



DANE COUNTY PLANNING & DEVELOPMENT

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

March 31, 2015

Dane County Board of Adjustment
C/o Dane County Zoning Division
210 Martin Luther King Jr. Boulevard
Madison, WI 53703

RE: Concern regarding Appeal 3668 Oak Park Quarry

Dear Board Members,

On March 3, 2015, I wrote an opinion letter that notes factual information regarding the property located at 3528 Oak Park Road in the Town of Deerfield. The letter references the determinations of a past Zoning Administrator and past approvals by the Zoning and Land Regulation Committee. The letter notes that the Zoning Administrator in 1969 rejected the property as an existing mineral extraction site and in turn, the site was not registered as a non-conforming site. The letter goes on to describe the approval of numerous conditional use permits granted by the Zoning and Land Regulation Committee for the property throughout the years. The letter provides accurate historical information. The only determination that the letter makes is that the property is in conformance with Dane County Code of Ordinances.

I believe the appellant is not aggrieved that the property is in compliance with the Dane County Code of Ordinances. I believe the content of the appeal shows that the appellant is aggrieved by a determination that was made by the Zoning Administrator in 1969. The appellant is in effect, requesting the Board of Adjustment to review a determination that was made in 1969, forty-five years after the fact.

When Ordinance Amendment #1163 (see attached) was adopted on April 16, 1968, the ordinance provided a process by which a landowner could register their property as an existing mineral extraction site. The ordinance provided a landowner one year to do so. The County received 322 requests for registration, of which 30% were rejected. This particular property was requested and rejected.

The entire premise of this appeal is to allow the new landowner, after 45 years, to be allowed to register a property as a non-conforming site. Under Dane County Code of Ordinances Section 10.26(3), a person aggrieved by a decision by the Zoning Administrator shall be taken up in a reasonable amount of time. 45 years is not a reasonable amount of time. Hearing this appeal would set a precedence to allow every landowner who is aggrieved by any historical decision by the County for the past 45 years to come before the Board of Adjustment to argue the decision.

The process was clearly described in the ordinance and the process was followed as proof in the documentation. The property at 3528 Oak Park Road was not accepted in the registration process in 1969 as described in the March 3rd letter.

Before this appeal is entertained by the Dane County Board of Adjustment, I ask the Board to address one question:

Does a person have the right to appeal a decision that has been rendered through a documented process which happened 45 years ago?

*Housing &
Economic Development*
(608)266-4270, Rm. 362

Planning
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I feel that hearing this appeal will undermine the public record of registered non-conforming mineral extraction sites which people have relied on for 45 years.

If the appeal is accepted and the appellant is allowed to continue with the appeal, I respectfully submit this brief which supports the historic decision that was rendered by the previous Zoning Administrator.

Thank you for your understanding.

Respectfully,



Roger Lane
Dane County Zoning Administrator

Attachments

- Wisconsin State Statute Section 59.694(4)
- DCCO 10.26(3) Board of Adjustment section
- Dane County BOA Rules and Procedures section 4
- Ordinance Amendment #1163

Wisconsin Statute Section 59.694(4)

(4) APPEALS TO BOARD. Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the building inspector or other administrative officer. **Such appeal shall be taken within a reasonable time**, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

Dane County Code of Ordinances Section 10.26(3) BOARD OF ADJUSTMENT

(3) Appeals to the board. Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the zoning administrator or other administrative officer; an appeal may also be taken by the committee. **Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.** The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The committee may appeal only those matters properly before it prior to the committee vote and within thirty (30) days of the public hearing on the matter and only by a 2/3 vote of the committee's members. The committee's appeal shall be exempt from fee.

From Dane County Board of Adjustment Rules and Procedures

4. VARIANCES, APPEALS AND APPLICATIONS

a) **Appeals of administrative decisions shall be filed within 30 days after the date of receipt of a written decision** or order from which the appeal is taken by filing a notice of appeal with the Zoning Administrator or the Chair of the Board.

Amending Section 10.12 Agricultural District

The Dane County Board of Supervisors does ordain as follows:

That Section 10.12 (1) (c) of the A-1 Agricultural District be amended to read as follows:

(c) Mineral extraction operations including washing, crushing, quarrying, borrow pits, or other processing or removal of mineral resources, the erection of buildings and the installation of necessary machinery used in said extraction or processing, and the preparation of hot blacktop mix and ready-mixed concrete are conditional uses and may be permitted in the A-1 Agricultural District provided that:

(1) An application for a permit shall be submitted by the owner and shall include an adequate description of the operation; a plan of the site showing proposed and existing roads and drives, the sources, quantity and disposition of water to be used, if any; estimated dates for the completion of the extraction and commencement and completion dates for the reclamation; a reclamation plan, and such other information as may be necessary to determine the nature of the operation and the effect on the surrounding area.

(2) The reclamation plan shall contain adequate provision that all final slopes around the area be flatter than a 3 to 1 horizontal slope in a sand and gravel or borrow pit operation, or in a safe angle of repose in a quarrying operation; excavations below the grade of the nearest abutting public street or highway shall be set back from said street or highway a distance not less than that required for buildings and structures under this ordinance; excavations made to a water producing depth shall be not less than 3 feet measured from the low water mark; all final slopes shall be covered with topsoil from the original site and seeded to prevent future erosion; the plan shall require that after completion of the anticipated operation that the area shall be cleared of all debris and be left in a workmanlike condition, subject to the approval of the Dane County Zoning Committee or its agent. The reclamation plan shall indicate the proposed future use or uses of the site, however, the proposed re-use of the site for a dumping grounds shall have the concurrence of the Town Board.

(3) Application for a conditional use permit for a mineral extraction operation proposed to be located within 600 feet of a residence district zone, a residential subdivision, or a city or village limits line; or for a hot blacktop mix or ready-mixed concrete plant, shall be submitted to the County Zoning Committee for public hearing and approval. The conditional use permit shall be for a period of time as stated in the application or as modified by the County Zoning Committee. Modification of the application or reclamation plan may be permitted or additional conditions may be required upon application. The County Zoning Committee shall consider the effect of the proposed operation and the proposed reclamation upon existing and future conditions, including streets, neighboring development, land use, drainage, water supply, water pollution, air pollution, soil erosion, natural beauty, and land value of the locality. The County Zoning Committee may approve, approve conditionally or reject the application and reclamation plan. A filing fee of \$2 shall be required for each application.

(4) All other applications for conditional use permits for mineral extraction shall be submitted to the County Zoning Supervisor who shall issue the permit for a period of time as stated in the application but not to exceed four years providing that the application and reclamation plan meets the terms of this ordinance. The owner may apply for renewal of the permit or modification of the permit. A filing fee of \$2 shall be required for each application. All existing mineral extraction operations shall be deemed non-conforming uses and may be continued providing that they have been worked prior to the date of adoption of this ordinance and they have been registered with the County Zoning Supervisor within one year of the date of adoption of this ordinance.

