quarry, which is also used as access by the neighboring three homes. Wade Cattell said that he owns the road, and the homeowners have an easement to use it. The conditions of the CUP for the concrete plant require that the road be blacktopped. He does not operate the pit or concrete plant in the winter. If the homeowners want to use the road during that time, they need to plow it. Ms. Moerke was advised to look on her property deed for the easement information.

Ms. Moerke also complained about the weeds on the berm between the homes and the concrete plant. It was noted that this had been looked into before, and unless the weeds are noxious as defined by statute, the Town has no jurisdiction. The County had not advised removing the foliage due to possible erosion. Ms. Moerke was advised to work with Mr. Cattell to control the weeds closest to her property. Mr. Cattell said that he will replace any of the pines that did not survive last years drought.

Ms. Moerke again complained about operation of the concrete plant at all hours, and urged the Town Board not to approve the permit. The Clerk attempted to clarify that the permit under consideration tonight is not for the concrete plant, which is regulated by Dane County under a Conditional Use Permit. Complaints regarding operation of the concrete plant should be directed to the County. She then explained that since the pit is a “non-conforming site”, the only possible regulation is by the Town's non-metallic mining ordinance, and if the permit is not approved, the owners would be free to operate in any fashion they so choose.

**MOTION CARRIED 5-0.**

3. **MOTION** by Fonger/DuPlayee to approve a July 2013 – June 2014 Non-metallic mining permit for Brad Huston of R.G. Huston Company, Inc. to operate the Skaar pit at 3355 County Road N, owned by Dale R. and Dwight D. Huston. Operating hours to be limited to 6:00 a.m. to 6:00 p.m, Monday thru Friday, and 8 a.m. to 3 p.m. on Saturday. **MOTION CARRIED 5-0.**

---**Sent:** Sunday, August 12, 2012 6:44 PM

**Subject:** 1st Notice of Complaint, 2294 U.S.Hwy 12 and 18 Cottage Grove, Wisconsin

Mr. Russel Bartlett  
Zoning Inspector  
Dane County, Wisconsin

Mr. Bartlett, this Email is to inform Dane County Zoning, of the Non-Compliance relating to Conditional Use Permit # 2175, dated July 12, 2011.

This Permit is issued to Raymond P. Cattell, Inc. 2401 Vondron Road Madison, Wisconsin.

The permit in question, was granted for a Concrete Batch Plant located in front of my Home at, 2292 U.S.Hwy 12 and 18 and along a shared driveway on the side of the same Home. I have received a copy of permit # 2175 and understand the restrictions the Board has placed on the operation of said Plant.

However, the Permit holder has not complied with Conditions Numbers (3), (5), (7). And Zoning Committee Finding of Facts numbers (1), (2), (5).



The most egregious Permit Violation is Number (3), in the Conditions Section. The hours of operation stated in the permit, Monday thru Friday, 6:00 A.M. to 6:00 P.M. are more than enough to substantially impair the use, value and enjoyment of my property. However, the permit holder deems it necessary to operate from 3:50 A.M. to 8:10 P.M. ( Date of occurrence 8/7/2012). Saturdays are a different story, most every Saturday since March, 2012 the permit holder has had some type of hauling that had to be done. The hours vary depending on their needs. Even on Sunday (Date of occurrence 7/15/2012 and 7/29/2012, the permit holder deems it necessary to further impair the use, value and enjoyment of my property.

I understand the Boards Stipulation stating that Operations outside of those hours will require at least 7 Days notice to the Town and immediate neighbors and shall be limited to no more than 6 projects ( please define project ? ) not to exceed 30 total days / year ( please define 30 days ? ).

I can tell you that my property has never once received any type of notice that the permit holder was to work outside the normal hours.

I have called Town Board, Co-Chair, Kris Hampton (279-4470) on Four (4) Saturdays to ask him if the permit holder had contacted the Town and notified them of the work outside of permitted hours and on every occasion he told me "NO" they have not notified him.

The following are the the actual times that the permit holder has had the property in operation.

This has been the normal procedure since early spring 2012.

8/1/2012.....Wed... 5:15 A.M. until 6:50 P.M.  
 8/2/2012.....Thur... 4:30 A.M. until 8:00 P.M.  
 8/3/2012.....Fri..... 5:00 A.M. until 6:05 P.M.  
 8/4/2012.....Sat.....5:30 A.M. until 3:00 P.M.  
 8/5/2012.....Sun.....Closed  
 8/6/2012.....Mon....4:35 A.M. until 9:09 P.M.  
 8/7/2012.....Tue....3:50 A.M. until 8:10 P.M.  
 8/8/2012.....Wed....4:35 A.M. until 4:50 P.M.  
 8/9/2012.....Thur....4:35 A.M. until 9:12 P.M. (Awakened by Semi Truck going into Property)

Moreover, the Concrete Plant and Quarry creates excessive noise disturbing the public peace. It is of sufficient loudness that it tends to unreasonably disturb the rights of enjoyment and use of land and property.

If operated normally, most original equipment in any "Road Vehicle" should not emit excessive noise. However, the aggressive use of "Off Road" equipment operated in making

Concrete and a Quarry Operation, in such close proximity to Residential Property's, exceeds most permissible noise limits.

Please feel free to contact any of the three (3) Residential Property Owners that abut the Permitted Property listed in the complaint, as all have signed on to this Complaint. We would all like to be kept informed on your progress with this complaint.

Alex Tukiendorf  
Christine Moerke  
2292 US Hwy. 12 and 18  
2292 US Hwy. 12 and 18  
Cottage Grove WI 53527  
Cottage Grove WI 53527  
608.338.4702  
Unknown

Andy, Noel & Barb Johnson  
2272 US Hwy. 12 and 18  
Cottage Grove WI 53527  
608.877.1045

Respectfully Submitted,

Alex Tukiendorf

RECEIVED  
JAN 17 2018  
DANE COUNTY PLANNING & DEVELOPMENT

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
APRIL 22, 2015

1. Notice of the meeting was posted at Town Hall, Gaston Road at Brown Thrush, American Way and USH 12 & 18 at County BN. A quorum was present with Kris Hampton, Steve Anders, Silvin Kurt, Phillip Bultman, Wilmer Larson and Virgil Schroeder in attendance. David Muehl arrived at 7:08 P.M.
2. Chair Kris Hampton called the meeting to order at 7:00 p.m.
3. Approve minutes of the previous meeting: **MOTION** by Bultman/Kurt to approve the February 25, 2015 minutes as printed. **MOTION CARRIED 5-0-1** (Schroeder abstained).
4. Public Concerns: Kurt questioned whether the flag lot on the west side of the Coffey property on Ridge Road can be re-sized/re-configured?
5. Wade Cattell, Rocky Rights LLC – Applicant, Duane Swalheim – Landowner. Parcels 0711-342-9730-0 and 0711-342-8500-9: Seeking conditional use permit for non-metallic mining on 35 acres:

(Muehl arrived during this discussion)

Both Wade Cattell and Duane Swalheim were in attendance. Cattell stated that the purpose of adding the acreage to the mining operation is to provide additional material for the existing concrete plant, not for sand and gravel sales. A berm would be installed to prevent runoff.

Public Comment:

- Andrea & Johnathon Enriquez, 3380 North Star Road, were concerned about 1) silica sand and air quality (Hampton said probably not an issue), 2) fencing to keep kids out, 3) dry sand and wind erosion, 4) Effects on values of surrounding properties. They questioned what the hours of operation would be.
- Otto Otteson, 2173 Nora Road, said his main concern is about drainage flow, but also does not like the noise it would make.
- Alex Tukiendorf, 2292 U.S. Hwy 12 & 18, questioned whether limits will be enforced. He does not feel that the complaints he has made about the current operation have been addressed. These include dust from the drive, noise issues, disrepair of the east berm and fence, and time of operation violations, which he has logged. He noted that he counted around 100 loads of gravel hauled in in 2014, since the old mine has been exhausted, and said a precedent for rejection exists from the Town of Humbolt. He feels that the general health and welfare requirements of the CUP application will not be met.
- James Merritt, 2390 North Star Road, said all of his concerns have already been expressed, and he feels the proposed expansion would reduce property values and quality of life.
- Kirk Eilenfeldt, 3710 Ridge Road, is the landowner to the north, and said that the fence is in, as required by the CUP for the concrete plant, and the east berm has been fixed. He said that “Everything Wade was supposed to do, he has done it.” He had a question about water retention and a berm to the North. Cattell said that the additional 35 acres will not be worked all at once. A berm will be installed running north to south on the active portion, and a drainage ditch will be dug on the north property line.

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
APRIL 22, 2015

Cattell response to the complaints:

- There have been instances of semis coming in late delivering cement, but late and early deliveries are no longer allowed.
- They are trying to keep dust down, and have a camera recording conditions.
- He is asking for a 10 year operation, starting in 2016.

Hampton asked whether a portion of the non-conforming area could be reclaimed as each portion of the new area is opened? Cattell expects the north part of the 35 acres will be good for up to 5 years, but the non-conforming area will not be reclaimed within the 5 years, so that trade-off will not work.

**MOTION** by Anders/Larson to deny the CUP since standards 1 and 2 of the six standards under DCCO 10.255(2)(b) are not satisfied. **MOTION CARRIED 7-0.**

6. Respond to questions from Ho Chunk Nation regarding their plans to develop their property in relation to the Town's Comprehensive Plan:
  - a) What are the Town's plans for its property located along County AB north and south of Hwy 12/18? Commercial.
  - b) Could any of Cottage Grove's existing or ongoing projects influence the development of Ho-Chunk's 47.75 acres? No.
  - c) What sort of uses of the 47.75 acres would complement Cottage Grove's plans for development? Further development will not complement our plans.
  - d) What are some issues that should be considered as the Ho-Chunk Nation undertakes the development of this area: Traffic, new roads, potential pressure from city of Madison to annex our lands.
7. Comprehensive Plan Update:
  - a) Discuss/Consider Meetings and Major Milestones Schedule: No issues.
  - b) Discuss/Consider Draft Vision Statement: No Issues.
  - c) Discuss/Consider Draft of the Conditions and Issues Volume:

Page 4:

- clarify 10 miles vs. proximity of city limits (Madison).
- Village is surrounded by the Town on its eastern, western and southern borders.
- Six school districts.

Map 2: Use better colors.

Page 16:

- remove the 's's from the first sentence.
- Last paragraph: former quarry is in the Village.

Page 17:

TOWN OF COTTAGE GROVE  
TOWN BOARD MEETING  
SEPTEMBER 8, 2015

I. ADMINISTRATIVE

- A. Notice of the meeting was posted at Town Hall, the park at 4539 American Way, Gaston Road at Brown Thrush and US Hwy 12 & 18 at County Road BN, and on the Town's web site. Town Chair Kris Hampton, Supervisors Mike Fonger, Steve Anders, Kristi Williams and Mike DuPlayee were present, along with Clerk Kim Banigan and Treasurer Debra Abel.
- B. Hampton called the meeting to order at 7:00 P.M.
- C. Minutes of previous meeting(s): **MOTION** by Williams/DuPlayee to approve the minutes of the Town Board meeting held on August 17, 2015 as printed. **MOTION CARRIED 5-0.**
- D. Finance Report and Approval of Bills:
1. **MOTION** by DuPlayee/Fonger to approve payment of bills corresponding to checks #23915-23979, including voided check 23994, as presented. **MOTION CARRIED 5-0.**
  2. **MOTION** by Anders/DuPlayee to approve payment of August Per Diems as presented, and payment of \$747.00 to Viken Inspection Agency LLC for August building permits. **MOTION CARRIED 5-0.**
- E. Public Concerns: None initially, but later in the meeting Gloria Binnette, 3840 Blazing Star Road asked to be heard since she arrived too late for the agenda item. She asked about changing the 4-way stop at the intersection of Nora Road with South and West Jargo Roads to a 2-way stop (East to West) only, and adding a speed limit sign just north of Doubledays on Baxter Road. The Board did not show interest in considering either of these suggestions.
- F. Road Right of Way Permits: **MOTION** by DuPlayee/Williams to permit Alliant Energy to trench and drill across and parallel to the right-of-way on Luds Lane for underground electric and plastic gas service. **MOTION CARRIED 5-0.**

II. BUSINESS:

A. Plan Commission Recommendations:

1. Wade Cattell, Rocky Rights LLC – Applicant, Duane Swalheim – Landowner. Parcels 0711-342-9730-0 and 0711-342-8500-9: Seeking conditional use permit for non-metallic mining on 35 acres: Hampton explained that the Plan Commission had considered and denied this request back in May, but the petitioners postponed their appearance before the Town Board until now to allow time for them to address concerns and for the Town Board to tour the site. Mr. Cattell said he is asking for a 20 year conditional use permit to expand the mining site to provide gravel for his concrete plant and some fill sand. There would be no changes to traffic patterns, the existing driveway would be adequate. Hours would be 6 a.m. to 6 p.m. Monday thru Friday, and 6 a.m. to 4 p.m. on up to five Saturdays per calendar year, probably in the fall and consecutive, with prior notice given to quarry neighbors. No blasting is planned at this time. A berm would surround the entire active areas of the site, with a 3-wire barbed wire fence and no trespassing signs along the entire western property line. He suggested annual review by the Town Board with a walk-through every three years. He said he is not currently out of gravel but is making this request in an effort to plan ahead.
  - Duane Swalheim said that he barely hears noise from the the current quarry operation from his nearby farm. Most of it takes place down below.
  - Jon and Andrea Enriques, 3380 North Star Road, expressed their opposition to expansion of the quarry toward their home due to the negative effects it could have on

TOWN OF COTTAGE GROVE  
TOWN BOARD MEETING  
SEPTEMBER 8, 2015

air and water quality as well as property values. They indicated they can hear current operations from their home. They had obtained a copy of the existing site's erosion and stormwater control plan from Dane County, but were unclear as to who enforces it. They had also contacted the DNR and learned that the operation is missing a necessary industrial stormwater permit, and determined an air quality permit is also needed if any crushing is performed on site. They suggested that if the operators cannot be trusted to follow the rules for the existing site, how can they be trusted to follow them with an expansion?

