

Staff Report
Request for revocation of Conditional Use Permit # 2175
Concrete Batch Plant
2294 US Highway 12/18, Town of Cottage Grove



The Zoning and Land Regulation (ZLR) Committee has received a letter from Alex and Jamie Tukiendorf requesting the revocation of Conditional Use Permit #2175. This conditional use permit was approved in 2011 and allows for the operation of a concrete batch plant on the property. The Tukiendorfs' claim that there have been persistent violations with the operation and the operation no longer meets the standards for a conditional use permit.

Site History

The concrete batch plant is located in a legal non-conforming mineral extraction quarry. The quarry has been in operation since the 1960's. The quarry is considered a permitted use due to the site being registered 1969 when quarries became a conditional use in the county. The quarry activities are not restricted to any hours of operation or truck traffic. The quarry activities fluctuate over the years based on industry demands.

In 2000, the previous owner requested that three residential lots be created immediately south of the quarry. The intent was to sell the houses to family members in order to financially support the farm operation. The three lots were approved and sold to family members; however, only one family member still resides on one of the lots. The residential lots use the quarry driveway for access onto Highway 12/18; however, no driveway easement was ever established.

In 2005, Mr. Tukiendorf purchased Lot 1 of CSM 994, the lot which is located adjacent to the quarry drive. The quarry was fully active during this time. See the 2005 aerial photo below.

In 2011, Rocky Rights LLC (Wade Cattell) purchased the quarry from Sun Prairie Sand and Gravel. A conditional use permit application was submitted in order to operate a concrete batch plant from the property. The quarry provides sand and aggregate for the concrete batch plant. Town and the ZLR Committee had approved the operation of the batch with 12 conditions. The conditions are as follows:

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.

On May 28, 2013, Mr. Tukiendorf appeared before the Zoning and Land Regulation Committee to lodge complaints regarding the concrete batch plant being operated outside the permitted hours of operation. The ZLR Committee asked staff to work with the landowner to resolve the land use conflicts.

Mr. Tukiendorf has lodged numerous complaints over the past years regarding hours of operation, dust, and traffic. Each time the property was inspected and the complaints researched. The inspections did not find violations occurring on the property.

STAFF REVIEW

2017 Wisconsin Act 67

The State Legislature recently passed legislation regarding Conditional Use Permits under 2017 Wisconsin Act 67. The new legislation places protections on conditional use permits. Once a CUP is obtained, the CUP may continue until the conditions of approval are violated. I have asked Corporation Counsel if this holds true on existing Conditional Use Permits and they stated that it would apply to all existing CUPs. The committee may only look at the conditions as listed on the conditional use permit, if the conditional use permit is to be revoked. The committee may not revoke an active conditional use permit by means of reevaluating the activity to the six standards of obtaining a conditional use permit.

§§ 60.62(4e)(b) 1. and 62.23(7)(de) 2.a., Wisconsin Statutes

Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the [municipality] may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the [municipal] zoning board.

Review of CUP #2175

Zoning Staff conducted a review of the conditions set forth in Conditional Use Permit #2175. Each condition was reviewed for compliance. Below is a summary of the review:

1. The applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations. The concrete batch plant CUP boundaries are within the existing mineral extraction site. Erosion control plan ES 2003-0186 has been approved by Dane County Land and Water Resources for the site.

2. The applicant shall apply for and receive all other required local, state and federal permits. County Staff contacted State agencies regarding required permits. The plant requires a DNR Storm water permit. The operator has obtained WisDNR storm water permit and is currently in compliance with DNR storm water regulations. The batch plant does not require a DNR air emissions permit. In speaking with DNR air emission specialists, the operator still needs to comply with fugitive dust best management practices. The Town of Cottage Grove does not require a license to operate a concrete batch plant.

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.

Over the past few years, County Staff has reviewed the hours of operation after complaints have been lodged. Upon inspection, the activity was found to be related to the mineral extraction activity, rather than the concrete batch plant. The plant has not been used for night projects since 2013.

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 WisDOT has approved the connection to State trunk highway 12/18. In speaking with Scot Hinkle, WisDOT highway access coordinator, the driveway is in compliance with approved plans.

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.

On previous inspections, it appeared that all vehicles had muffler systems. A decibel reading was conducted on site. The concrete batch plant operates at the same ambient noise level as the noise generated from vehicle traffic on Highway 12/18.

6. Trucks shall not use "jake" brakes.

County Zoning Division has not received any complaints regarding the use of "jake" brakes regarding the operation. Truck operators have been informed of this requirement.

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.

The WisDNR does not require an air emissions permit for the operation. Best management practices are to be used to reduce fugitive dust. Practices include paving the driveway and using water to reduce dust. The driveway consists of 500 feet of paved asphalt and 500 feet of crushed asphalt. Assistant Zoning Administrator Dan Everson has made periodic inspections of the site over the last few years and did not find accumulations of dirt on the on the driveway. As part of the best management practices, the operator is logging all days that the driveway is watered to reduce fugitive dust.

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.

The berm along the southerly and easterly boundary has been improved and pine trees planted in accordance with the condition.

9. Install fence on northern boundary of the mineral extraction operation.

A fence has been installed along the northern boundary.

10. The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076.

The operator is using Best Management Practices to control particulate emissions. It appears that the batch plant is shrouded, the driveway is paved, and the driveway is being watered to reduce fugitive dust. In speaking to the DNR, no violations are on file for the site..

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.

The operation of the batch plant will cease on July 12, 2036. In speaking with the Town Clerk, the batch plant has not been specifically reviewed in 2016, however, the operation has been discussed numerous times at Town Board meetings. No complaints have been lodged by the Town Board regarding the operation.

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 Staff has been allowed to inspect the operation on every occasion. Over the past years, the batch plant has been found to be in compliance with the conditions of approval. Staff feels that the operation is in compliance with the conditions of approval

COMMITTEE ACTION

The Dane County Code of Ordinances provides instruction for the CUP revocation process. Section 10.255(2)(m) reads as follows: "If the zoning committee finds that the standards in subsection (2)(h) and the conditions stipulated therein are not being complied with, the zoning committee, after a public hearing as provided in subs. (2)(f) and (g), may revoke the conditional use permit. Appeals from the action of the zoning committee may be as provided in sub. (2)(j).

Under 2017 Wisconsin Act 67, limitations have been placed on the potential revocation process. First, the Committee may only review the conditions contained on the Conditional Use Permit regarding violations. The Conditional Use Permit shall remain in effect if the conditions are not violated. Secondly, any decision regarding a Conditional Use Permit must be made with substantial evidence.

2005 photo of site