BEFORE THE DANE COUNTY BOARD OF ADJUSTMENT

Appeal No. 3668

Appeal of Jon Halverson, Oak Park Quarry, LLC, regarding a letter from the Dane County Zoning Administrator on an opinion as to whether the quarry located at 3528 Oak Park Road, Section 29, Town of Deerfield, Dane County, Wisconsin, qualifies as a non-conforming use.

BRIEF OF DANE COUNTY ZONING ADMINISTRATOR

An administrative appeal has been filed by Attorney Mitchell Olson on behalf of Jon Halverson and Oak Park Quarry, LLC, as of a result of a letter written by the Dane County Zoning Administrator dated March 3, 2015. The letter details the history of the Mandt property in Section 29 in the Town of Deerfield. The letter notes that Mandt property was rejected by Dane County Zoning for the registration of existing mineral extraction sites in 1969. The letter goes on to state that the current quarry located at 3528 Oak Park Road is in conformance with Dane County Code of Ordinances. The information in the letter provides public knowledge of the property over the past 45 years and does not render any a new decision of the status of the property.

What the appellant is trying to do, in effect, is request that the Board of Adjustment review a determination that was made in 1969. Although the March 3rd letter notes the determination, it should not create a precedence to have that decision be reviewed 45 years after the fact. This appeal is untimely. Both Dane County Code of Ordinances section 10.26(3) and Wisconsin State Statutes section 59.694(4) states that an appeal of a decision must be within a reasonable amount of time of that decision. The appellant's primary purpose of this appeal is to open the door to argue a determination made by Dane County in 1969.

In 1969, Dane County changed the zoning ordinances under Ordinance Amendment #1163 making mineral extraction land uses a conditional use permits. The amendment provided a one-year period for interested landowners to register their existing mineral extraction sites so that there would be documentation of the soon to be non-conforming land use. Norman Carpenter and Sons tried to register the Mandt Property as an existing quarry operation in 1969. The registration was rejected by the Dane Count Zoning Administrator and the property was not listed in the "non-conforming mineral extraction book". Please note that 30% of the 322 requests were rejected in 1969. This rejection was not appealed by Norman Carpenter or by Vernon Mandt.

What the appellant is claiming is that the County overlooked is an extremely small area, approximately 8000 square feet, which appears to be only excavated once. Historic photographs show an absence of activity from 1937 to 1968. In affidavits supplied to Dane County Zoning, the material from this excavated area was known to be used for the construction of a round barn on the property sometime prior to 1937. Using gravel or sand on-site for construction projects is not considered a mineral extraction operation (Dane County Zoning Ordinance definition 10.01(36m)(a)). With the absence of any resemblance of an existing quarry shown on the 1968 aerial photo, Ijj-88, it appears that the Dane County Zoning Division made a reasonable decision to reject the request in 1969.

Vernon Mandt accepted the new ordinances for mineral extraction operations. In 1981, Mineral Extraction Permit #81-61 was obtained by Rude Sand and Gravel from Dane County to begin a quarry operation on the Mandt property. Conditional use permits have been issued for years following for the continuation of the quarry operation.

The current quarry is operated under Conditional Use Permit #2103. The quarry operation at 3528 Oak Park Road under the ownership of Oak Park Quarry LLC is in compliance with Dane County Code of Ordinances.

Pertinent History

A. Prescott originally owned the 200-acre property as noted in the 1890 plat book.

Prescott started a farmstead which included the construction of a round barn as shown in the 1937 aerial photo.

Prescott sold the farm to the Rudy Mandt in 1952.

In 1968, the Dane County Board adopted Ordinance Amendment #1163 which required mineral extraction operations to obtain a conditional use permit or mineral extraction permit. (See attachment)

In 1969, Norman Carpenter tried to register the Mandt property located in Section 29, Town of Deerfield. The registration was rejected by the Dane County Zoning Administrator and was not made part of the registration of existing mineral extraction operations. Note that Mandt owned a second farm in Section 9 in Deerfield which was used material for the US Highway 30 construction project.

In 1981, Karl Rude obtained Mineral Extraction Permit #81-61 to begin a gravel quarry on the Mandt property.

In 1985, Conditional Use Permit #427 was issued to the Mandt property for the continuation of the mineral extraction quarry.

In 1995, Conditional Use Permit #1316 was issued to the Mandt property for the continuation of the mineral extraction quarry.

In 2002, Conditional Use Permit #1757 was issued to the Mandt property for the continuation of the mineral extraction quarry.

In 2009, Conditional Use Permit #2103 was issued to the Mandt property for the continuation of the mineral extraction quarry. The quarry operation is currently operating under this approval.

Argument of the appeal

On March 13th, Attorney Mitchell Olson submitted an administrative appeal regarding the letter written on the Mandt property. The administrative appeal letter (attached) lists 9 “factual history” items. Below is the Dane County Zoning Division’s response to these items:

1. Property acquired by Oak Park Quarry, LLC from Vernon Mandt

Dane County does not dispute this fact. The transfer of property is noted on Dane County Register of Deeds document #4710692.

2. Filed affidavits

The appellant has submitted affidavits from individuals that have lived in the area that recall a quarry operation on the property from the 1940’s to the 1980’s. A photo was attached to the affidavits showing an excavated area approximately 8000 square feet. The affidavits contend that this area was the site for the quarry operation.

The affidavits all claim that the so-called quarry was in operation from the 1940’s through the 1960’s. The affidavit from Richard Erickson even notes that Carl Rude operated the quarry between 1966 and 1968 and kept an old crusher in the quarry. However, the aerial photos from 1937 to 1968 show no activity on the site and the 1968 aerial photo does not show any equipment at the site.

Dane County Zoning has obtained an affidavit from Vernon Mandt, the owner of the property from 1959 to 2010, which provides clarity to this identified feature. (See attached.) Vernon Mandt states that this area was excavated by the previous owner (Prescott) in order to obtain material to construct a silo and a foundation for a round barn on the property. Vernon Mandt also stated that he did not contract with a mineral extraction operator until 1978. The actual quarry operation started in 1981 under Mineral Extraction Permit #81-61.

Dane County Zoning has also obtained affidavits from John and Dennis Mandt (sons of Vernon Mandt), Daniel Kelly, Fredrick Nelson, and Karen Harbort (neighbors) that state similar history of the Mandt property. (See attached.)

3. Aerial Photography

The appellant claims that there was a mineral extraction operation on the property which is identified in the 1937, 1940, 1955, and 1968 aerial photos.

The affidavit from Jeff Kreamer of Stantec notes a disturbance area in the 1937 photo where excavation had taken place. Note that the 1937 photo shows a constructed round barn on the farmstead. The 1940 photo shows the same excavated area, approximately 80'x 100', with no increase in size. The 1955 aerial photo shows the area overgrown with vegetation, and the 1968 photo shows the area fully wooded. From 1937 to 1968, the size and shape of the excavated area does not change. This is verified by Jeff Kreamer's affidavit report. The photos do not contain any evidence of a quarry operation. There are no gravel piles, equipment, access drive, or any other signs of a mineral extraction operation. The area appears just to be used on one occasion possibly for the construction of buildings on the farm as stated by Vernon Mandt in his affidavit.