- Alex Tukiendorf, 2292 US Highway 12 & 18, provided photos alleging violations to operating hours of the existing site since the May Plan Commission meeting, including shots of the gate open after hours and dust generated by truck traffic.
- Jim Merritt, 3290 North Star Road, alleged that the quarry operators have a history of disregard for the environment, and said it is the Town Board's responsibility to support the recommendation of the Plan Commission to deny the expansion, which could be devastating to future development in the vicinity.
- Otto K. Otteson, 2173 Nora Road, said the quarry has been active there his whole life and he hears noise from it all the time, although more now than ever before. He suggested that the operators could show good faith by reclaiming portions of it, and wondered if they could be forced to reclaim some of it before being allowed to open up any more.
- Anders asked Mr. Cattell a series of questions:
  - Q: Define "berm": A: 10 foot minimum height, seeded or mulched.
  - Q: Will the site be a "borrow site" for storage of offsite materials" A: There would be no reason for that to occur, other for reclamation dirt.
  - Q: How many acres would be open at any one time? A: 2/3 of the 35 acres would be stripped and surrounded by a berm at a time, moving north to south on the site.
- Williams was concerned whether a 3-wire barbed wire fence would be enough to keep out curious children.

**MOTION** by Anders to approve the conditional use permit for five years beginning on January 1, 2016 to allow non-metallic mining on 35 acres with the following conditions:

- No more than 10 acres of the expansion area may be open at any one time, and for each acre opened, an acre must be reclaimed on the existing site, and seeded with some type of ground cover.
- All open areas must be completely surrounded by a 10' berm and 3 strand barbed wire fence.
- The entire 35 acres shall not be used as a borrow pit or allowed to be used for storage of off site materials including gravel, concrete or blacktop. It would be acceptable to bring in dirt for building a berm.
- Hours of operation limited to 6 a.m. to 6 p.m. Monday thru Friday, and 7 a.m. to 4 p.m. on up to five Saturdays per calendar year, with prior notice given to neighbors. No operations on Sundays.

TOWN OF COTTAGE GROVE  
TOWN BOARD MEETING  
SEPTEMBER 8, 2015

- All necessary State and County permits must be secured prior to the beginning of mining operations.
- Operator shall notify neighbors in advance of any crushing done on the site.

**MOTION FAILED FOR LACK OF SECOND.**

**MOTION** by DuPlayee/Anders to approve the conditional use permit beginning on January 1, 2016 to allow non-metallic mining on 35 acres with the same conditions as the failed motion above, but allowing up to 15 acres of the 35 to be open at any one time. The six standards under DCCO section 10.255(2)(b) were considered with the following votes:

1. Failed 2-3
2. Approved 3-2
3. Approved 4-1
4. Approved 5-0
5. Approved 5-0
6. Approved 4-1

**MOTION FAILED 2-3 (Fonger, Anders and Williams opposed).**

2. John T. Mulligan, applicant, Don Peckham, owner – parcels 0711-071-8790-7 and 0711-07-9050-0 on County Road BB: seeing rezone to LC-1 with a conditional use permit for outdoor storage of construction materials for .224 acres currently zoned R-1A and 1.959 acres currently zoned C-1: Anders stated that he had opposed this rezone at the Plan Commission level because he did not approve of the large quantities of material it would allow to be stored outdoors. Discussion was that materials would be limited to gravel, sand, boulders and topsoil and the piles would not be visible from County BB. DuPlayee wondered about truck traffic on such a busy road, but Mulligan stated there would be a half dozen or so coming and going each day. **MOTION** by Fonger/Anders to accept the Plan Commission's recommendation to approve the rezone of the entire 2+ acres to LC-1 with a CUP for outside storage of materials and vehicles as specified above and below:
  - a) Design review and landscaping plans to include:
    - Overhead doors facing south and no windows.
    - Screening requirements: continuous evergreen plantings, ultimately reaching 6' wide by 5' high, or a 6-8' fence.
    - Outdoor lighting only at the back doors of the building, and downward facing.
    - Up to 3 full time employees.
    - No additional signage.
  - b) Hours from 6:00 a.m. to 8:00 p.m., winter excluded from enforcement of these hours due to the unpredictable nature of snow removal.
  - c) Total vehicles and equipment on site not to exceed 24.
  - d) Total vehicles and equipment stored outside at any one time not to exceed 18.

TOWN OF COTTAGE GROVE  
TOWN BOARD MEETING  
DECEMBER 4, 2017

I. ADMINISTRATIVE

- A. Notice of the meeting was posted at the Town Hall and on the Town's internet site. Town Chair Kris Hampton and Supervisors Mike Fonger, Steve Anders, Kristi Williams and Mike DuPlayee were all in attendance, as well as Clerk Kim Banigan, Treasurer Debra Abel, Highway Superintendent Jeff Smith, and Dane County Assistant Zoning Administrator Daniel Everson.
- B. Hampton called the meeting to order at 7:00 P.M.
- C. Minutes of previous meeting(s): **MOTION** by Williams/DuPlayee to approve the minutes of the November 20, 2017 public hearing, special meeting of the electors, and Town Board meeting as presented. **MOTION CARRIED 5-0.**
- D. Finance Report and Approval of Bills:
  - 1. **MOTION** by DuPlayee/Anders to approve payment of bills corresponding to checks #31797-31826 from Monona State Bank, including voided check #31808. **MOTION CARRIED 5-0.**
  - 2. **MOTION** by Anders/Fonger to approve payment of November per diems as presented, and payment of \$425.00 to Viken Inspection Agency, LLC for November building permits. **MOTION CARRIED 5-0.**
- E. Public Concerns: None.
- F. Road Right of Way Permits: **MOTION** by Anders/DuPlayee to permit Charter to drill across the right-of-way of Baxter Road to install a 300' conduit. **MOTION CARRIED 5-0.**

II. BUSINESS:

- A. Plan Commission Recommendations:
  - 1. Duane Farwell, applicant, Duacam Investment LLC, landowner, parcel 0711-193-8096-1 at 3812 County Highway AB – requesting rezone of 1.0 acres from R-1A to R-3A to allow for building of a duplex home: The Clerk stated that she had confirmed with Dane County that that since the parcel is in the Neighborhood Development area of the future land use plan, and has been residential since before 1981, no RDU is needed to convert from single family to duplex zoning. **MOTION** by Williams/DuPlayee to accept the Plan Commission's recommendation to approve the rezone of 1.0 acres from R-1A to R-3A to allow for building of a duplex home. **MOTION CARRIED 5-0.**
  - 2. Rocky Rights LLC, applicant, Kirk and Heidi Eilenfeldt, landowners – requesting conditional use permit for expansion of non-metallic mining site at 2294 US Highway 12 & 18 to include mineral extraction (gravel quarry) for 35 acres on parcel 0711-273-9514-0 currently zoned A1-EX:
    - Wade Cattell of Rocky Rights, LLC provided an overview of the planned mining operations on the new 35 acre site just north of the existing non-conforming site. Exterior berms will be 7' high and interior berms will be 5' high, all with a 1:1 slope. A perimeter fence will consist of three strands of barbed wire. A maximum of 9 acres will be active at any one time, including three phases: 1) operating, 2) dewatering, 3) reclamation. The remainder will continue to be farmed, with farming access from North Star Road, not through the main quarry entrance. He expects to begin mining operations about 6 months after approval. The Plan Commission proposed a 10 year term for the CUP, and operating hours of 6 a.m. to 6 p.m. Monday thru Friday, and 6



TOWN OF COTTAGE GROVE  
TOWN BOARD MEETING  
DECEMBER 4, 2017

a.m. to 4 p.m. on Saturdays only with prior notice to adjacent property owners and the Town. He is asking for up to five Saturdays per year. He stated there may be other work performed on Saturdays (hauling in and out), but no mining without the required notice, and no work at all on Sundays. Material will be trucked from the new site to the non-confirming site for use in the concrete batch plant. He expects mining to be active for 3 months per year, unless there is demand for more. Reclamation will be continuous. There will be no blasting or crushing on the new site, however there is crushing on the non-confirming site.

- Fonger said he remembered hearing there was 20-30 years of gravel in the existing pit. Cattell said there is sand stone remaining in the existing pit, but not aggregate (gravel and the appropriate type of sand) needed for concrete manufacturing. He thinks there is enough on the new site to last 20 years, and said that by expanding to the new site he can use existing infrastructure to supply the concrete plant vs. the increased traffic that bringing in material would create. The concrete batch CUP has another 19 years.
- Atty. Christa Westerberg introduced herself as representing neighbors of the existing site, and stated that she has 15 years of experience as an attorney, primarily in zoning work. She said that the issue of timing of the application seems to now be resolved, but County enforcement of the existing site is still unresolved, and she does not feel that the proposed substantial expansion can meet the six standards under DCCO 10.255(2)(h), especially items 1 and 2. She specifically mentioned noise from backup beepers that are disruptive to neighbors, and a drop in property values. She stated that the Town's Comprehensive Plan recognizes that dust, noise and traffic from mining sites can negatively affect neighbors. She stated that the additional conditions for a CUP in the A-1EX district under DCCO 10.123(5) are not addressed by the application, and that the Town's Agricultural Preservation planning district says nothing about mines.
- Otto Otteson, 2173 Nora Road, was opposed to the CUP. He has lived with the gravel pit his entire life, and does not see a reason to expand as long as the existing site still has material available. He thinks there should be reclamation on the existing site before an expansion is discussed, and is concerned about the affect on the watershed, aquifer, and little Door Creek, as well as reduced property values.
- Jonathon Enriquez, 3380 North Star Road, bought his property in 2013 and said at that time the piles were not as big as they are today. He said he moved there for the view, which is being taken away. He questioned the reason to expand, and mentioned a petition submitted against an application to expand the quarry to the West of the existing site back in March of 2017, which was re-submitted with additional signatures in August of 2017 to oppose this application. He urged the board to deny the expansion.
- Alex Tukiendorf, 2292 US Highway 12 & 18, said his property abuts the existing site on two sides. He hears back up alarms and everything else occurring on the site from the inside of his house. He noted that an earlier attempt to expand this site was denied by the Town Board on September 8, 2015 due to standard #2 not being met, and further precedent exists with the denial of another mining site in September of 2016, also for failure to meet standard #2. He felt a three-strand barbed wire fence will not prevent curious children or adults from entering the site. He alleged a recent safety

TOWN OF COTTAGE GROVE  
TOWN BOARD MEETING  
DECEMBER 4, 2017

violation at the current site when the gate was left open from November 22<sup>nd</sup> through the 26<sup>th</sup>. He said he quit calling the Town's contracted Deputies when he observes violations because he doesn't believe the Town should be paying to protect private property. Anders and Fonger said if he felt there was a safety risk he should have called the Deputy. Kirk Eilenfeldt said he had someone working the fields during that time frame who may have left the gate unlocked. Cattell said his crew did not work from Thursday thru Sunday due to the Thanksgiving holiday. Tukiendorf also urged the board to deny the expansion,

- Atty. Buck Sweeney, representing Rocky Rights, LLC, said that since the sand stone material remaining in the non-conforming site is not appropriate material for making concrete, expansion to the isolated site to the North is ideal compared to hauling in material. He said the plans to put the site back into agriculture are very consistent with the A1-EX zone, and the requested conditional use is reasonable considering pre-existing uses in the vicinity. He said it will be further from neighbors than the existing site is, will have minimal conversion with only 9 acres active at any one time, will not impair future development, will not require additional utilities, and will not harm any other properties.
- DuPlayce asked if mining will lower the land, and how it will impact Little Door Creek. Cattell said fill will be brought back in as needed, and DNR regulations will ensure there will be no impact on the creek.
- Fonger asked why the existing site has not been reclaimed. Cattell replied that it is used for processing, crushing and recycling.
- Appraiser Scott Mac Williams repeated the presentation he made at the November 15, 2017 Plan Commission meeting, providing sales data to refute the claim that property values have been reduced by the current site.
- Kirk and Heidi Eilenfeldt, owners of the proposed new site, said they have talked to neighboring landowners and found them to not be in opposition. The Eilenfeldts have been farming the site for 19 years, and plan to continue to farm it. Mr. Eilenfeldt said it is not the best land, very rocky, which they hope will improve with reclamation. They own a 25 acre buffer between the proposed site and Little Door Creek.
- At this point the Town Board voted on the findings required by Dane County Ordinances for conditional use permits:
  - DCCO 10.123(5) findings when conditional use will be on lands owned A1-EX:
    1. a) Approved 5-0, b) Approved 5-0, c) Approved 5-0, d) Approved 5-0, e) Approved 5-0, f) Approved 5-0, g) Approved 5-0.
    2. Approved 5-0.
    3. Approved 5-0
    4. Approved 5-0
    5. Approved 5-0
    6. Approved 5-0
    7. Approved 5-0
    8. Approved 5-0

