

**Lane, Roger**

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**From:** chair@town.rutland.wi.us  
**Sent:** Tuesday, January 17, 2023 9:08 AM  
**To:** Planning & Development  
**Subject:** written testimony submitted for record re: HAHN non-metallic mining/January 24th - PUBLIC HEARING  
**Attachments:** FINAL WINTER NEWSLETTER 2023.docx

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Hello, Attached please find my Winter 2023 Rutland Newsletter. I request that this document be part of the record.

Sincerely,

Deana M. Zentner  
Rutland Chairperson

Winter 2023

Hello Rutland!

Many of you may be aware of the following Town of Rutland land use issue: Since March of 2020 our town has faced ongoing and increasingly contentious challenges regarding a proposed non-metallic mining (gravel quarry) expansion on Center Road. Due to the increasing number of questions/concerns I recently received, this chairperson newsletter will first focus on explanations based on verifiable legal documentation.

### **TIMELINE OF CENTER ROAD QUARRY:**

- This quarry, previously known as the Homberg Quarry, has been in existence since the 1930's.
- Mr. Kevin Hahn and family bought this legal non-conforming (NC) quarry in 2017.
- Mr. Kevin Hahn and family bought contiguous land in 2019. This property is zoned FP-35 and non-metallic mineral extraction operations (gravel quarry) is listed as a conditional use within this district.

WHAT IS A LEGAL NON-CONFORMING (NC) QUARRY: . If a land use is in existence prior to a zoning ordinance change, the land use is allowed to continue to operate. In 1969, the zoning ordinance changed, making non-metallic mineral extraction operation a conditional use rather than a permitted use. The quarry was registered as a legal non-conforming use in 1969 and is allowed to operate as if it was a permitted use.

#### WOULD MR. HAHN RELINQUISH HIS CURRENT NON-CONFORMING (NC) STATUS IF THE CUP #2585 IS APPROVED:

Yes, the current NC status would be null and void. The entire operation would be covered under a CUP.

WHAT IS ZONING: All areas of =Dane County are assigned a zoning district classification. Each zoning district allows for specific land use to occur on the property. There are three basic types of use designations in a zoning ordinance; permitted, prohibited, and conditional.

WHAT IS ZONING AND LAND REGULATION COMMITTEE (ZLR): The ZLR provides oversight to the Planning and Development Departments. The ZLR holds public hearings on rezoning petitions and Conditional Use Permits (CUP). [plandev.countyofdane.com](http://plandev.countyofdane.com)

- Mr. Kevin Hahn has applied for three (3) separate CUP quarry expansions. All information is public and can be found on <https://dane.legistar.com>. (Go to the "Legislation" tab and enter the separate application number (below) on "Legislative text", then click "search legislation".)
- 1 - #2496 (2/25/2020) DENIED
- 2 - #2563 (3/16/22) APPROVED 7/12/22 by ZLR with operating conditions that met required legal CUP standards.
- 3 - #2585 (11/17/22) IN PROCESS Joint Public Hearing on 1/24/23. See Rutland website for information: <https://town.rutland.wi.us>

WHAT IS A CUP (Conditional Use Permit): "Conditional Use" means a use allowed under a conditional use permit. The State of Wisconsin changed the statutes 59.69 (5e) on November 28,

2017 by placing requirements on municipalities regarding the processing and review of CUPs namely ACT 67.

WHAT IS ACT 67: The State of Wisconsin changed the statutes on November 28, 2017 by placing requirements on municipalities regarding the processing and review of CUPs. Wisconsin Act 67 sets the ground rules for processing a CUP. Previously, there were no statutory rules and local governments could create individual CUP requirements based on their zoning authority. Act 67 requires “substantial evidence” in the record to support denial. If an applicant for a CUP meets or agrees to meet all of the requirements and conditions specified in the ordinance or those imposed by the county zoning board, the county shall grant the CUP. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

What is “Substantial Evidence”: Substantial evidence means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a CUP.

MR. HAHN WAS USING THE CONTIGUOUS OWNED LAND PRIOR TO THE 7/12/22 APPROVAL. IS THIS LEGAL?

Yes, Mr. Hahn was operating within his legal rights under WI STATUTE 85.193.

IF CUP #2563 WAS APPROVED ON 7/12/22, WHY IS CUP #2585 CURRENTLY IN PROCESS:

Per public record, #2563 was subsequently challenged (Appeal #3721) by an adjacent landowner near the quarry through the Board of Adjustment. A minor discrepancy was found in a legal description forcing #2563 null and void.

WHAT VOTING ACTION DID THE TOWN OF RUTLAND TOWN BOARD TAKE PRIOR TO ZLR 7/12/22 APPROVAL ON 7/12/22 :

Following is actual Board Action on CUP # 2563 from the May 4, 2022 Board Meeting: “Chairperson Deana Zentner and Supervisor Sue Williams recused themselves on this item and stepped down from the table. Supervisor Nancy Nedveck took over the Board meeting for this item at this point. Supervisor Nedveck summarized the action taken at the Public Hearing and Planning Commission. It was noted that the Board had a quorum of three of five board members with the recusal of Zentner and Williams. MM2 by Postel/Nedveck that the Town Board take no action on CUP 2022-2563. Individual members of the Planning Commission and Board may forward comments on the 8 standards and possible conditions to PC Chair Travis Leeser who will forward the information to Dane County Zoning. These will be submitted as the public and not as a town. Motion carried 3-0-2. Chairperson Zentner and Supervisor Williams returned to the table.”

WHAT IS THE TOWN’S ROLE IN HOLDING PUBLIC HEARINGS: A local public hearing was held on April 28, 2022 for #2563. Following

recommendations from multiple professional sources, the Rutland Plan Commission and Rutland Town Board will again hold another JOINT PUBLIC HEARING on #2585. See <http://town.rutland.wi.us>.

If you reference <https://dane.legistar.com>, public records show that an anonymous letter from Rutland residents was sent to Dane County Zoning on 5/17/2022 prior to the approval on 7/12/22. The last sentence reads: "When facts are considered and rights of all citizens" (Rutland resident population is 1984) "in our society are weighed, logic (substantial evidence) and law" (ACT67) "dictates the path we must all take." I am in complete agreement with the anonymous Rutland residents who made this statement - I added data in the parenthesis -.

I implore all Rutland residents to recognize the integral, legal procedures we have immersed ourselves in since March 2020 in recognizing the rights of ALL citizens.

Secondly, I am pleased to soon be launching " **LISTENING SESSIONS** ", which are informal opportunities that will allow **ALL 2012** Rutland residents to have their thoughts, opinions, ideas, suggestions, comments, etc. heard by me. These listening sessions will be organized by a resident who initially proposed this initiative at a board meeting. Let's all work together to bring back civility and commUNITY to our Rutland meetings and neighborhoods in the place we all call home.... the wonderful Town of Rutland. \* **STAY TUNED FOR UPCOMING INFORMATION!** \*

If you have any further questions or need help navigating the referenced internet sites, as always, please feel free to contact me.

Sincerely,

Deana M. Zentner  
Chairperson  
608-575-3420