4. Affidavit from Jeff Kreamer

The appellant claims that the report from Jeff Kreamer of Stantec proves that a quarry existed on the property.

The affidavit from Jeff Kreamer, Stantec, only notes that there was man-made land disturbing activity in the area. The report notes that the boundaries of the land disturbing activity did not change since the 1937 aerial photo. The report does not provide any information regarding who excavated the area, company information for the perceived quarry operation, or sales tax receipts from the sales of aggregate. There is no proof within the report that a quarry operation existed on the property prior to 1981 when Rude Sand and Gravel obtained a Mineral Extraction Permit from Dane County.

5. Dane County's determination

The appellant claims that Dane County declined to accept the Vernon Mandt property in 1969.

Dane County does not dispute this fact. In 1969, the record shows that the Dane County Zoning Administrator rejected the Mandt property registration due to lack of photo evidence and field evidence as noted on the registration verification sheet. The record also shows that 322 properties were requested for registration and 30% of those properties were rejected. The determination was not disputed in 1969.

6. There was a mistake made on letter for registration noting the wrong quarter section.

The inspection form used for the registration request of the Mandt farm notes that Ijj-88 aerial photo was used in the determination. This photo shows Section 29 of the Town of Deerfield in its entirety. The entire Mandt property is clearly visible on the photo.

7. The Administrator's opinion suggests that Mandt was the mistaken owner of the Kelly Quarry.

The registration letter came from N. Carpenter and Sons. The 1968 aerial photo Ijj-88 shows only one existing mineral extraction operation in Section 29. This quarry is on the Kelly property. Mr. Carpenter may have mistaken this for property owned by Vernon Mandt.

8. Wisconsin DOT records show the Mandt Pit in Section 29 was subject to testing in 1987, 1989, and 1995.

This information has no bearing on whether or not a mineral extraction operation existed prior to 1969 to qualify as a non-conforming site.

9. Wisconsin DOT records show the Mandt Pit in Section 9 and in Section 29 was subject to testing.

This information has no bearing on whether or not a mineral extraction operation existed prior to 1969 to qualify as a non-conforming site.

Summary

The record clearly shows that the Mandt property was rejected by the Dane County Zoning Administrator in 1969. The property had to meet two requirements in order to be deemed a registered non-conforming mineral extraction site: 1) A mineral extraction operation must have existed prior to 1969 and, 2) the site registered with the Dane County Zoning Administrator. It appears that both of these requirements were not met.

No significant evidence was presented that shows that a legitimate quarry operation was present on the Mandt property prior to 1969. There is only a small portion of land, 8000 square feet, which was excavated sometime prior to 1937 showing no signs of activity since. In 1969, the property was rejected for registration due to the lack of evidence showing an existing mineral extraction operation. Neither Vernon Mandt nor the agent appealed the rejection. Further, the record shows that Vernon Mandt complied with the new ordinance by obtaining mineral extraction permits and conditional use permits when the mineral extraction operation started on the property.

The property located at 3528 Oak Park Road is now owned by Oak Park Quarry LLC. The present mineral extraction operation is compliance with Dane County Code of Ordinances as identified under Conditional Use Permit #2103.

Finding of Fact

I respectfully request that the Dane County Board of Adjustment make the following Findings of Fact:

1. The appeal of the Zoning Administrator's March 3rd letter resonates of for a decision that was made by Dane County in 1969 and is found to be untimely.
2. In 1969, the Dane County Zoning Administrator rejected the registration of the Mandt property for an existing mineral extraction site located in Section 29, in the Town of Deerfield.
3. There is no substantial evidence to support that a mineral extraction operation existing on the property prior to 1969.
4. The previous property owners of 3528 Oak Park Road (Mandt) obtained all necessary Dane County approvals, from 1969 to current, to operate a mineral extraction operation (quarry) on the property.

Conclusion

With the aforementioned evidence, I respectfully request that the Dane County Board of Adjustment make the following conclusion:

1. Affirm that the information contained within Zoning Administrator's opinion letter is true and accurate.
2. The property located at 3528 Oak Park Road was not registered as an existing mineral extraction operation in 1969 and does qualify as a non-conforming mineral extraction site.
3. All present and future non-metallic mineral extraction uses on the property located at 3528 Oak Park Road shall comply with Dane County Code of Ordinance Section 10.191, *Procedures and Standards of Operation for Mineral Extraction Operations*.

March 3, 2015 Letter from Zoning
Administrator Lane regarding Oak
Park Quarry



DANE COUNTY
PLANNING & DEVELOPMENT

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

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Economic Development*
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Planning
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Records & Support
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Zoning
(608)266-4266, Rm. 116

March 3, 2015

Mitchell R. Olsen
Axley Brynelson, LLP
2 East Mifflin Street
Madison, WI 53703

RE: Oak Park Quarry LLC letter (former Vernon Mandt property)

This correspondence is in regards to your letter that you had sent to me on February 4, 2015 with the heading: *Open Records Request*. The letter did not request any open records but in fact request an opinion as to whether an existing mineral extraction site qualifies as a non-conforming use. My analysis of the matter is as follows:

The property in question is known as the Oak Park Quarry which located at 3528 Oak Park Road, Section 29, in the Town of Deerfield. There is a mineral extraction operation located on the property operating under Conditional Use Permit #2103. The 181-acre property was owned by Vernon Mandt from 1959 until 2010 when it was sold to the current owner, Oak Park Quarry, LLC.

In 1969, property owners were given the opportunity to submit information on the location of existing mineral extraction sites so that sites could be recorded as existing land uses prior to the adoption of new mineral extraction ordinances. At the time, the new ordinance amendment (#1163) would change mineral extraction activities from a permitted use to a use requiring a conditional use permit. The change would make existing sites non-conforming uses.

The record shows that N. Carpenter and Son had tried to register the Vernon Mandt Property located in Section 29 of the Town of Deerfield for a "rock quarry comprising of 10 to 15 acres of rock". (See exhibit A). The Zoning Supervisor (Administrator) in 1969, William Massarene, reviewed aerial photography for the requested site and denied the property for registration. The registration report notes "no" as being accepted as an existing site. (See exhibit B). The area was not mapped in the Non-conforming Mineral Extraction Maps and not included in as a non-conforming site.

In looking at the 1968 photo, it appears that N. Carpenter and Son were trying to identify a quarry located on the Kelley property in Section 29. The photo clearly shows an existing active quarry but unfortunately it is not part of the Vernon Mandt Property. (See exhibit C) The Kelley property was not submitted as part of registration.

In 1969, Dane County Zoning Supervisor William Massarene determined that the Mandt property was not an existing mineral extraction site and thus not registered as a non-conforming site. It

appears from the historic records that this determination was not disputed by Vernon Mandt in 1969 or in any future years.