TOWN OF COTTAGE GROVE  
TOWN BOARD MEETING  
DECEMBER 4, 2017

- DCCO 10.255(2)(h) findings for all conditional uses:
    1. Approved 5-0
    2. Approved 4-1 (Anders opposed)
    3. Approved 5-0
    4. Approved 5-0
    5. Approved 5-0
    6. Approved 5-0
  - The Clerk read the conditions as recommended by the Plan Commission:
    - Operating hours of 6 a.m to 6 p.m., Monday thru Friday, 6 a.m to 4 p.m. on no more than six Saturdays each year, with 7 days prior notice provide to the Town clerk, plus the residents at 2252, 2272, and 2292 US Highway 12 & 18, 3380 North Star Road, and all others within 500 feet of the new site. It was discussed that notice could be by whatever means is agreeable to the Rocky Rights, LLC and the recipient.
    - Property boundaries to be surveyed and entire property must be surrounded by a perimeter fence.
    - Exterior sides of active areas will have a 7' high berm with 1:1 side slopes
    - Interior sides of active areas will have a 5' high berm with 1:1 side slopes
    - Berms to be seeded within 14 days.
    - A maximum of 9 acres can be active at any one time, including all three phases of up to 3 acres each: 1) operating, 2) dewatering, 3) reclamation.
    - Reclaimed areas must be returned to agricultural use.
    - The following are prohibited on the new 35 acre site: Blasting, crushing, screening, production of asphalt or concrete, storage of recycled material, permanent structures, additional water wells, lighting, vehicle storage, fuel storage.
    - Haul roads must be maintained for dust control.
    - No altering of topography within 5' of the property line.
    - CUP expires after 10 years
    - CUP must be posted on the site.
  - Anders stated his primary concern is the length of the CUP, he feels a five year permit would allow the operators to show they are in compliance and ask for a renewal.
  - **MOTION** by DuPlayce/Fonger to approve a conditional use permit for expansion of non-metallic mining site at 2294 US Highway 12 & 18 to include mineral extraction (gravel quarry) for 35 acres on parcel 0711-273-9514-0 currently zoned A1-EX, including all of the conditions stated above, and noting that the findings under DCCO 10.255(2)(h) and DCCO 10.123(5) have been considered satisfied. **MOTION CARRIED 4-1** (Anders opposed).
- B. Discuss/Consider approval of Agreement for Municipal Inspection Services with General Engineering Company: **MOTION** by Hampton/Williams to authorize Atty. Susan Allen to

TOWN OF COTTAGE GROVE  
TOWN BOARD MEETING  
DECEMBER 4, 2017

negotiate the final terms and authorize the Town Chair to sign the final agreement, as outlined in Atty. Allen's memo to the Board. **MOTION CARRIED 5-0.**

- C. Discuss/Consider enforcement of TCG Ord. Section 11.09 for clean-up after garage fire at 4454 Baxter Road: **MOTION** by Anders/DuPlayee to authorize the Town Chair and Highway Superintendent to perform the initial inspection under TCG Ord. Section 11.09. **MOTION CARRIED 5-0.**
- D. Discuss/Consider approval of Election Inspectors for the 2018-19 term: The Clerk reported that the Republican Party submitted names of two persons who have already served as election inspectors, and the Democratic Party did not submit any names. All 28 of those submitted by the Clerk are Town residents and experienced election inspectors. **MOTION** by Williams/Hampton to approve the list of 28 election inspectors for the 2018-19 term. **MOTION CARRIED 5-0.**
- E. Discuss/Consider approval of a Lock Box Service Agreement with Monona State Bank for first installment property tax collection: **MOTION** by DuPlayee/Williams to approve the Lock Box agreement as presented. **MOTION CARRIED 5-0.**
- F. Discuss/Consider approval of an Addendum to modify the agreement between Schindler Elevator Company and the Cottage Grove Fire Station: The addendum offers a reduced cost for a 5 year commitment. **MOTION** by Williams/Anders to approve the addendum. **MOTION CARRIED 5-0.**
- G. Discuss and consider revisions to TCG Ordinances 01 through 11 as recommended by the Town Attorney and staff: The Clerk had provided revisions made since the November 20<sup>th</sup> meeting, including minor changes to Chapters 1, 5, 7, and 8, and a reorganization of Chapter 11 to consolidate to a common enforcement procedure for the various violations. **MOTION** by Hampton/DuPlayee to forward the the revisions to Chapters 1 thru 11 to a public hearing to be held on January 8<sup>th</sup>, 2018, and to direct the Town Attorney to begin preparation of summaries as needed for publication once the revisions are adopted. **MOTION CARRIED 5-0.**

III. CLERK'S OFFICE UPDATE: Nothing to report.

IV. PUBLIC WORKS DEPARTMENT ACTIVITY UPDATE: New playground equipment for El Margo Park will be delivered next week and will need to be stored for the winter.

V. BOARD REPORTS AND COMMUNICATIONS:

- A. Hampton distributed materials for other board members to review in preparation for a closed session discussion on December 18<sup>th</sup> about boundary negotiations with the City of Madison.

VI. COMMITTEE REPORTS:

- A. Deer-Grove EMS Commission: Williams reported that the commission authorized making a job offer to one of the Chief candidates, and negotiations for an employment agreement are going well. The Chief appointment is expected to occur at the December 21<sup>st</sup> meeting.

VII. Adjournment: **MOTION** by DuPlayee/Williams to adjourn. **MOTION CARRIED 5-0.** The meeting ended at 9:26 P.M.

Kim Banigan, Clerk  
Approved 12-18-2017

# TOWN OF COTTAGE GROVE

4058 CTH "N"

COTTAGE GROVE, WI 53527

The Cottage Grove Town Board will hold a public meeting beginning at 7:00 P.M. on Monday, December 4, 2017 at the Town Hall, 4058 County Road N.

## AGENDA

- I. ADMINISTRATIVE
  - A. Determination that a quorum is present and that the meeting was properly posted.
  - B. Call to Order & Flag Pledge.
  - C. Minutes of Last Meeting(s).
  - D. Finance Report and Approval of Bills.
  - E. Public Concerns: Public's opportunity to speak to the Town Board about any subject that is not a specific agenda item.
  - F. Road Right of Way Permits.
- II. BUSINESS
  - A. Plan Commission Recommendations:
    - 1) Duane Farwell, applicant, Duacam Investment LLC, landowner, parcel 0711-193-8096-1 at 3812 County Highway AB – requesting rezone of 1.0 acres from R-1A to R-3A to allow for building of a duplex home.
    - 2) Rocky Rights LLC, applicant, Kirk and Heidi Eilenfeldt, landowners – requesting conditional use permit for expansion of non-metallic mining site at 2294 US Highway 12 & 18 to include mineral extraction (gravel quarry) for 35 acres on parcel 0711-273-9514-0 currently zoned A1-EX.
  - B. Discuss/Consider approval of Agreement for Municipal Inspection Services with General Engineering Company.
  - C. Discuss/Consider enforcement of TCG Ord. Section 11.09 for clean-up after garage fire at 4454 Baxter Road.
  - D. Discuss/Consider approval of Election Inspectors for the 2018-19 term.
  - E. Discuss/Consider approval of a Lock Box Service Agreement with Monona State Bank for first installment property tax collection.
  - F. Discuss/Consider approval of an Addendum to modify the agreement between Schindler Elevator Company and the Cottage Grove Fire Station.
  - G. Discuss and consider revisions to TCG Ordinances 01 through 11 as recommended by the Town Attorney and staff.
- III. CLERK'S OFFICE UPDATE
- IV. PUBLIC WORKS DEPARTMENT ACTIVITY UPDATE
- V. BOARD REPORTS AND COMMUNICATIONS
- VI. COMMITTEE REPORTS
  - A. Deer Grove EMS Commission
- VII. Adjournment

ALL AGENDA ITEMS ARE SUBJECT TO POSSIBLE ACTION

BY: Kris Hampton, Town Chair

Certified Posting on December 1, 2017

It is possible that members of and a possible quorum of members of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any other governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

NOTE: If you require an interpreter, materials in alternative formats, or other accommodations to access this meeting, please contact the Town Clerk's Office at 839-5021 or Fax 839-4432 at least 24 hours prior to this meeting.

(Continued)

1. Notice of the meeting was posted at the Town Hall and on the Town's internet site. A quorum was present with Kris Hampton, Jerry Meylor, Phil Bultman, Steve Anders, Wilmer Larson, Dave Muehl and Virgil Schroeder in attendance. Town Clerk Kim Banigan, and Dane County Assistant Zoning Administrator Daniel Everson were also present, along with several interested parties as listed on the sign-in sheet available in the Clerk's office.
2. Chair Kris Hampton called the meeting to order at 7:00 P.M.
3. Approve minutes of the previous meetings: **MOTION** by Anders/Bultman to approve the minutes from the October 25, 2017 meeting as printed. **MOTION CARRIED 7-0.**
4. Public Concerns: None.

(There was consensus to accept Hampton's suggestion to address the remaining agenda items in reverse order).

5. Jason & Jessica Helgeland, applicants, Helgeland Family Farms LLC, landowner – parcel 0711-042-8670-0 at 2608 Gaston Road – requesting rezone of 5 acres from A-2(8) to A-2(4) to for single family home, and rezone of remaining 7.25 acres to A-4: Bultman recused himself as Mr. Helgeland is his grandson. Mr. Helgeland had an alternate lot configuration compared to what was provided with the application, stating that the original sketch did not total the 5 acres they would like to have. The new configuration extended to the north of King Drive, which would leave a landlocked parcel. **MOTION** by Hampton/Schroeder to table until the December 27<sup>th</sup> meeting to give the Helgelands time to think about how to best configure the lot. **MOTION CARRIED 6-0.**
6. Duane Farwell, applicant, Duacam Investment LLC, landowner, parcel 0711-193-8096-1 at 3812 County Highway AB – requesting rezone of 1.0 acres from R-1A to R-3A to allow for building of a duplex home: Mr. Farwell stated that he is not looking for any lot line changes, and the lot has an existing driveway and septic system. The house was burned down by the fire department in 2016. The Clerk stated that since the parcel is in the Neighborhood Development area of the future land use plan, and has been residential since before 1981, no RDU is needed to convert from single family to duplex zoning. **MOTION** by Anders/Meylor to recommend approval of a rezone of 1.0 acres from R-1A to R-3A to allow for building of a duplex home. **MOTION CARRIED 7-0.**
7. Rocky Rights LLC, applicant, Kirk and Heidi Eilenfeldt, landowners – requesting conditional use permit for expansion of non-metallic mining site at 2294 US Highway 12 & 18 to include mineral extraction (gravel quarry) for 35 acres on parcel 0711-273-9514-0 currently zoned A1-EX (tabled from the October 25, 2017 meeting): Wade Cattell and Atty. Buck Sweeney were present representing Rocky Rights, LLC. Kirk and Heidi Eilenfeldt were also present. Atty. Sweeney stated that application has been made to the Dane County for a Conditional Use Permit, as requested. Everson confirmed that the application had been filed and is scheduled for a public hearing with the ZLR on January 23, 2018. He noted that at a reclamation plan and stormwater requirements will be conditions of the CUP, either as an amendment to existing plans or a new plan for the new area.

Attorney Christa Westerberg, representing the Enriquez and Tukiendorf families, provided copies of an emailed memo and attachments, which the Clerk acknowledged was received at 5:18 p.m. today (Exhibit A). Westerberg expressed continued concern over the application process, noting that the Town's vote is supposed to be within 60 days of the ZLR hearing. The Clerk said that the soonest the Town Board could vote would be December 4<sup>th</sup>, which is within the 60 day window. Westerberg also said that while the application does address the six standards for CUP approval under DCCO 10.255(2)(h), it fails to address the additional five standards for a CUP in the A-1EX

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
NOVEMBER 15, 2017

district under DCCO 10.123(5). She listed potential impacts on neighbors from truck traffic, noise, dirt, tracking on roads and reduced property values, and alleged that conditions on the CUP for the concrete batch plant are not always followed. She stated that evidence presented tonight and at prior meetings shows that the standards cannot be met. She questioned whether the existing mining site is exhausted of materials, and thought that the erosion control plan required reclamation to begin in the existing mining site in 2014.

Anders stated that the consequences to neighbors due to the operation of the non-conforming gravel pit are going to be there, and said it is important to concentrate on what is before the Plan Commission on the current application.

Bultman noted that a letter from Dane County Zoning Administrator Roger Lane to Hampton (Exhibit B) indicated that there have been no substantiated complaints over the current operation. Westerberg said her firm takes issue with Lane's response, and does not believe Lane considered the requirements of the erosion permit in his response. (See Exhibit C, response from Atty. Westerberg to Roger Lane). Kirk Eihlenfeldt stated that he was at fault for leaving the gate open during harvesting season, which lead to one of the complaints. He had not been aware that it was a condition of the concrete plant CUP that it be locked during non-operating hours.

Sweeney urged the Plan Commission to look at the application submitted and consider facts, not claims based on speculation. He then introduced Appraiser Scott MacWilliams, who presented property sales data to refute the claim that property values have been reduced by the current site (Exhibit D). He also presented a graph from a study performed in Michigan regarding the impact of a gravel pit on residential property values, and suggested that it was used as the basis for reductions in the assessed value of properties surrounding the current site. Alex Tukiendorf, 2292 US Highway 12 & 18, did not feel that the study was the basis for the reduction in assessed values, but rather it was due to his phone call to the Town Assessor to demonstrate noise from the truck traffic and quarry at his home. He said that the owners of the three houses fronting the quarry expressed their concerns about the concrete batch plant, but it was approved anyway. The proposed expansion will mean that new people will have a chance of losing value in their properties. He stated the definition of the word 'precedence', and said there is precedence to deny this application due to Plan Commission action on April 22, 2015 to deny an earlier expansion to the west of the current site due to conditions #1 and 2 not being met, with subsequent denial by the Town Board on September 8, 2015, as well as denial of a new non-metallic mining site on County Road AB in 2016 due to conditions #1 and 2 not being met.

Otto Otteson, 2173 Nora Road, said he would rather see a study to provide evidence that property values did not go down when a new pit was opened. He said his home is .2 miles from the expansion site, and he hears noise from the current operation all the time.

Kirk Eilenfeldt said he has talked to neighbors, including the Vineys, Leas, and Swalheims, none of whom have any problem with the expansion area. He has not talked to Larry Skaar but doesn't think he has any concerns either. Schroeder guessed he is 0.75 mile from the current site and does not hear any noise from it.

Andrea Enriquez, 3380 North Star Road, was concerned to learn that there is an easement allowing the Eilenfeldts access for farm use. She said in 2011 it was stated that there was 30 to 40 years of material in the existing site, now they are saying there is only material for 5 years. She felt the expansion would feed the concrete plant, which feeds the problems, and thinks they should be looking to begin reclamation rather than to expand. In rebuttal, Cattell stated that there still is 30-

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
NOVEMBER 15, 2017

40 years of material in the non-conforming site, however not all of it is concrete aggregate. There is fill sand, and under that is limestone.

Westerberg said the relevant question is whether the application can meet the standards for approval. In response to this, Hampton called for a vote on the conditions:

Under DCCO 10.255(2)(h), standards for approval of a CUP, votes were as follows:

1. 7-0.
2. 6-1 (Anders opposed)
3. 7-0
4. 7-0
5. 7-0
6. 6-1 (Anders opposed)

Under DCCO 10.123(5), purposes of the A1-EX district, votes were as follows:

- a) 7-0
- b) 7-0
- c) 7-0
- d) 7-0
- e) 7-0

Otto Otteson asked if there is a reason why none of the land has been reclaimed yet. Everson said that the State's reclamation program does not force operators to reclaim land, but only to file a report each year. The only way to force reclamation is for the conditions of a CUP to allow only so many acres to be open at a time.

Hampton asked commission members to focus on what the conditions of the CUP should be:

- Operating hours of 6 a.m to 6 p.m., Monday thru Friday, 6 a.m to 4 p.m. on no more than six Saturdays each year, with 7 days prior notice provide to the Town clerk, plus the residents at 2252, 2272, and 2292 US Highway 12 & 18, 3380 North Star Road, and all others within 500 feet of the new site. It was discussed that notice could be by whatever means is agreeable to the Rocky Rights, LLC and the recipient.
- Property boundaries to be surveyed and entire property must be surrounded by a perimeter fence.
- Exterior sides of active areas will have a 7' high berm with 1:1 side slopes
- Interior sides of active areas will have a 5' high berm with 1:1 side slopes
- Berms to be seeded within 14 days.
- A maximum of 9 acres can be active at any one time, including all three phases of up to 3 acres each: 1) operating, 2) dewatering, 3) reclamation.
- Reclaimed areas must be returned to agricultural use.
- The following are prohibited on the new 35 acre site: Blasting,crushing,screening, production of asphalt or concrete, storage of recycled material, permanent structures, additional water wells, lighting, vehicle storage, fuel storage.
- Haul roads must be maintained for dust control.



TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
NOVEMBER 15, 2017

- No altering of topography within 5' of the property line.
- CUP expires after 10 years (Anders suggested 5 years, Atty Sweeny said such a short period would not be economical in light of the investment required. Kirk Eilenfeldt thought a shorter timeframe could force more to be open at a time.)
- CUP must be posted on the site.

**MOTION** by Muehl/Schroeder to recommend approval of a conditional use permit for expansion of non-metallic mining site at 2294 US Highway 12 & 18 to include mineral extraction (gravel quarry) for 35 acres on parcel 0711-273-9514-0 currently zoned A1-EX, with conditions as stated above, and noting that the six conditions under DCCO 10.255(2)(h), as well as the five conditions under DCCO 10.123(5), had all been considered satisfied. **MOTION CARRIED 6-1** (Anders opposed).

8. **ADJOURNMENT: MOTION** by Anders/Schroeder to adjourn. **MOTION CARRIED 7-0**. The meeting was adjourned at 9:52 P.M.

Submitted by: Kim Banigan, Clerk  
Approved 12-27-2017

# TOWN OF COTTAGE GROVE

## COTTAGE GROVE, WI 53527

THE PLAN COMMISSION FOR THE TOWN OF COTTAGE GROVE WILL HOLD A PUBLIC MEETING ON WEDNESDAY, NOVEMBER 15, 2017 AT 7:00 P.M. AT TOWN HALL, 4058 COUNTY ROAD N.

### AGENDA

1. DETERMINE PROPER POSTING AND QUORUM IS PRESENT
2. CALL MEETING TO ORDER
3. APPROVE MINUTES OF PREVIOUS MEETINGS
4. Public Concerns: Public's opportunity to speak to the Plan Commission about any subject that is not a specific agenda item.
5. Rocky Rights LLC, applicant, Kirk and Heidi Eilenfeldt, landowners – requesting conditional use permit for expansion of non-metallic mining site at 2294 US Highway 12 & 18 to include mineral extraction (gravel quarry) for 35 acres on parcel 0711-273-9514-0 currently zoned A1-EX (tabled from the October 25, 2017 meeting).
6. Duane Farwell, applicant, Duacam Investment LLC, landowner, parcel 0711-193-8096-1 at 3812 County Highway AB – requesting rezone of 1.0 acres from R01A to R-3A to allow for building of a duplex home.
7. Jason & Jessica Helgeland, applicants, Helgeland Family Farms LLC, landowner – parcel 0711-042-8670-0 at 2608 Gaston Road – requesting rezone of 5 acres from A-2(8) to A-2(4) to for single family home, and rezone of remaining 7.25 acres to A-4.
8. ADJOURNMENT

BY: Kris Hampton, Commission Chair

POSTED: November 10, 2017

IT IS POSSIBLE THAT MEMBERS OF AND A POSSIBLE QUORUM OF MEMBERS OF OTHER GOVERNMENTAL BODIES OF THE MUNICIPALITY MAY BE IN ATTENDANCE AT THE ABOVE-STATED MEETING TO GATHER INFORMATION; NO ACTION WILL BE TAKEN BY ANY OTHER GOVERNMENTAL BODY AT THE ABOVE-STATED MEETING OTHER THEN THE GOVERNMENTAL BODY SPECIFICALLY REFERRED TO ABOVE IN THIS NOTICE.

PLEASE NOTE: UPON REASONABLE NOTICE, EFFORTS WILL BE MADE TO ACCOMMODATE THE NEEDS OF DISABLED INDIVIDUALS THROUGH APPROPRIATE AIDS AND SERVICES. FOR ADDITIONAL INFORMATION OR TO REQUEST THIS SERVICE, CONTACT THE TOWN CLERK'S OFFICE AT 839-5021 OR FAX 839-4432.

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
OCTOBER 25, 2017

1. Notice of the meeting was posted at the Town Hall and on the Town's internet site. A quorum was present with Kris Hampton, Jerry Meylor, Phil Bultman, Steve Anders, Wilmer Larson, Dave Muehl and Virgil Schroeder in attendance. Town Clerk Kim Banigan, Town Engineer Thomas TeBeest and Dane County Assistant Zoning Administrator Daniel Everson were also present, along with several interested parties as listed on the sign-in sheet available in the Clerk's office.
2. Chair Kris Hampton called the meeting to order at 7:00 P.M.
3. Approve minutes of the previous meetings: **MOTION** by Anders/Bultman to approve the minutes from the September 27, 2017 meeting as printed. **MOTION CARRIED 6-0-1** (Schroeder abstained).
4. Public Concerns: None.
5. Rocky Rights LLC, applicant, Kirk and Heidi Eilenfeldt, landowners – requesting conditional use permit for expansion of non-metallic mining site at 2294 US Highway 12 & 18 to include mineral extraction (gravel quarry) for 35 acres on parcel 0711-273-9514-0 currently zoned A1-EX: Hampton stated that this application was tabled from the August 23, 2017 meeting pending submission of an erosion plan for review by the Town Attorney, specified updates to the operation plan and specifications for the berms. He asked Everson if there are any current issues with the current operation. Everson stated there are not, however he also stated that the proposed expansion area is not within the boundaries of the registered non-conforming site, and that the usual expansion process includes an application to the County for a conditional use permit, which has not been made. Two pieces of correspondence received by the Clerk this morning were distributed to Plan Commission members, (as they also had been by email earlier in the day): 1) a letter from Attorney Christa O. Westerberg, representing John and Andrea Enriquez and Alex and Jamie Tukiendorf 2) A letter from Dane County Zoning Administrator Roger Lane, warning the Town about prejudging matters before the formal application is before the Town, and citing relevant case law. Atty. Buck Sweeney, representing Rocky Rights, LLC, stated that the applicant wants to make sure the expansion is OK with the Town before moving forward, and suggested the Town could approve contingent on County approval. **MOTION** by Anders/Larson to table the request until the Town can consult with the Town Attorney in light of the case law cited by Roger Lane, and until Rocky Rights, LLC makes application for the CUP with Dane County. **MOTION CARRIED 6-1** (Muehl opposed).
6. Consider date for November meeting: **MOTION** by Muehl/Anders to hold the November meeting a week early on November 15<sup>th</sup>. **MOTION CARRIED 7-0**.
7. **ADJOURNMENT: MOTION** by Anders/Schroeder to adjourn. **MOTION CARRIED 7-0**. The meeting was adjourned at 7:21 P.M.

Submitted by: Kim Banigan, Clerk  
Approved 11-15-2017

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
AUGUST 23, 2017

1. Notice of the meeting was posted at the Town Hall and on the Town's internet site. A quorum was present with Kris Hampton, Phil Bultman, Steve Anders, Dave Muehl, and Virgil Schroeder in attendance. Town Treasurer Debra Abel was also present. See sign-in sheet for others in attendance.
2. Chair Kris Hampton called the meeting to order at 7:00 p.m.
3. Approve minutes of the previous meeting: **MOTION** by Anders/Bultman to approve the minutes from the July 26, 2017 meeting as printed. **MOTION CARRIED 5-0-1** (Larson abstained).
4. Public Concerns: None.
5. Rocky Rights LLC, applicant, Kirk and Heidi Eilenfeldt, landowners – requesting conditional use permit for expansion of non-metallic mining site at 2294 US Highway 12 & 18 to include mineral extraction (gravel quarry) for 35 acres on parcel 0711-273-9514-0 currently zoned A1-EX: Wade Cattell, Rocky Rights LLC, presented the operating plan for proposed gravel pit, see exhibit 1. There will be no change to existing operation. Buck Sweeney, Rocky Rights Attorney, added that this is an expansion of the existing pit so they can continue processing current product. Dane County encourages quarries to expand verses finding a new location.

Plan Commission:

- Bultman inquired about the distance between the expansion and the Enriquez residence.  
*.40 miles from North Star Road with lots of trees in-between.*
- Schroeder – Maximum acres being mined at one time?  
*Three blocks of land consisting of 3-4 acres. Maximum of 12 acres open at one time. One block is left open for water drainage. Remaining acres will be left as farm land and mined at some point.*  
What happens if water leaks?  
*The berm will stop water from leaking and the slope will move water to existing ponds.*  
Stormwater erosion plan has not been done for the new plan.
- Anders – Why not use what you have first before starting on new site?  
*Need to look at future needs. Would like to move recycling to the back of the property to move away from neighbors.*

Public Comment:

- Duane Swalheim, 2298 Highway 12 & 18, farms land that has been reclaimed and it is fine. The only noise from pit is crushing. There is no dust. He wanted to mention that

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
AUGUST 23, 2017

Wade Cattell has always tried to get along with neighbors and thinks they should try to work with him on the expansion.

- Christa Westerberg, Pines Bach LLP, representing Andrea and Jonathan Enriquez, 3380 North Star Road, reviewed a memo she submitted to the plan commission members, see exhibit 2, expressing the Enriquez's concerns about the expansion. Andrea Enriquez submitted a study on Property Value Losses from Quarrying Operations, a picture of her backyard overlooking the Cattell quarry, and a petition to deny quarry expansion, see exhibit 3.
- Alex Tukiendor, 2292 Highway 12 & 18, presented documents on the property value loss of his and his neighbors' homes along with other miscellaneous documents regarding Rocky Rights current operations, see exhibit 4.
- Otto Otteson, 2173 Nora Road, feels the expansion is wrong for the health of Door Creek.
- Don Viney, 2093 Highway 12 & 18, concerned about how close extraction will be to the lot line. He is worried about his farm equipment getting too close to the pit and the land giving away. He would also like more dust control.
- Richard Swalheim, 2410 Ofsthun Road, hears trucks all the time and not one is from traffic on Highway 12 & 18.

**MOTION** by Hampton/Anders to table request until:

- a. Erosion plan is submitted by a qualified engineer that meets county conditions and the Town's engineer has an opportunity to review.
- b. Update operating plan to replace "small areas" to actual acreage.
- c. Put in writing how far extraction will be from lot line.
- d. Have a one to one slope on new berms.