Further, the record shows that Vernon Mandt kept all of the land use activities on his property in compliance with Dane County Code of Ordinances from 1969 to the time he sold the property in 2010. He obtained a mineral extraction permit M81-61, in 1981 to allow mineral extraction. (See exhibit D). Mr. Mandt continued to obtain conditional use permits (CUP) throughout the years for mineral extraction to keep his property in conformance with current zoning regulations. He obtained CUP #427 in 1985, CUP #1316 in 1995, and CUP #1757 in 2002. Mr. Mandt also obtained the current conditional use permit, CUP #2103 that allows the extraction of non-metallic minerals on the property to date. (See exhibit E).

The current owner, Oak Park Quarry LLC, is operating a mineral extraction site on the property under the conditions of CUP 2103. There is a communication tower on the property that is allowed under CUP 1596. The remaining land is being agriculturally cropped which is permitted by right in the A-1 Exclusive Agriculture Zoning District. All land uses that are being conducted on the former Mandt property appear to be in compliance with Dane County Code of Ordinances.

My review finds that the property and its activities located at 3528 Oak Park Road, Section 29, in the Town of Deerfield are in conformance with the Dane County Zoning Ordinance. The property does not contain any non-conforming uses.

I have reviewed all the information that you have sent me over the last few months that gives a historic perspective on the Mandt property. The area that is referenced in the Stantec report has never been included as a registered non-conforming mineral extraction site. The referenced area is included in the boundaries of the current conditional use permit #2103 and is deemed to be compliance with current Dane County Zoning Ordinances. (See exhibit F)

In summary, the record shows that the property was never included as a non-conforming mineral extraction site; determination was never disputed as not being a non-conforming site; the previous owner did his due diligence to keep all of the land use activity on his property in conformance with current Dane County Code of Ordinances. The property does not contain a non-conforming use.

I hope this information provides value to you and your client.

Respectfully,



Roger Lane
Dane County Zoning Administrator

Cc:
Oak Park Quarry, LLC
Assistant Zoning Administrator Daniel Everson
Planning and Development Director Todd Violante
Assistant Corporation Counsel David Gault
Town of Deerfield Clerk



AXLEY BRYNELSON, LLP

• • • • •
MITCHELL R. OLSON
molson@axley.com
608.283.6724

February 4, 2015

VIA HAND DELIVERY

Mr. Roger Lane
Dane County Zoning Administrator
City-County Building, Room 116
210 Martin Luther King, Jr., Blvd.
Madison, WI 53703

RECEIVED

FEB 4 2014

DANE COUNTY PLANNING & DEVELOPMENT

RE: *OPEN RECORDS REQUEST*
Our Client: Mr. Jon Halverson

Dear Mr. Lane:

This follows the meeting held with you, Attorney Charles V. Sweeney, and the undersigned, on January 5, 2015 regarding the Oak Park Quarry in the Town of Deerfield, Wisconsin. At that time, we presented to you a package of Affidavits documenting our client's position that the Oak Park Quarry should qualify as a non-conforming use. At that time we promised that we would be supplying an additional Affidavit from Mr. Jeff Kraemer, at Stantec, which included historical aerial photographic analysis.

Enclosed please find Mr. Kraemer's Affidavit as well as a disk containing the Exhibits and aerial photographs which are referenced in his Affidavit.

At this time, we have submitted to you all of our supplemental information relative to this issue. We refer you back to our letter of September 25, 2014, seeking establishment of a non-conforming use.

We formally request that you, as Dane County Zoning Administrator, issue a written opinion as to whether this site qualifies as a non-conforming use. Please supply your written opinion in that regard to the undersigned at your earliest convenience. Thank you for your attention to this matter.

Sincerely,

AXLEY BRYNELSON, LLP

Mitchell R. Olson
MRO/tmd
Enclosures

cc: Attorney Charles V. Sweeney
Mr. Jon Halverson
Attorney David Gault, Corporation Counsel Dane County (via U.S. mail w/encl.)

N. CARPENTER and SON

LIMESTONE PRODUCTS

CAMBRIDGE, WISCONSIN 53523

PHONE 608 — 423-3635

✓ (4)

VERNON MANOT (OWNER) ^{SEE X}

Vernon Manot

TOWN OF DEERFIELD

SECTION # 29

STARTED IN
1859

ROCK QUARRY COMPRISING 10 TO 15
ACRES OF ROCK —

N. W. OF ~~THE~~ N. W. 4.

EXHIBIT A

MINERAL EXTRACTION REGISTRATION

TOWN Deerfield SECTION 29

OWNER Vernon Mandt

REGISTERED BY N. Carpenter and Son

DESCRIPTION OF LAND REGISTERED NW¹/₄ NE¹/₄

ZONING DISTRICT A-1

ZONING DEPARTMENT VERIFICATION

<u>1/4 1/4</u>	<u>AERIAL PHOTO NO.</u>	<u>PHOTO EVIDENCE</u>	<u>FIELD EVIDENCE</u>	<u>ACCEPTED</u>
<u>NW¹/₄ NE¹/₄</u>	<u>LJJ-88</u>	<u>---</u>	<u>---</u>	<u>Yes</u>
<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>
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COMMENTS _____

EXHIBIT B



EXHIBIT C

MINERAL EXTRACTION PERMIT - DANE COUNTY, WISCONSIN

The undersigned hereby applies for a permit to extract mineral resources in Dane County as required by Chapter 10.12 (2) (a) of the Dane County Ordinances. The undersigned declares that the statements made below are true and that the proposed mineral extraction is in full compliance with all laws and ordinances applicable thereto.

LAND

TOWN DEERFIELD SECTION 29 QUARTER SE NW + NE SW ACREAGE 10 ±
HIGHWAY OAK PARK RD. WIDTH 66 CLASS C FRONTAGE _____
OWNER _____ CONTRACTOR RUDE SAND + GRAVEL, INC.
3522 OAK PARK RD 1942 U.S.H. 12
DEERFIELD, 53531 CAMBRIDGE, WI. 53523

PUBLIC HEARING

DISTRICT A-2 Agr. LAND USES (600 FEET FROM EXCAVATION) _____
AGRICULTURAL
READY-MIX PLANT No HOT BLACK TOP MIX PLANT No
PUBLIC HEARING REQUIRED No INSPECTION _____ HEARING _____
DECISION OF ZONING, PLANNING & WATER RESOURCES COMMITTEE _____

OPERATION INFORMATION

TYPE OF EXTRACTION QUARRY AREA OF EXCAVATION 10 ACRES ±
DISTANCE FROM RIGHT OF WAY OF HIGHWAY _____ TOPSOIL STOCKPILED YES
WASHING OPERATION NO SOURCE OF WATER _____ ESTIMATED _____
DAILY QUANTITY _____ DISPOSITION _____
EXCAVATION TO WATER PRODUCING DEPTH _____ (If excavated to water producing level, excavation must be continued to at least three (3) feet below water line).
SITE PLAN SUBMITTED _____ ESTIMATED STARTING DATE _____ ESTIMATED TERMINATION DATE _____
RECLAMATION PLAN SUBMITTED YES PROPOSED LAND USE AFTER TERMINATION PROBABLE FENCED-LOT, CATTLE AREA

SIGNED AS PER LETTER
(Owner - Agent)

PERMIT ISSUED 4-29-81 EXPIRES 4-29-85 PERMIT NUMBER MS1-61

William Flank
Zoning Supervisor

INSPECTION

DATE _____ COMMENT _____
DATE _____ COMMENT _____
DATE _____ COMMENT _____
DATE _____ COMMENT _____

TERMINATION INSPECTION _____ COMPLIANCE WITH TERMINATION AND RECLAMATION PLA _____

EXHIBIT D



Dane County Zoning Division
City-County Building
210 Martin Luther King, Jr., Blvd., Room 116
Madison Wisconsin 53703
(608) 266-4266

EXHIBIT E

DANE COUNTY
CONDITIONAL USE PERMIT #2103

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 #2103 for a Mineral Extraction Site pursuant to Dane County Code of Ordinance Section 10.194 and subject to any conditions contained herein.

EFFECTIVE DATE OF PERMIT: MARCH 24, 2009

THE CONDITIONAL USE SHALL BE LOCATED ON THE PROPERTY DESCRIBED AS FOLLOWS: 3522 Oak Park Road, Town of Deerfield, Dane County, Wisconsin.

Parcel # 0712-293-8000-2

Description:

Part of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, Town of Deerfield described as follows: Commencing at the southeast corner of the Northwest quarter of said Section 29, thence West along the South line of said NW $\frac{1}{4}$ to the centerline of Oak Park Road and the Southwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 29; thence North along the West line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, 150 feet to the point of beginning; thence North along the West line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, 820 feet; thence east 1010 feet; thence S23 degrees West, 580 feet; thence South parallel to the West line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, 280 feet; thence West 770 feet to the point of beginning.

Also:

Part of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and part of the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, Town of Deerfield described as follows: Commencing at the Southeast corner of the Northwest quarter of said Section 29; thence West along the South line of said NW $\frac{1}{4}$ to the centerline of Oak Park Road and the Southwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 29; thence North along the West line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, 150 feet to the point of beginning. Thence East 800 feet; thence South parallel to the West line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, 550 feet; thence West 800 feet; thence North along the West line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, 550 feet to the point of beginning.

CONDITIONS:

1. The applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
2. Reclamation shall meet the requirements of Chapter 74 of the Dane County Code of Ordinances.

(Page 2, CUP 2103)

3. The applicant shall apply for and receive all other required local, state and federal permits.
4. Operations shall cease no later than 10 (ten) years from the date of CUP approval.
5. The driveway accessing the subject site shall be paved for a distance of at least 100 feet from the public road. 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.
6. The haul route will be Oak Park Road South to USH 12.
7. The access to the driveway shall have gates securely locked when the extraction site is not in operation. The site shall be signed "no trespassing."
8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m., Monday through Friday, and from 7:00 a.m. to 1:00 p.m. on Saturdays. No operations of any kind shall take place on Sundays or legal holidays.
9. There shall be a safety fence around the entire extraction area at all times. That safety fence shall be a minimum of 5 feet in height with a single strand of barbed wire on the top.
10. No water shall be pumped or otherwise removed from the site.
11. There shall be no bulk fuel stored on site
12. The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
13. The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076.
14. 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.

(Page 3, CUP 2103)

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.



0 250 500 1,000 Feet



Exhibit F

Oak Park Quarry Property
3528 Oak Park Road
Town of Deerfield

March 13, 2015 Letter from Attorney
Mitchell Olson regarding an appeal to
Zoning Administrator Lane's Oak
Park Quarry letter



AXLEY BRYNELSON, LLP

• • • • •

MITCHELL R. OLSON
molson@axley.com
608.283.6724

March 13, 2015

VIA HAND DELIVERY

Mr. Roger Lane
Dane County Zoning Administrator
City-County Building, Room 216
210 Martin Luther King, Jr., Blvd.
Madison, WI 53703

RE: *Administrative Appeal of Zoning Administrator's Determination
Oak Park Quarry, LLC*
Our Client: Mr. Jon Halverson / Oak Park Quarry, LLC

Dear Mr. Lane:

We represent Mr. Jon Halverson and Oak Park Quarry, LLC. Please let this letter serve as a notice of an administrative appeal to the Dane County Board of Adjustment of the Zoning Administrator's written decision dated March 3, 2015. A copy of the decision subject to appeal is attached hereto as Exhibit A. Also enclosed herewith is a check for \$350.00 payable to the Dane County Zoning Division, for the administrative appeal fee.

This appeal is made pursuant to Dane County Ordinance §15.14(6), which authorizes the Board of Adjustment "[t]o hear and decide appeals where it is alleged that here has been an error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of the zoning ordinance or section 59.97 of the Wisconsin Statutes."

The following factual history is relevant to this appeal:

1. Oak Park Quarry, LLC owns the former Vernon Mandt farm in Section 29, Town of Deerfield, Dane County, Wisconsin (the "Quarry"). The Quarry parcel as acquired from Mandt by Oak Park Quarry, LLC, consists of Dane County Parcel Numbers 071229395005, 071229380002, 071229295319, 071229280110, and 071229190011.
2. Individuals with first hand observations of the Quarry from the 1940s to 1980s have supplied Affidavits documenting that they observed a quarry on the Mandt Farm just to the east of Oak Park Road. See Affidavits of Sharon Halverson, Donald Strand, Phyllis

Mr. Roger Lane
Dane County Zoning Administrator
March 13, 2015
Page 2

Syvrud, John Prescott, Richard Erickson, and Robert Riege. (Exhibits B, C, D, E, F, and G) These witnesses recollect a quarry with a high wall of 15-20 feet in height dating back to the 1940s and 1950s.

3. Aerial photography records also show that mineral extraction operations have existed at the Quarry since before 1969. Provided herewith is the Affidavit of Jeff Kraemer of Stantec. The Kraemer Affidavit incorporates and interprets a series of historical aerial photographs. Mr. Kraemer renders an expert opinion that the area claimed to be a quarry was clearly subjected to man-made operations consistent with quarry operations, and inconsistent with agriculture. This man-made disturbance dates back at least to 1937 per the aerial photos. (Exhibit H)
4. In 1969, N. Carpenter & Sons attempted to register the Vernon Mandt Quarry with Dane County pursuant to Dane County Code of Ordinance ("DCCO") § 10.191(6). (Exhibit I) Under § 10.21(1)(c) DCCO: "Mineral extraction operations which existed prior to 1969 and were registered with and approved by the Dane County Zoning Administrator shall be considered nonconforming uses." The significance of having a registered mineral extraction site is that once registered, the mineral extraction site is not to be considered abandoned or discontinued if the site is inactive for more than one year. DCCO § 10.21(1)(d).
 - a. The document indicates that the Quarry was "started in 1859."
 - b. The original handwriting on the document lists the location as "Town of Deerfield, Section # 29."
 - c. The document describes the quarry as "rock quarry comprising 10 to 15 acres of rock."
 - d. In what appears to be *different handwriting*, someone entered in "N.W. of N.W. ¼."
5. As indicated in the Administrator's Decision, Dane County completed a document entitled "Mineral Extraction Registration," purportedly in 1969, for Vernon Mandt in Section 29, Town of Deerfield. (Exhibit J)
 - a. The Form indicates review only on aerial photo inspection, not photo evidence or field evidence.
 - b. The Form indicates the review was only of the NW ¼ NW ¼.
 - c. Dane County asserts the Form declines to accept the registration.