**MOTION CARRIED 6-0.**

6. Adjournment: **MOTION** by Anders/Schroeder to adjourn. **MOTION CARRIED 6-0.** The meeting ended at 9:10 p.m.

Debra Abel, Treasurer  
Approved 09-27-2017

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
MARCH 22, 2017

1. Notice of the meeting was posted at the Town Hall and on the Town's internet site. A quorum was present with Kris Hampton, Phil Bultman, Mike DuPlayee, Dave Muehl, Wilmer Larson and Virgil Schroeder in attendance. Town Planner Mark Roffers, Dane County Senior Planner Pam Andros, and Town Clerk Kim Banigan were also present. See sign-in sheet for others in attendance.
2. Chair Kris Hampton called the meeting to order at 7:00 P.M.
3. Approve minutes of the previous meetings: **MOTION** by DuPlayee/Bultman to approve the minutes from the February 22, 2017 meeting as printed. **MOTION CARRIED 6-0.**
4. Public Concerns:
  - There was a question about requirements for notification of affected parties. The Town generally notifies adjoining landowners. Interested parties can sign up for email notice of agendas on various topics on the Town's web site.
  - Brian Shoup, 3779 Janelle Lane, wondered when he could make general comments about the planning process. Hampton said he would allow for it at the beginning of the Annual Review of the Comprehensive Plan.
5. (This was item 6. on the agenda, but was taken out of order out of respect for the time of those who were in attendance for this item only.) Wade Cattell, applicant, Duane Swalheim, landowner – parcels 0711-342-8500-9 and 0711-342-9930-0 at 2298 US Highway 12 & 18 – seeking conditional use permit for non-metallic mining on 35 acres zoned A1-EX: Hampton reported that the applicant has asked the request to be tabled indefinitely. **MOTION** by DuPlayee/Schroeder to table for up to one year. **MOTION CARRIED 6-0.** Attorney Christa Westerberg of Pines Bach LLP and representing Andrea and Jonathan Enriquez, 3380 North Star Road, presented a letter in opposition to the expansion of the quarry.
6. Annual Review of SmartGrowth Comprehensive Plan:

Brian Schoup commented that he had read the Comprehensive Plan and felt it solidly captures the idea of preserving agriculture and the landscape. He commended the Plan Commission for their efforts in developing the plan and expected them to use it to guide their decisions.

  - a) Discuss/Consider the following landowner requests to have lands moved from the Agricultural Preservation Area to the Neighborhood Development Area of the future land use map:
    - Joel and Marie Hammond, 3859 Vilas Road – parcels 0711-204-9500-4 and 0711-204-8000-1, totaling approximately 39 acres: Roffers projected a map showing this and the other mapping changes up for consideration. Hammonds had requested 39 acres be reclassified for neighborhood development, but Roffers had added additional acreage bringing the total to 58 acres which he said would clean up the map vs. leaving a sliver in the Ag Preservation area. All of the land borders existing neighborhood development areas. The eastern and western edges were already subdivided a number of years ago. It was noted that the Hammond property had been in the Neighborhood Development area prior to last year's revision of the Comprehensive Plan, but put back to Ag Preservation last year at the landowner's request. They have now changed their mind and want it put back to Neighborhood Development.

There were a number of questions about the process to amend the Comprehensive Plan, so Roffers outlined the process, explaining that there will be several more opportunities for public input. He also presented a handout of excerpts from the Comprehensive Plan with items emphasized that he thought were especially pertinent to the decision making process.

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
MARCH 22, 2017

Discussion on this topic spilled over from the Hammond request to include questions, comments and concerns about this request as well as the similar request by the Wittes below. Speakers included Katheryn Kersels, 2881 Wittewood Lane, Roger Goppelt, 3786 Janelle Lane, Jean Schneider, 2859 Wittewood Lane, Amy Melton-White, 3777 Bohnsack Lane, JoAnne Winkler-Bley, 3772 Bohnsack Lane, Anne Bork, 2772 Hope Road, Jim Gilbertson, 2767 Hope Road, John Brogan, 2750 Hope Road and Linda Wilson, 2889 Wittewood Lanc. Questions included whether there is a need for new development areas, parameters for determining who was notified of the meeting, and about the process to adopt an amendment to the Comprehensive Plan. There were numerous comments from residents who live here because of the rural setting close to Madison and do not want to see that change. Concerns included additional traffic, potential water issues and opinions that development of these areas would not adhere to the vision statement of the Comprehensive Plan. Alternate suggestions included agri-tourism and community gardens. On the other hand, there was also discussion about the threat of the City of Madison to the Town, what they will or will not allow under extra-territorial jurisdiction, what their comprehensive plan calls for if Town lands are annexed in the future, and what the Town can do to protect its borders and rural setting.

**MOTION** by DuPlayee/Schroeder to table until the April 26<sup>th</sup> meeting. **MOTION CARRIED 6-0.**

- Windsor Quarry, LLC – parcels 0711-183-8000-7, 0711-183-8500-2, 0711-183-9000-5 and 0711-183-9500-0, totaling 116.8 acres: Atty. Michael Lawton addressed the commission, representing Windsor Quarry, LLC/Bill and Sue Paulson. He said the reason the Paulsons are bringing this forward is because Madison's Yahara Hills plan calls for intense development just over the town line in what is now Blooming Grove but will soon be City of Madison. The Paulsons would prefer to see the land used for a plat of a small number of lots with the remainder restricted against more residential development. They proposed to use 33.8 acres to develop 19 lots, and deed restrict the remaining acres. Development would be set back from Vilas Hope Road to preserve views. Lawton suggested this could be a bargaining chip to be used in boundary negotiations with the City. In any event, it would be harder to annex with the additional residents to vote in opposition. Roffers suggested it could backfire and be seen by the City as a shot over the bow instead, noting that our Comprehensive Plan calls for boundary negotiation first, with boundary protection measures to follow if negotiations are unsuccessful.

Randy Gaber, 3895 Vilas Hope Road, said he agrees with others here about wanting to preserve the rural landscape, and that initially he was opposed to this request, but as he thinks about the reality of Madison coming, he is more willing to support the larger lots developed in the Town and deed restriction of the remainder as smart development.

Zong Her, owner of the property to the south, was concerned about effects on her property.

There was discussion about how much of the 116.8 acres should actually be added to the neighborhood development area. The owners are hoping to transfer their own RDUs from the portion left in Ag Preservation to benefit from the multiplier available when they are transferred for use in a Neighborhood Development area.

**MOTION** by DuPlayee/Schroeder directing the landowner to work with Roffers to determine how to delineate the southern portion of the property to be put into the Neighborhood Development area. **MOTION CARRIED 6-0.**

- F.H. Witte and Sons, Inc. - approximately 19.5 acres from parcel 0711-203-8000-2 that is adjacent to the Bohnsack subdivision and approximately 11.0 acres from parcels 0711-292-

TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
MARCH 22, 2017

8500-0 and 0711-301-8002-0 along Wittewood Lane: Tom Richgels represented the Witte Family. Robert, Dave and Andrew Witte were also present. Richgels explained that much of the Witte Land is in a Federal wildlife program and is too wet for development. Their application is for 19.5 acres west of Nadene Road, but there are only 4 acres of tillable land there that would be suitable for development. Richgels proposed access to the new lots from Nadene Road, but it appears this would require purchasing some land from Dennis and Ann Bork. Mark Hoenecke, 3785 Janelle Lane expressed concern over the wetlands and whether they would expand due to development. Jill Koch, 2740 C-Bar-J Circle said the wetlands have no bottom and have expanded greatly over the years she has been here. Roffers said a wetland delineation would determine what could be developed, and development would need to comply with Dane County stormwater regulations.

The Wittes are also requesting that 11 acres on the north side of Wittewood Lane be put into the Neighborhood Development area. Kathryn Kersels, 2881 Wittewood Lane, and Jeff and Linda Wilson, 2889 Wittewood Lane voice concerns and opposition to this.

Eddie Brogan, 2750 Hope Road, thanked the Wittes for their being responsible landowners and good neighbors and warned that Madison is coming with what could be way worse than what is proposed.

**MOTION** by Schroeder/Larson to move 4 acres west of Nadene Road and 11 acres north of Wittewood Lane from the Ag Preservation to the Neighborhood Development area. **MOTION CARRIED 4-2** (Hampton and DuPlayee opposed).

- b) Discuss/Consider amending item 2. under Development Polices for Agricultural Preservation Area regarding farm residences built before May 15, 1982: The original plan adopted in 2000 allowed for splitting off original farm houses without the use of a RDU, with a sunset date of January 1, 2011. It seems that when the plan was overhauled in 2015, the opportunity to split off an original farm house without using a RDU was inadvertently put back in. Discussion was that this was unintentional and the plan should be amended to require a RDU when splitting of an original farm house.
- c) Other revisions suggested by commission members and/or planning consultants: Roffers suggested updating municipal and ETJ boundaries, and revising the adoption procedures to delay distribution of the approved amendment to meet statutory requirements until after the County as adopted the amendment.

**MOTION** by Muehl/DuPlayee directing Roffers to draft the changes recommended in a) and discussed in b) and c) above into an amendment to be considered at the April meeting. **MOTION CARRIED 6-0.**

- 7. Royal Oak Associates/Tim Thurson, applicant, Screamin Norwegian Farms LLC, landowner:
  - a) Parcel 0711-351-9501-0 at 1864 US Hwy 12 & 18: seeking rezone of 1.3 acres from A1-EX to R-3A to separate a 2-unit family residence: Andros advised that under the Town's current plan, no RDU would be needed to separate this original farm house if it were a single family home, however one is needed for the second unit. **MOTION** by DuPlayee/Schroeder to recommend approval of the rezone of 1.3 acres from A1-EX to R-3A to separate a 2-unit family residence, pending a density study to show that there is a RDU available for the second family residence. **MOTION CARRIED 6-0.**
  - b) Parcel 0711-351-9000-1 at 1924 US Hwy 12 & 18: seeking rezone of 1.3 acres from A1-EX to R-1A to separate a single family residence: This property has two homes on it, but the owners



TOWN OF COTTAGE GROVE  
PLAN COMMISSION  
MARCH 22, 2017

indicated they plan to remove one. Andros suggested a deed restriction or delayed effective date could require removal of the second home. **MOTION** by DuPlayee/Larson to recommend approval of the rezone of 1.3 acres from A1-EX to R-1A to separate a single family residence, conditional on compliance with the County's time line and restrictions for removal of the second home. **MOTION CARRIED 6-0.**

8. Discuss/Consider Dane County Ordinance Amendment 83, 2016 regarding authorizing electronic signs in the A-1EX Exclusive Agricultural District: Andros said there is a substitute version of this amendment coming that in her opinion is much better. **MOTION** by DuPlayee/Larson to not support OA 83, 2016 regarding authorizing electronic signs in the A-1EX Exclusive Agricultural District as currently drafted. **MOTION CARRIED 6-0.**
9. ADJOURNMENT: **MOTION** by DuPlayee/Bultman to adjourn. **MOTION CARRIED 6-0.** The meeting was adjourned at 10:35 P.M.

Submitted by: Kim Banigan, Clerk  
Approved 04-26-2017



## Dane County Planning and Development Department

Room 116, City-County Building, Madison, Wisconsin 53703  
Fax (608) 267-1540

August 28, 2017

Chair Kris Hampton  
Town of Cottage Grove  
4058 County Highway N  
Cottage Grove, WI 53527

*Planning*

(608)266-4251, Rm. 116

*Records & Support*

(608)266-4251, Rm. 116

*Zoning*

(608)266-4266, Rm. 116

RE: Rocky Rights LLC Quarry and Batch Plant, US Highway 12/18, Cottage Grove

Dear Chair Hampton,

There have been inaccurate claims by Mr. Tukiendorf regarding the quarry operation and concrete batch plant located at 2294 US Highway 12/18. This letter is being sent to provide an accurate depiction of the site.

The property consists of a 52-acre legal non-conforming non-metallic mineral extraction site. The property was registered by the Wingra Stone Company in 1968. The registration was part of a zoning ordinance amendment when quarries changed from a permitted use to a conditional use. As a legal non-conforming site, the quarry operation is provided the same benefits as a land use which is permitted by right. Meaning, there are no limits on hours of operation, trucking, fencing, or screening. Quarry safety is monitored by Mine Safety and Health Administration. The operator has a reclamation plan for the site and is in conformance with Wisconsin Administrative Code NR 115 regarding reclamation. See attached operations plan.

The property also is host to a concrete batch plant. The operation is a legal land use permitted through the conditional use process. Rocky Rights LLC obtained a conditional use permit (CUP #2175) in 2011 to operate the batch plant. The land use has conditions of approval, see attachment.

With regards to Mr. Tukiendorf's claims, the site does not require a 6 to 10-foot chain link fence around the entire site. There is only one requirement for fencing which is part of the conditional use permit. The CUP requires a fence to be installed on the northern boundary of the property. A barbed wire fence has been installed on the northern boundary and is in conformance with the condition. The reclamation plan does however list a fence in its inventory of man-made objects on the property. This identification would not be considered a requirement.

There was a claim that the operation does not have an adequate tracking pad to remove dirt from trucking vehicles prior to accessing onto a public right-of-way. The access path from the site consists of a 500-foot asphalt path, plus a 500-foot crushed asphalt path to ensure dirt is not tracked out onto Hwy 12/18. In addition, the operation area consists primarily of a gravel base with keeps tracking of mud to a minimum. The current access path goes beyond minimum requirements and in conformance with tracking requirements.