Mr. Roger Lane
Dane County Zoning Administrator
March 13, 2015
Page 3

6. There never was a quarry in the NW ¼ NW ¼ of Section 29. All aerial photography documents that fact. Moreover, Vernon Mandt never owned the NW ¼ NW ¼ of Section 29. The only reasonable conclusion is that the person who wrote “NW of NW ¼” on the application in 1969 made a mistake of fact / scrivener’s error.
7. Vernon Mandt also never owned the parcels in Section 29 which held what was commonly known as the “Kelly Quarry.” The Kelly Quarry was in the NW ¼ NE ¼ and/or NE ¼ NE ¼ of Section 29. The Administrator’s Decision suggests the intent of Vernon Mandt was to register the Kelly Quarry. Neither the owner nor the legal description match the Kelly Quarry, however.
8. Wisconsin DOT records show the Mandt Pit in Section 29 was subject to testing in years 1987, 1989, and 1995. (Exhibit K)
9. Wisconsin DOT records show the Mandt Pit in Section 29 was subject to testing, based on notations as to test numbers 2151-2-50 and 2013-3-53, in years 1950 and 1953. The document supports a conclusion that the Mandt Pit was an approved source for DOT projects. (Exhibit L)

The following procedural history is relevant to this appeal:

1. Jon Halverson and legal counsel met with Administrator Lane on January 5, 2015. All of the affidavits, except for Kraemer and Riege, were then presented. An oral request was made for an opinion on whether the Oak Park Quarry qualified as a non-conforming use.
2. By letter dated 2/4/2015, Counsel for Oak Park wrote to Administrator Lane, submitting the Kraemer Affidavit. Said letter specifically requested a formal opinion on whether the Oak Park Quarry has nonconforming use status. (Exhibit M)
3. By letter dated 2/27/2015, Counsel for Oak Park wrote to Administrator Lane, submitting the Riege Affidavit. Said letter again requested a formal opinion on whether the Oak Park Quarry has nonconforming use status. (Exhibit N)
4. By letter dated March 3, 2015, Roger Lane responded to the 2/4/2015 Letter and concluded that the “property does not contain a non-conforming use.” (Exhibit A)

Mr. Roger Lane
Dane County Zoning Administrator
March 13, 2015
Page 4

DISCUSSION

I. The Appeal Is Properly Brought before the Board of Adjustment.

A. Applicable Dane County Ordinances

DCO 10.25(1) Zoning Administrator. (a) The provisions of this ordinance shall be administered by or under the zoning administrator.... (b) It shall be the duty of the zoning administrator to ... take such action as may be necessary for the enforcement of the regulations provided herein....

DCO 15.14(6) The board of adjustment shall exercise the following powers and responsibilities: (a) To hear and decide appeals where it is alleged that there has been an error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of the zoning ordinance or section 59.97 of the Wisconsin Statutes.

DCO10.26(3) *Appeals to the board.* Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the zoning administrator or other administrative officer.... Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

DCO 10.26(6) *Powers of the board of adjustment.* The board of adjustment shall have the following powers: (a) To hear and decide appeals where it alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of sections 59.69, 59.692 or 87.30. Wis. Stats., or of any ordinance adopted pursuant thereto.

B. The Administrator's March 3, 2015 Letter is an appealable decision.

The County Ordinances clearly indicate that an appeal to the Board of Adjustment must relate to a zoning administrator's determination. Roger Lane's 3/3/2015 Letter made a direct and substantive response to the request for a determination on non-conforming use status.

Oak Park submits that this appeal within 30 days of the 3/3/2015 Letter. Thus, this appeal should be deemed timely and addressed on the merits.

Mr. Roger Lane
Dane County Zoning Administrator
March 13, 2015
Page 5

II. The Oak Park Quarry Has Non-Conforming Use Rights.

Jon Halverson / Oak Park Quarry, LLC, appeal the March 3, 2015 Determination on the following grounds:

The Quarry was first opened in 1859. The Quarry, based on eye witness testimony and aerial photography analysis, clearly existed in the 1940s and 1950s. In 1969, N. Carpenter & Sons attempted to register the Quarry with Dane County pursuant to Dane County Code of Ordinance ("DCCO") § 10.191(6). Under § 10.21(1)(c) DCCO: "Mineral extraction operations which existed prior to 1969 and were registered with and approved by the Dane County Zoning Administrator shall be considered nonconforming uses." The significance of have a registered mineral extraction site, *inter alia*, is that once registered, the mineral extraction site is not to be considered abandoned or discontinued if the site is inactive for more than one year. DCCO § 10.21(1)(d).

The Quarry qualifies as a nonconforming mineral extraction site. There are two criteria to meet the standard. First, the mineral extraction operation must have existed prior to 1969. DCCO § 10.21(1)(c). Second, the site must be registered with and approved by the Dane County Zoning Administrator. *Id.* These two standards should be deemed satisfied under the facts presented.

First, mineral extraction operations existed at the Quarry since well before 1969. The Affidavits of Sharon Halverson, Donald Strand, Phyllis Syvrud, John Prescott, Richard Erickson, and Robert Riege, as well as the Affidavit and aerial photos from Jeff Kramer, cannot be disputed. [DOT records?]

The second criterion is whether the site was registered with Dane County zoning. Enclosed is a copy of the N. Carpenter & Son registration of the Property. The location of the property is identified as Section 29 in the town of Deerfield. We note that there is a notation at the end of the registration of "N.W. of N.W. ¼." Dane County Zoning interprets this to mean that only the N.W. of the N.W. ¼ was sought to be registered.

However, the N.W. of N.W. ¼ must be disregarded for several reasons. Further, as discussed below, the indication of the quarter quarter section on a registration is immaterial to whether a mineral extraction site was registered.

Mr. Roger Lane
Dane County Zoning Administrator
March 13, 2015
Page 6

First, the handwriting of the N.W. of N.W. ¼ is plainly different than the rest of the handwriting on the registration of the site. Since this was submitted to Dane County in 1969, we have no way of knowing who included this extra notation. However, it is plain that the extra notation was not written by whoever prepared the registration. It suggests that a mistake may have been made.

Second, Mr. Mandt did not own any property in the NW ¼ of the NW ¼, Section 29, Town of Deerfield. Nevertheless, Mr. Mandt and N. Carpenter & Sons obviously intended to register Mr. Mandt's property, because they completed and submitted a mineral extraction registration to Dane County (*see also*, Exhibit G, Mr. Mandt's *Affidavit of Intent to Mine*). This further suggests a mistake was made.

Third, Mr. Mandt has submitted an *Affidavit of Intent to Mine* (Exhibit G). That Affidavit explicitly provides that the inclusion of the N.W. of N.W. ¼ in the registration was in error. Rather, the registration was intended for all of the Mandt property located in Section 29 in the town of Deerfield.

Under these circumstances, the County's aerial review of a registration in the NW ¼ NW ¼ was in review of an erroneous description. If actual aerial photography or a field inspection were made of the correct Quarry location, the registration certainly would have been verified. The County today should be readily able to appreciate this erroneous legal description and correct same.

Thus, the Quarry has met both requirements of § 10.21(1)(c) DCCO, mineral extraction, and is as a legal nonconforming use, which Dane County cannot prohibit. Further, under § 10.21(1)(d), as a registered nonconforming site, it does not matter if the Quarry has been mined continuously, or if mineral extraction operations were otherwise discontinued.

As a nonconforming use, Dane County cannot prohibit, or require permits for, the establishment or expansion of the Quarry. Wisconsin has long-standing law regarding nonconforming uses for mineral extraction. In *Sturgis v. Winnebago Co. Bd. of Adjustment*, 141 Wis. 2d 149, 413 N.W.2d 642 (Ct. App. 1987), Wisconsin first recognized the diminished asset rule. In *Sturgis*, the Wisconsin Court of Appeals quoted from the Illinois Supreme Court explaining the rule:

This is not the usual case of a business conducted within buildings, nor is the land held merely as a site or location whereon the enterprise can be conducted indefinitely with existing facilities. In a quarrying business the land itself is a mineral or resource. It constitutes a diminishing asset and is consumed in the very process of use. Under such facts the ordinary concept of use, as applied in

Mr. Roger Lane
Dane County Zoning Administrator
March 13, 2015
Page 7

determining the existence of a nonconforming use, must yield to the realities of the business in question and the nature of its operations. We think that in cases of a diminishing asset the enterprise is “using” all that land which contains the particular asset and which constitutes an integral part of the operation, notwithstanding the fact that a particular portion may not yet be under actual excavation. It is in the very nature of such business that reserve areas be maintained which are left vacant or *332 devoted to incidental uses until they are needed. Obviously, it cannot operate over an entire tract at once.

Sturgis, 141 Wis.2d at 153, 413 N.W.2d at 643-44 (quoting *County of DuPage v. Elmhurst-Chicago Stone Co.*, 18 Ill.2d 479, 165 N.E.2d 310, 313 (1960))

In *Smart v. Dane Co. Bd. of Adjustment*, 177 Wis. 2d 445, 501 N.W.2d 582 (1993), the Wisconsin Supreme Court applied the diminishing asset rule to the expansion of a nonconforming mining operation. Under the diminished asset rule, the property owner is “using” all of the land that contains the particular asset and which constitutes an integral part of the operations, notwithstanding the fact that the particular portion may not be under actual excavation. *Smart*, 177 Wis. 2d at 454. The Court reasoned that in the quarrying business the land itself is a mineral or resource and constitutes a diminished asset as it is consumed in the very process of use. *Id.*

As related to the matter at hand, *Schroeder v. Dane Co. Bd. of Adjustments*, 228 Wis. 2d 324, 596 N.W.2d 472 (Ct. App. 1999), is directly on point. In that case, the Wisconsin Court of Appeals considered how §§ 10.191 and 10.21 DCCO are to be interpreted in light of the diminishing assets rule. The specific issue was whether a registration that only indicated one quarter quarter section could be expanded beyond that quarter quarter section without a conditional use permit issued by Dane County. The court reviewed §§ 10.191 and 10.21 DCCO and determined that under the diminishing asset rule, regardless of the quarter quarter section listed on the registration, the property owner could expand the mineral extraction site without the need for a conditional use permit.. The court stated:

Neither § 10.191(6) nor § 10.21(1)(c) make any reference to the intended area of expansion of the operation, whether it must be registered, or how it is to be determined and approved by the county. The ordinance sections do not refer to registration of “area” at all, but only to registration of “operations.”

Schroeder, 228 Wis. 2d at 335.

Mr. Roger Lane
Dane County Zoning Administrator
March 13, 2015
Page 8

The Wisconsin Court of Appeals explained that “[t]he diminishing asset rule is a gloss on the definition of ‘existing use’ for mineral extraction operations whereby all land which constitutes an integral part of the operation, notwithstanding the fact that it was not under actual excavation, is considered ‘in use.’” *Schroeder v. Dane Co. Bd. of Adjustments*, 228 Wis. 2d 324, 341, 596 N.W.2d 472 (Ct. App. 1999). Therefore, when a property owner has a legal nonconforming mineral extraction site, it can be expanded under the law of diminishing assets, regardless of any size included with the registration. The only limitation is the owner’s intent and ownership of the property. *Id.*

The above legal authorities make absolutely clear that the Quarry is a legal nonconforming mineral extraction site, and that Oak Park Quarry, LLC can conduct a mineral extraction operation at the Quarry without the need for a conditional use permit. Under what is commonly referred to as the “diminishing assets rule,” the county cannot require a conditional use permit for the expansion of the legal, nonconforming mineral extraction site, nor can it prohibit extraction regardless of whether a conditional use permit has been issued.

Finally, the fact that Oak Park, and its predecessors, have applied for and received a conditional use permit for this quarry does not eliminate the non-conforming use rights. No Wisconsin cases provide that a CUP eliminates non-conforming use status. Further, the Minnesota Supreme Court recently addressed this issue and concluded that a CUP does not terminate non-conforming use rights.

In *White v. City of Elk River*, it was undisputed that the land use (campground) was nonconforming when the zoning ordinance became effective. The litigants disputed what effect, if any, the CUP obtained by the campground had on the non-conforming use rights. The issue was one of first impression in Minnesota. 840 N.W.2d 43 (MN Sup. Ct. 2013). Following the decision of Connecticut in *Taylor v. Zoning Board of Appeals*, 783 A.2d 526 (Conn. App. Ct. 2001) (holding a nonconforming sand and gravel mine that existed before the zoning ordinance was enacted, and which applied for and received a CUP for the use, did not extinguish the right to continue the use independent of the permit), the Minnesota Supreme Court concluded that “a landowner does not surrender the right to continue a nonconforming use by obtaining a conditional use permit unless the landowner validly waives that right.”

A waiver is an intentional relinquishment of a known right. A valid waiver requires (1) knowledge of the right; and (2) an intent to waive the right. An application for a CUP and acceptance of a CUP are not sufficient, alone, to constitute a waiver. *White v. City of Elk River*. Unless there is other evidence of intent to waive, the right remains.

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Mr. Roger Lane
Dane County Zoning Administrator
March 13, 2015
Page 9

Here, there is absolutely no evidence that Oak Park, or its predecessors, ever knowingly waived its nonconforming use rights. Their mere exercise of applying for and receiving a CUP is meaningless. Yet Dane County places great emphasis on that CUP process. Dane County is in error in that regard.