There was a claim that a portion of the quarry needs to be reclaimed. The operations plan shows that the northerly portion of the site is to be worked between 2005-2014. The operator has not exhausted the

gravel and sand deposit in this area and remains active. The landowner is not required to reclaim any portion of the site until such time as the materials are exhausted.

Over the past few years, Dane County Zoning Division has received complaints from one person alone regarding potential violations of the operation of the quarry and batch plant. All complaints have been responded to and inspections conducted on the site. Each time, the operations are found to be in compliance with Dane County Code of Ordinances, NR 115, and conditions of approval under CUP #2175.

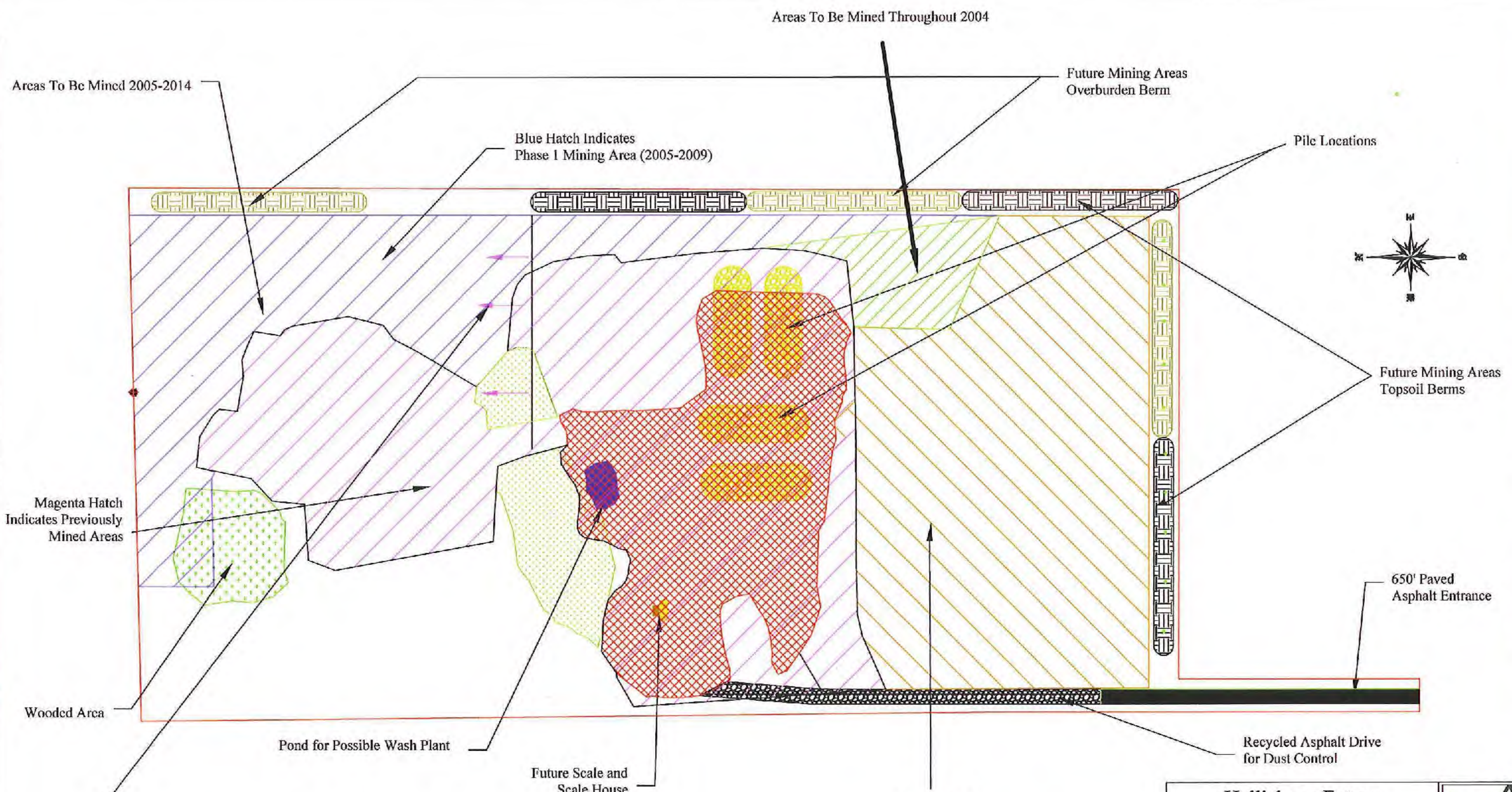
If you have any questions or concerns, please feel free to call me at (608) 266-9078.

Respectfully,

A handwritten signature in black ink, reading "Roger W. Lane III", enclosed in a thin black rectangular border.

Roger Lane  
Dane County Zoning Administrator





Areas To Be Mined 2005-2014

Areas To Be Mined Throughout 2004

Future Mining Areas  
Overburden Berm

Blue Hatch Indicates  
Phase 1 Mining Area (2005-2009)

Pile Locations



Future Mining Areas  
Topsoil Berms

Magenta Hatch  
Indicates Previously  
Mined Areas

650' Paved  
Asphalt Entrance

Wooded Area

Pond for Possible Wash Plant

Future Scale and  
Scale House

Recycled Asphalt Drive  
for Dust Control

Arrows Indicate Phase 1 Reclamation Area  
Everything To The Left of This Line Will Be Reclaimed

Orange Hatch  
Indicates Phase 2  
Mining Area (2009-2024)

### Hellickson Future Operational Plan

SIZE B	DATE 07/20/2004	DWG NO. 8	REV 1
SCALE 1"=200'		SHEET 8	DRAFTER NS



495 Marshview Dr.  
Sun Prairie, WI 53590  
Phone: (608) 837-4041 Fax: (608) 837-7440

*Sun Prairie Sand and Gravel*





## Dane County Zoning Division

City-County Building  
210 Martin Luther King, Jr., Blvd., Room 116  
Madison Wisconsin 53703  
(608) 266-4266/266-9083 Fax (608) 267-1540

# DANE COUNTY CONDITIONAL USE PERMIT #2175

THE ZONING AND LAND REGULATION COMMITTEE OF THE DANE COUNTY BOARD PURSUANT TO SECTION 10.255(2) OF THE DANE COUNTY CODE OF ORDINANCES DOES HEREBY:

GRANT Conditional Use Permit #2175 for a concrete batch plant pursuant to Dane County Code of Ordinance Sections 10.126(3)(a), and subject to any conditions contained herein.

EFFECTIVE DATE OF PERMIT: **JULY 12, 2011**

THE CONDITIONAL USE SHALL BE LOCATED ON THE PROPERTY DESCRIBED AS FOLLOWS: **2272 US Highway 12/18, Town of Cottage Grove, Dane County**

### LEGAL DESCRIPTION:

Part of the E 1/2 NE 1/4 and W 1/2 NW 1/4 Section 34, Town of Cottage Grove described as follows: Commencing at the Northwest corner of NE 1/4 of said Section then South 773.94 feet; thence West 670 feet; thence South 950 feet to the point of beginning. Beginning at this point, the 2 acre plant site shall be described as thence North 200 feet, thence East 425; thence South 200', thence West 425; back to the point of beginning and containing the 2 acres, being part of Section No. 34.

Tax Parcel # 0711-341-8600-0

### CONDITIONS:

1. The applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations.
2. The applicant shall apply for and receive all other required local, state and federal permits.
3. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. Monday through Friday, and some Saturdays when necessary from 6:00 a.m. to 4:00 p.m. Operation outside of those times will require at least 7 days notice to the Town and immediate neighbors, and shall be limited to no more than 6 projects not to exceed 30 total days / year.
4. CUP 2175 shall not become effective until a *permit for connection to state trunk highway* has been issued from the Wisconsin Department of Transportation (WisDOT); and operations may not begin until all improvements, as defined in the *permit for connection to state trunk highway*, have been completed.
5. The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.

6. Trucks shall not use “jake” brakes.
7. 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.
8. Landscaping/screening: The berm along the southern boundary of the mineral extraction operation area shall be uniformly graded with pine trees at least 3 feet high, incorporating neighbor input; berms shall be built on the east boundary of the mineral extraction operation; and the berm on the western boundary must be built in such a way that maintains the access easement.
9. Install fence on northern boundary of the mineral extraction operation.
10. The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076.
11. Operations shall cease no later than twenty-five (25) years from the date of CUP approval, with a review by the town once every 5 years. The town will report the outcome of their review to Dane County Zoning.
12. 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 this approval, such approval is subject to amendment or revocation.

THE ZONING AND LAND REGULATION COMMITTEE AFTER PUBLIC HEARING  
AND IN THEIR CONSIDERATION OF THE CONDITIONAL USE PERMIT MADE THE  
FOLLOWING FINDINGS OF FACT:

1. That the establishment, maintenance and operation of the proposed conditional use will not be detrimental to or endanger the public health, safety, morals comfort or general welfare.
2. That the uses, values, and enjoyment of other property in the neighborhood for purposes already permitted will not be substantially impaired or diminished by the establishment, maintenance, and operation of the proposed conditional use.
3. That the establishment of the proposed 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 will be made.
5. That adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the proposed conditional use does conform to all applicable regulations of the district in which it is proposed to be located.

EXPIRATION OF PERMIT

In addition to any time limit established as a condition in granting this CUP, Section 10.25(2)(n) of the Dane County Code of Ordinances provides that any use for which a conditional use permit has been issued, upon its cessation or abandonment for a period of one year, will be deemed to have been terminated and any future use shall be in conformity with the ordinance.

Attorney Christa O. Westerberg  
cwesterberg@pinesbach.com

November 10, 2017

**VIA E-MAIL**

lane.rogier@countyofdane.com

Roger W. Lane  
Zoning Administrator  
Planning & Development  
210 Martin Luther King Jr. Blvd, #116  
Madison, WI 53703

Re: Tukiendorf Concerns re Cattell Concrete Plant/Non-Metallic Mine

Dear Mr. Lane:

We read with interest records we recently received from the Planning and Development Department in response to an Open Records request concerning the above-referenced project. We were particularly interested in, and disappointed by, a letter from you to Town of Cottage Grove Chair Kris Hampton on August 28, 2017, apparently prepared at the request of Mr. Cattell.

A. Requirements Applicable to the Site.

Your letter states that this firm's client, Alex Tukiendorf, has made "inaccurate claims" regarding requirements that apply to the mine site and concrete batch plant. However, it is your statements that are inaccurate, because you have not considered the erosion control and stormwater management plan, as approved by Dane County via a permit dated May 15, 2012, and issued to Wade Cattell. A copy of the permit and approved plan is attached.

First, you state "the site does not require a 6 to 10-foot chain link fence around the entire site." However, the erosion control and stormwater management plan does require such a fence. *See* Attached Plan, § I.k. ("The site will also have a gated entrance with a six foot high chain link fence that encompasses the entire mined area.").

Second, you address the claim that the operation "does not have an adequate tracking pad to remove dirt from trucking vehicles prior to accessing onto a public right of way,"

and state that asphalt access path and gravel-based operation area “goes beyond minimum requirements” and is “in conformance with tracking requirements.” Yet the permit approving the erosion control and stormwater management plan required the site to have a stone tracking pad “a minimum of 50’ long x 24’ wide and 12” deep and be constructed of 3-inch clear stone.” Permit, ¶ 1. The permit further specified that the mine site may only be accessed from U.S. Highway 12 using the “existing gravel drive and stone tracking pad.”

Third, you address “a claim that a portion of the quarry needs to be reclaimed.” You admit that the operations plan shows that the northerly portion of the site is to be worked between 2005-2014 but state that the operator is permitted to mine this area until it is exhausted and is not required to reclaim the area until this time. Yet the erosion control and stormwater management plan provides, in part:

d. Phasing

The site will essential[ly] have two phases. Phase I will be the continued mining of the northern 20 acres until 2009 when reclamation will take place. Phase 2 will include the reclamation of Phase 1 and the continued mining the southern half of the property.

...

f. Revegetation Plan

The revegetation will be implemented in two phases. The first phase of reclamation will take place in the fall of 2009. The northern half of the mine will be reclaimed with the construction and seeding of the retention pond and all other lands surrounding the pond. All other areas surrounding [the] pond will be reclaimed back to agricultural land and planted with a cover crop of winter wheat until other agricultural crops such as corn and soybeans will be planted. The pond will be planted with a native wet prairie mixture and a cover crop of annual rye.

...

v. Interim Reclamation

As stated previously in “d. Phasing,” the site will be mined in two phases with the reclamation of the first phase taking place before mining of phase two.



Plan, § III (emphasis added). The plan also includes a more specific timeline for mining that provides Phase I Reclamation begins on October 1, 2014, and is completed on November 1, 2014. Plan, § VIII.<sup>1</sup>

The permit specifically states that “[t]he phased restoration of disturbed areas included in the plan must be followed.” Permit, ¶ 6.

We are not aware that the fence and tracking pad have been installed, or reclamation occurred in 2014, as required by the erosion control and stormwater management plan and permit. Further, we are not aware of any modifications or amendments to the plan or the conditions imposed by Dane County, even though the plan provides that “[a]ny changes in the dates will be presented to Dane County Planning and Zoning and Dane County Land Conservation.” Plan, § VII. Please let us know if we are mistaken. Otherwise, Planning & Development Department should recognize and enforce the requirements in the plan and permit.

#### B. Record of Complaints

Your letter concludes that the Dane County Zoning Division “has received complaints from one person alone” about the mine and batch plant, that they have all been “responded to and inspections conducted on the site,” and that each time the facilities have been found in compliance with County ordinances, Wis. Admin. Code ch. NR 115, and CUP #2175. We do not appreciate this evident attempt to minimize the concerns of Mr. Tukiendorf – the mine and plant’s closest neighbor – though in fact some prior complaints have been jointly submitted with the Moerke and Johnson families.

Furthermore, we are unclear about which complaints you are referring to. We are not aware that Dane County has made a site inspection every time Mr. Tukiendorf has registered a complaint. If you are referring to the April 4 and 16, 2017, “formal complaints,” regarding work occurring outside of permitted hours, Mr. Tukiendorf correctly reported the gate on the site being open and activity occurring for about 8 hours on Sunday, April 2, 2017. This is a day when operations are typically not allowed either by the County’s CUP for the batch plant or the Town’s permit for the non-metallic mine. Mr. Cattell indicated only one employee was working that day, but this is inconsistent with the long duration of activity that day.

---

<sup>1</sup> The plan is inconsistent about when Phase I reclamation would begin: 2009 as stated in the plan narrative, or Fall 2014 as stated in the accompanying chart. Since the plan was approved in 2012, and as a conservative measure, we assume the correct date is Fall 2014.

After submitting the April 4 complaint, the Town of Cottage Grove clerk advised Mr. Tukiendorf to make future complaints to Dane County Dispatch at the time they occur, so a deputy can document it. Mr. Tukiendorf did so on April 14, when a deputy visited the site and verified the gate was open. When asked for a response by Dan Everson, Mr. Cattell stated that no quarry or concrete plant activity occurred that day. He separately noted, however, that “[w]ith regards [sic] to the entire property we do have other operations that have no connection [sic] to the CUP [i.e.,] Recycle (asphalt, concrete, Sand fill, dumping, and topsoil sales.)”

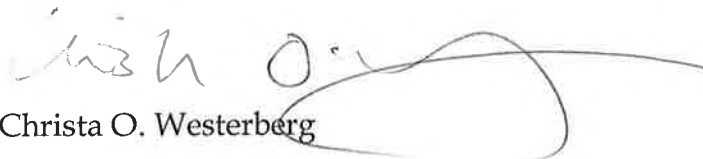
This response suggests that activities are occurring at the site that are not authorized by either the site’s status as a non-conforming non-metallic mine site under Dane County Ord. § 10.21 or concrete batch plant CUP, and further that these may be occurring outside of hours authorized in the Town’s non-metallic mine permit or the County’s CUP. Additionally, it is unclear whether the recycling is in fact unconnected to the batch plant and associated CUP requirements, since the recycling may be for reuse in concrete mixtures as envisioned in Ord. § 10.21(1)(e).

We’d ask that the County obtain a definitive understanding of what the site is currently being used for, what rules cover these various uses, and that consistent rules be established for any further uses. We’d also ask that the County exhibit more understanding of Mr. Tukiendorf’s concerns in the future.

Please let me know if you would like to discuss this letter or have any questions. Thank you.

Sincerely,

PINES BACH LLP



Christa O. Westerberg

COW:hkb


cc: Alex & Jamie Tukiendorf  
Kris Hampton, Town of Cottage Grove  
Dane County Land & Water Resources Department, Land Conservation Division  
Todd Violante, Director, Dane County Planning & Development Dep’t



**Land Conservation Division**  
Dane County Land & Water Resources Department  
Patrick J. Sutter, County Conservationist

DATE: May 15, 2012

TO: Wade Cattell  
Rocky Rights, LLC

FROM: Jeremy Balousek, P.E.   
Urban Conservation Engineer

RE: **Hellickson Pit – Revised Erosion Control and Stormwater Management Plan, ES2003-0186**  
*Associated Non-Metallic Mining Permit 74-28*

MAY 15 2012

The submitted revised erosion control and stormwater management plan meets the needs of the site. The plan includes the following conditions:

1. The site may only be accessed off USH 12 using the existing gravel drive and a stone tracking pad. The pad must be a minimum of 50' long x 24' wide x 12" deep and be constructed of 3-inch clear stone. No other site access may be used and material deposited in the road will be cleaned up throughout and at the end of each workday.
2. The site is internally drained. All grading activity will proceed in a manner to preserve the internal drainage of all runoff from disturbed areas. If at any time, runoff is allowed to leave the site, additional controls and a revised erosion control and stormwater management plan will be required.
3. Silt fence must be installed prior to grading in the locations shown on the plan and where deemed necessary, including down slope of all soil stockpiles not draining internally to the pit. The silt fence must be maintained until the site has been vegetated and stabilized.
4. Topsoil must be segregated from the overburden and will be stored in stockpiles. The stockpiles will be contained within the internally drained portion of the site.
5. Grading must be confined to the areas shown on the plan. No material storage, vehicle traffic or grading may occur in the areas identified as "undisturbed" or "vegetated buffer" on the plan. In the event any of these areas are disturbed, additional erosion control measures will be required.
6. The plan includes a construction schedule as follows:

Grading and operation is underway.

The phased restoration of disturbed areas included in the plan must be followed.

All disturbed areas on the site must be permanently seeded and mulched by September 15, 2037.

The construction site will follow the plan according to the schedule approved by Dane County Land Conservation. **This permit will expire on the stabilization date included in the plan (September 15, 2037) and may be amended prior to permit expiration only.** This review is for the erosion control requirements of 14, Dane County Code of Ordinances only and other approvals may be necessary.

Cc: Daniel Everson, Dane County Zoning Division (via Email and Inter-D)

**I. Site Information.**

**a. General Description.**

The Hellickson pit is a sand and gravel quarry located approximately 1.5 miles east of the intersection of County Hwy N and US Hwy 12&18. The property is owned by Sun Prairie Sand and Gravel LLC and operated by Yahara Materials, Inc.

**b. Legal Description.**

Part of the Northwest ¼ of the Northeast ¼, part of the Southwest ¼ of the Northeast ¼, part of the Southeast ¼ of the Northwest ¼, and part of the Northeast ¼ of the Northwest ¼ of Section 34, T7N, R11E, Town of Cottage Grove, Dane County, Wisconsin is described as follows; commencing at the Northwest corner of said Section 34; thence along the North line of the said Northwest ¼, North 88deg30'19" East, 1992.82 feet to the point of beginning; thence continuing North 88deg 30'19" East, 660.60 feet to the North ¼ corner of said Section 34; thence continue North 88deg30'19" East, 412.44 feet; thence south 00deg11'54" East, 2113.60 feet to the extended North line of CSM # 9984, South 88deg22'36" West, 981.29 feet to the Northwest corner of Lot 1 of said CSM #9984; thence along the West line of said Lot 1, South 01deg02'30" East, 491.25 feet to the Southwest corner of said Lot 1 and a point of the North right of way line of USH 12&18; thence along said North right of way line, South 87deg57'53" West, 66.01 feet to a point on the West line of the East ½ of the Southeast ¼ of the Northwest ¼ and East ½ of the Northeast ¼ of the Northwest ¼ of said section 34 as established on CSM #9984; thence along the West line of the said East ½ of the Southeast ¼ of the Northwest ¼ and the east ½ of the Northeast ¼ of the Northwest ¼, North 01deg03'21" West, 2607.43 feet to the point of beginning

**c. Property Boundaries.**

See Appendix B.

**d. Aerial Extent.**

See Plan 1.

**e. Geologic Composition.**

Roughly two-thirds of Dane County was subject to continental glaciations during the Pleistocene age, which ended roughly 15,000 years ago. The Town of Cottage Grove is located in the southeastern part of Dane County where the surface is predominantly glacial till and outwash. The site contains seven geologic formations from oldest to youngest they are: Cambrian-aged sandstone; Ordovician-aged dolostone of the Prairie du Chien Group; Ordovician-aged sandstone and limestone shale of the St. Peter Formation; Ordovician-aged Sinnippee group dolostone of the Platteville and Galena Formations; and the Unconsolidated Sand and Gravel of the Pleistocene.

**h. Ground Water Information.**

The site is at an approximate elevation of 806 ft and the water table is at approximately 776 ft. The site also contains a high capacity well for a previous washing operation. The well is high capacity and is pumping at a depth of 60 feet or at an elevation of 746 ft. The capacity of the well is 10 gpm/foot at specific capacity.

**i. Location of Surface Waters.**

The surface waters on site include a 20 ft by 50 ft by 3 ft deep retention pond for the previous operators wash plant on site. The site also contains a wetland area were there is standing water approximately 20 by 50 by 3 feet. This area will be left untouched by the mining process and seeded and mulched around the perimeter of the wetlands.

**j. Existing Drainage Patterns.**

See Plan 7.

**k. Location of Manmade Features.**

Manmade features constructed on site after the change in operators include a 200-ft paved asphalt access point from US Hwy 12 & 18 with the remaining driveway spread with recycled asphalt. The site will also have a gated entrance with a six foot high chain link fence that encompasses the entire mined area. A scale house and scale will also be present on site. The site also has an existing high capacity well that will be maintained for future wash plant use, the sediment pond that also exists on site will be cleaned and maintained throughout the life of the mine.

**l. Previously Mined Areas.**

The original mine was began in the 1960's and switched hands between operators until 1990. In 1990 Amon Brothers became operators of the site and continued mining until 1994. Through a lease agreement signed December 23, 1993 and amended March 24, 1999, Yahara Materials, Inc. ("Yahara") acquired the right to mine through the period of the lease which expires on December 23, 2004.

**m. Biological Resources.**

The Hellickson Property was originally farmland before mining took place. Agricultural crops such as corn, alfalfa, and oats were grown on the property along with pasture for grazing. Because of the agricultural background many of the species affected by the mining processes are edge species like raccoons, red fox, coyotes, pheasants, and whitetail deer. However before farming, the land was originally oak savanna and sedge meadows. This eco-type is characterized by prairie grasses with sparse oak trees usually burr and white oaks. The savanna was home to many species of plants and animals such as buffalo, elk, red fox, red-tailed hawk, and prairie chicken. In addition to having a wide diversity of animal species, savannas also contained a wide variety of plant species such as big blue stem, little blue stem, Indian grass, cardinal flower, rattle snake master, wild

quinine, wild geraniums, and multiple sedges. No remnants are present.

## **II. Post Mining Land Use.**

The post mining land use for this site will be agricultural land. After the mining has ended at the end of twenty years, it is the goal of Sun Prairie Sand and Gravel, LLC to rehabilitate the land back to its original agricultural use. The reclamation plan can be found in Plan 10.

## **III. Reclamation Measures.**

### **a. Earthwork: Final Grade and Slope.**

The final grade and slope for the site is illustrated in Plan 10. The site will be graded to match the contours of the surrounding farmland. The high wall will be graded to a maximum slope of 4:1. The site will also have a retention pond constructed for internal drainage which can be found on Plan 10. The pond will be seeded and mulched with a native grass wetland mixture. The seed mixture can be found in Figure 1.1.

### **b. Topsoil.**

For erosion control purposes, all topsoil and overburden will be stripped and placed in berms located along the perimeter of the mined area for ease of reclamation. Following construction of the topsoil and overburden berms, all berms will be seeded and mulched with polymers applied in granular form in accordance with Dr. Aicardo Roa's June 4, 2004 letter. Yahara has successfully completed items 1 through 8 first listed in Dr. Roa's letter to improve site existing conditions. The practices described in Dr. Roa's letter will also be applied to all future mining areas as shown in Plan 9 including seeding, mulching, and application of polymers. Dr. Roa's letter can be found in Appendix A.

### **c. Topsoil Redistribution and Site Preparation.**

Before topsoil is redistributed over the site, overburden will first be used to create the new contours for the site as illustrated in Plan 10. After all final grading has been accomplished, topsoil will be redistributed over the entire site at an average depth of six inches on the agricultural land and 4-6 inches on the high-wall slopes to coincide with the surrounding areas. The site may need to have topsoil hauled in from other sites to complete the six inch depth needed for agricultural land use. The topsoil will be free of trees, brush, and other woody materials. Also all topsoil redistributed on site will be clean and uncontaminated. After the topsoil has been graded to specifications, the entire area will be deep tilled to alleviate compaction and to increase infiltration with a seven shank parabolic subsoiler pulled by a John Deere 9520 articulated tractor. The tractor is equipped with high flotation tires to limit compaction.

**d. Phasing.**

The site will essential have two phases. Phase 1 will be the continued mining of the northern 20 acres until 2009 when reclamation will take place. Phase 2 will include the reclamation of Phase 1 and the continued mining the southern half of the property. At the end of phase two, reclamation will take place on for the entire site. These mining phases are shown on Plan 8.

**e. Structures.**

There will be no man made structures left on the site after reclamation has taken place, except for an access road for neighbor's driveways. The road and scale will be removed to make way for agricultural land. Also the fence will be removed after the high wall has been graded to a 4 to 1 slope.

**f. Revegetation Plan.**

The revegetation plan will be implemented in two phases. The first phase of reclamation will take place in the fall of 2009. The northern half of the mine will be reclaimed with the construction and seeding of the retention pond and all other lands surrounding the pond. All other areas surrounding pond will be reclaimed back to agricultural land and planted with a cover crop of winter wheat until other agricultural crops such as corn and soybeans will be planted. The pond will be planted with a native wet prairie mixture and a cover crop of annual rye. Phase two reclamation will take place in the fall of 2014 with the area planted in winter wheat until the following season when other agricultural crops will be planted. Each planting will first be tilled with a seven shank parabolic subsoiler to lower compaction and increase infiltration. After the subsoiler, the area will be disked with a soil finisher for preparation of the seedbed. After the areas have been tilled, a Brillion drill will be used to apply the seed. The schedule outlined in this plan replaces the schedule proposed in Dr. Roa's June 4, 2004 letter.



Figure 1.1

Common Name	Price	Rate lbs/acre	% of Mixture
big bluestem	9	2.5	27.5
indian grass	11	2.5	27.5
Virginian wild rye	10	2	20
switch grass	6	1.5	15
green bulrush	38	0.25	2.5
wool grass	101	0.25	2.5
reed mana grass	105	0.05	5
<b>Total</b>	<b>\$119</b>	<b>10</b>	<b>100</b>

Annual Rye Grass	50 lbs per Acre	100% annual rye grass
------------------	-----------------	-----------------------

Figure 1.2

Fertilizer Type	Rate of Application
16-6-10	300 lbs per Acre

Mulching Rates

Mulch	Rate of Application
Straw Mulch	2 tons per Acre

#### **IV. Erosion Control.**

During the mining process, **erosion will be self-contained in the mine area.** All slopes that are not being mined will have polymers in granular form added then seeded and mulched with annual rye. The seed will help to minimize gully and sheet erosion on the steep slopes. All original trees and grasses located on berm 11 of the erosion control plan will be left intact until final reclamation. For further information on erosion control please see Plan 4.

#### **V. Interim Reclamation.**

As stated in previously in "d. Phasing," the site will be mined in two phases with the reclamation of the first phase taking place before mining of phase two.

#### **VI. Criteria for Successful Reclamation.**

To assess how successful the mine reclamation was a variety of criteria would be studied for each area of the reclamation. First of all the slopes around the perimeter of the pond will be judged on the bank stability and percent cover. The more cover that is present on the slopes the better the erosion control. We would like a percent cover of 70% or more for adequate stabilization. The percent cover will be measured with randomly chosen one-meter quadrates. The farmland success will be measured on the productivity of the land. It is Sun Prairie Sand and Gravel, LLC hope that the land achieves 60 bushels per acre for soybeans and 250 bushels per acre for corn or back to the areas normal cropland capacity.

**VII. Anticipated Cost of Reclamation.**

Reclamation Costs		
Item	Price per Unit	Total
Annual Rye Grass	.50 per pound	\$250.00
Forage Oats	\$0.34 per pound	\$680.00
Tall Grass Prairie Mix	\$119.00 per acre	\$238.00
Polymer	\$12.50 per pound	\$500.00
Straw Mulch	\$1.50 per bail	\$560.00
Fertilizer	\$54.00 per acre	\$2700.00
Labor and Equipment		\$15,000.00
	<b>Total</b>	<b>\$19,928.00</b>

**VIII. Timeline for Mining.**

Date	Procedure
July 1, 2004	Erosion Control Implemented
July 1, 2004 – December 23, 2004	Yahara Materials Continues Mining Operations.
July 31, 2004	Hand over of reclamation and bonding duties from Yahara Materials to Sun Prairie Sand and Gravel
December 23, 2004	Hand over of operating duties from Yahara Materials to Sun Prairie Sand and Gravel
October 1, 2014	Phase 1 Reclamation Begins
November 1, 2014	Reclamation of Phase 1 Completed, Phase 2 Mining Begins
October 1, 2024	Final Reclamation of Site Begins
December 1, 2024	Reclamation Completed

**\* All dates presented in the timeline are only tentative dates and are subject to market demand. Any changes in the dates will be presented to Dane County Planning and Zoning and Dane County Land Conservation.**

**From:** Christa Westerberg  
**Sent:** Friday, December 01, 2017 5:16 PM  
**To:** Gault, David  
**Cc:** MacKenzie, Marcia; Lane, Roger; Heather McGowen  
**Subject:** RE: Cottage Grove mine  
**Attachments:** 31N2760-Attachment 2 to TCG Town Board Ltr.PDF

Dear Atty. Gault:

Thank you for your response. I appreciate your time, but I am concerned that the County continues to broadly endorse this operation despite countervailing facts and concerns.

Your response broadly states that “all of the information” in Mr. Lane’s August 28, 2017, correspondence to the Town was correct. However, there were issues discussed in that letter that are not discussed in your email. This correspondence assumes you have not researched and addressed those issues, such as Mr. Lane’s statement that only one person has previously complained about this site and that all complaints were unproven. As we pointed out in our response, other neighbors in addition to Mr. Tukiendorf have complained, not just to the County, but to the Town, multiple times. We have also pointed out that Mr. Tukiendorf’s claims have been substantiated, such as complaints regarding fugitive dust to the DNR. See, for example, the attached DNR correspondence.

You also broadly state that “the site is in conformance with all county ordinances and DNR regulations.” I am not sure which DNR regulations you are referring to or what work the County has done to assess compliance with all DNR regulations. As just noted, there have been DNR compliance issues in the past. You also note that there are “technical deviations from the incorporated erosion control and stormwater management plan” but that the Zoning Administrator does not deem them “material.” Please be assured that neighbors of the facility do deem these violations to be “material,” such as the failure to install a tracking pad that would reduce mud tracked onto the driveway which passes 80 feet from the Tukiendorf home. This mud then dries and becomes airborne, drifting onto the Tukiendorf property. Your email did not discuss this issue. We also disagree that the erosion permits refers only to a preexisting fence.

Regarding enforcement of the erosion control and stormwater management permit and plan, I appreciate you relaying your understanding of the County Ordinances at issue. It appears we agree the plan is enforceable. If as you state the County Land & Water Resources Department does not issue a separate permit for non-metallic mines, I am unclear why it did issue a separate permit in 2012. Dane County Ord. § 14.47 does not list non-metallic mines among the uses that are exempt from the erosion control permitting scheme outlined in that chapter and the jurisdiction of the Land & Water Resource Department.

Citizens attending the Town of Cottage Grove Plan Commission meeting on November 15 complained about the existing mine site not being reclaimed. (Refer, for example, to comments of Otto Otteson and Andrea Enriquez.) You state that despite the reclamation schedule in the existing erosion control permit that set 2014 as the reclamation year, the operator is not required to reclaim until the site is exhausted. I appreciate you noting that the plan should be updated to include a revised date, but at prior meetings, Mr. Cattell has stated the site is actually exhausted or would be soon (which explains his desire for a new mine site). More recently, at the November 15 meeting, he stated more resources could theoretically be obtained at a greater depth. It is not clear that he has any plans to obtain these materials or that they would be suitable for concrete. The County should require reclamation now, since the open site is aggravating to neighbors and cannot be sustained in its current state indefinitely.

I remain concerned that neighbor concerns regarding this mine site and batch plant are being dismissed as just the concerns of a few people. While these is not a high-density area, that does not mean the concerns of the neighbors are not valid or unworthy of redress. I’ll also draw your attention to the last page of our November 10, 2017, letter, which noted Mr. Cattell’s recent statement that “[w]ith regards [sic] to the entire property we do have other operations that have no connection [sic] to the CUP [i.e.,] Recycle ( asphalt, concrete, Sand fill, dumping, and topsoil sales.)” We noted:

This response suggests that activities are occurring at the site that are not authorized by either the site's status as a non-conforming non-metallic mine site under Dane County Ord. § 10.21 or concrete batch plant CUP, and further that these may be occurring outside of hours authorized in the Town's non-metallic mine permit or the County's CUP. Additionally, it is unclear whether the recycling is in fact unconnected to the batch plant and associated CUP requirements, since the recycling may be for reuse in concrete mixtures as envisioned in Ord. § 10.21(1)(e).

I would reiterate our request that the County investigate what site activities are occurring, whether they are authorized by the non-conforming use or CUP, and ensure requirements across all approvals are consistent so that they may be more easily enforced.

I appreciate the opportunity to share these concerns with you. Please let me know if you would like to further discuss this correspondence.

Thank you.

**Christa O. Westerberg**

Attorney at Law

608.251.0101 Phone

608.251.2883 Fax

[cwesterberg@pinesbach.com](mailto:cwesterberg@pinesbach.com)

Pines Bach LLP

122 W Washington Ave, Ste 900

Madison, WI 53703

[www.pinesbach.com](http://www.pinesbach.com)



**Personal Service. Positive Outcomes.**

---

**From:** Gault, David [mailto:Gault@countyofdane.com]

**Sent:** Wednesday, November 29, 2017 2:56 PM

**To:** Christa Westerberg <cwesterberg@pinesbach.com>

**Cc:** MacKenzie, Marcia <MacKenzie.marcia@countyofdane.com>; Lane, Roger <lane.roger@countyofdane.com>

**Subject:** RE: Cottage Grove mine

Dear Atty. Westerberg:

I have reviewed the information you submitted to me regarding the Rocky Rights LLC mineral extraction site in the Town of Cottage Grove. I have also discussed the matter with Zoning Administrator Roger Lane, Deputy Zoning Administrator Dan Everson and Jeremy Balousek of the Land & Water Resources Department. It appears to me that all of the information in Mr. Lanes's correspondence of August 28, 2017 to the Town Chair is accurate.

Non-metallic mineral extraction sites are regulated permitted under Chapter 74 of the Dane County Code of Ordinances. DCO s. 74.08 states that Chapter 74 is administered by the Zoning Administrator. DCO s. 74.111(5) states that "Mineral extraction sites shall comply with the erosion control and stormwater provisions of chapter 14." Permitting under Chap. 74 requires a reclamation plan. DCO s. 74.131(4)(h) states that the reclamation plan shall include a plan "showing erosion control and stormwater measures to be employed to meet the requirements of chapter 14." Since Chapter 74 is administered by the zoning administrator, the Land & Water Resources Dept reviews the proposed erosion control and stormwater plan, but does not issue a separate permit under Chapter 14.

Although there may be some technical deviations from the incorporated erosion control and stormwater management plan, it is the Zoning Administrator's determination that there are no material violations of the reclamation permit and plan and that the site is in conformance with all county ordinances and DNR regulations.

The dates listed for reclamation in a reclamation plan are tentative. DCO s. 74.131(4) requires the reclamation plan to include a "proposed schedule and sequence for the completion of reclamation activities for various stages of reclamation." Actual reclamation is actually driven by exhaustion of the mineral asset on the property so long as the final closure and reclamation date is met (which is subject to revision.) The common law diminishing asset rule allows a mineral extraction operator to continue use of a site until the asset is depleted. It clearly was not the legislature's intent to use the reclamation statute to terminate a mineral extraction operation. To be fair, the proposed dates for reclamation on this site should be revised in the plan. The Zoning Administrator will be requesting that. But, this does not constitute a material violation of the plan or of Chapter 74, which is to implement effective reclamation requirements and to provide uniform and predictable reclamation standards in accordance with NR 135 and Wis. Stat. Chap. 95.

You have also mentioned the notation in Sec. I "Site Information" para. K "Location of Manmade Features" that states "The site will also have a gated entrance with a six foot high chain link fence that encompasses the entire mined area." This is a purported description of manmade features that were actually located on the property at the time the plan was submitted. It is not part of the plan requirements and bears no relevance to erosion control or stormwater management. The Zoning Administrator does not consider this a permit requirement.

Obviously your client has the right to contest issuance of the proposed CUP before the town board and the ZLR committee. If they are aggrieved by the decisions of those bodies they can appeal to the Board of Adjustment. However, it is my opinion that the position of the Zoning Administrator is accurate and legally defensible.

David R. Gault  
Assistant Corporation Counsel for Dane County  
Room 419, City-County Building  
210 Martin Luther King, Jr. Blvd.  
Madison, WI 53703  
(608) 266-4355

---

**From:** Christa Westerberg [<mailto:cwesterberg@pinesbach.com>]  
**Sent:** Monday, November 27, 2017 3:30 PM  
**To:** Gault, David  
**Cc:** MacKenzie, Marcia  
**Subject:** Cottage Grove mine

Dear Atty. Gault:

Thank you for your time on the phone regarding the proposed gravel pit expansion in the Town of Cottage Grove, and the enforceability of the erosion control permit on the existing non-conforming mine site. Attached is the correspondence I mentioned.

Among other things, we remain concerned about the Zoning Division's representation to the Town of Cottage Grove Plan Commission on Nov. 15 that this applicant does not need to comply with his erosion control permit at the existing mine site. I'd appreciate any clarification you can provide in advance of the next town meeting, on Dec. 4.

Thank you,

**Christa O. Westerberg**  
Attorney at Law

608.251.0101 Phone  
608.251.2883 Fax

[cwesterberg@pinesbach.com](mailto:cwesterberg@pinesbach.com)

Pines Bach LLP  
122 W Washington Ave, Ste 900  
Madison, WI 53703  
[www.pinesbach.com](http://www.pinesbach.com)



**Personal Service. Positive Outcomes.**

"This is a transmission from the law firm of Pines Bach LLP and may contain information which is proprietary, privileged, confidential, and protected by the attorney-client or attorney work product privileges. If (a) you are not the addressee or (b) you are not the intended recipient, that is, your e-mail address was used in error by the sender, you should know that any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have received this transmission in error, please delete and/or destroy it and, if we have not already realized our error and contacted you, notify us immediately at our telephone number (608) 251-0101."