For the aforementioned reasons we disagree with the Zoning Administrator's Determination dated March 3, 2015, and consequently we are requesting that the Board of Adjustment reverse the decision of the Zoning Administrator.

Please set this matter for a hearing in a timely fashion, and advise us of the hearing date.

Thank you.

Sincerely,

AXLEY BRYNELSON, LLP



Mitchell R. Olson
MRO/tmd
Enclosures

cc: Mr. Hans Hilbert (via email w/out encl.)
Attorney David R. Gault (w/encl.)
Attorney Charles V. Sweeney (w/encl.)

Affidavits sent to Zoning Division regarding the Mandt Property

- Affidavit from Vernon and Dolores Mandt
- Affidavit from John “Jack” Mandt
- Affidavit from Dennis Mandt
- Affidavit from Daniel Kelly
- Affidavit from Fredrick Nelson
- Affidavit from Karen Harbort

Mandt Limestone Pit

Vernon Mandt's father, Rudy Mandt, purchased the farm in 1952.

Vernon and his brother, Jack purchased it from Rudy in the fall of 1959.

In the year of 1964 Vernon bought out Jack's share of the farm.

During this period of time there was a small hole or area in the hill side, next to Oak Park Road on this farm. This small area is where previous owners had removed limestone to build the silo and basement of the round barn on the farm.

This small area in the hillside was too small for a truck or a lime rock crusher and had not been used for anything else other than to build the silo and barn basement on the farm to our knowledge.

In the year of 1978, Vernon and Dolores Mandt leased this area to Carl Rude and it became a limestone pit.

After a few years it was leased to Midwest for a very short time.

Then Amon leased it from Vernon and Dolores Mandt up to a couple of years before the farm was purchased by Jonathan Halverson.



Signed Vernon R. Mandt
Vernon R. Mandt

Dolores M. Mandt
Dolores M. Mandt

Vernon R. Mandt and Dolores M. Mandt personally appeared before me this 22nd day of September 2014.

Carri A. Bohn, Notary Public
State of Wisconsin, Dane Co.
Commission Expires 9/11/2016

RECEIVED

OCT 21 2014

DANE COUNTY PLANNING & DEVELOPMENT

Affidavit of John C. "Jack" Mandt

STATE OF WISCONSIN
COUNTY OF DANE

The undersigned, John C. Mandt, being duly sworn, hereby deposes and says:

1. I am over the age of 18 and am a resident of the State of Wisconsin. I have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.

While attending the Dane County Board of Adjustment meeting on October 23, 2014, the Oak Park Quarry LLC appeal, I feel that Attorney Charles Sweeney misrepresented actual facts about the history of the property located on Oak Park Road in section 29, Deerfield Township, now owned by Jon Halverson. Mr. Sweeney misrepresents that gravel was tested in 1950 and 1953, and more specifically, that gravel was taken from that farm and used for the Interstate Project. I would like to give a little history of these farms and would also like to state emphatically that there was no pit and no gravel on that farm until 1978.

Our family first came to Deerfield Township just after I graduated from 8th grade in 1946. We lived in section 10 Deerfield Township. In 1948 my father, Wilhelm "Rudy" Mandt, purchased the Otto Foll farm on County Hwy. BB in section 9, Deerfield Township. We moved to that farm in 1949. The current day address of the farm in section 9 is 883 County Hwy. BB, Deerfield. With the exception of the 2 years I was in the Marine Corps, I lived at that farm from 1949 until 1964.

In 1952 my father purchased another farm, this one from Walter Prescott, located on Oak Park Road in section 29 Deerfield Township, the present day location of the Oak Park Quarry LLC. My father could not move onto the Oak Park farm until he built a new house, as the old Prescott house was run down, had no running water and no heat. My father and my brother Bill together ran both of the farms until 1954. We used the old Prescott home to house chickens and hogs. That house was located right where the driveway to the current day quarry is located. The house was finally demolished in 1978 by Carl Rude when he opened the gravel pit at the Oak Park Rd farm.

I was in service from July 1952 until July 1954. While home on a 30 day leave in 1953 I spent a lot of time baling hay; the entire area where the pit is today was all in hay.

When I got out of service in 1954 my brother Bill and I went into partnership and bought out ½ of the farm equipment and ½ of the livestock; my dad owned the land and the other ½ of the equipment and livestock. Bill and I ran both farms.

About the same time I got out of service, gravel had begun being mined and transported out of the farm on Hwy. BB in section 9 and used for a road project. I believe this is the project Mr. Sweeney was referring to at the Board of Adjustment meeting. This was the Highway 30 project, as the Interstate project did not start until the late 1950's. I believe the company that was doing the gravel was Boehnen Inc. Gravel was only taken out of this farm for about a year until the road project was complete. The Village of Deerfield then used the hole in the ground as their dump.

In 1959 my brother Vernon Mandt bought out my brother Bill's share of operations, and Vernon and I together bought both farms outright from our dad. Vernon and his family moved to the farm in section 9 and I lived there as well. Vernon and I were in partnership (Mandt Brothers), owning and running both the Section 9 and Section 29 farms until 1964 at which time I sold my share to Vernon. Vernon ran both farms until 1969 or 1970 when he sold the farm in section 9. He sold the farm in section 29 to Jon Halverson in 2010.

I will again state that there was never a gravel pit on the Oak Park Rd farm until 1978.

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 6 day of Dec, 2014

John C. Mandt

John C. Mandt

NOTARY ACKNOWLEDGEMENT

STATE OF WISCONSIN, COUNTY OF DANE ss;

This Affidavit was acknowledged before me on this 6 day of Dec 2014, by John C. Mandt, who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him, and that the matters stated herein are true to the best of his information, knowledge and belief.



Janet Schuenke

Notary Public

Bank Teller

Title (and Rank)

My commission expires May 9 2017

Affidavit of Dennis W. Mandt

STATE OF WISCONSIN
COUNTY OF DANE

The undersigned, Dennis W. Mandt, being duly sworn, hereby deposes and says:

1. I am over the age of 18 and am a resident of the State of Wisconsin. I have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.

In 1948 my grandfather, Wilhelm "Rudy" Mandt, purchased a farm located at what is now 883 County Highway BB in section 9 in Deerfield Township (hereafter referred to as Farm #1).

In 1952 Grandpa Rudy Mandt purchased a farm from Walter Prescott in Section 29 Deerfield township, located at what is now the farm located at 3522 Oak Park Road (hereafter referred to as Farm #2), currently owned by Jon Halverson.

My Uncle William "Bill" Mandt and my Uncle John "Jack" Mandt ran these 2 farms from 1954 until 1959. In 1959 my father, Vernon Mandt, bought out Uncle Bill's share and he and Uncle Jack bought both farms outright from Grandpa Rudy. From 1959-1964 the 2 farms were run under "Mandt Brothers" (Vernon & Jack). In 1964 Jack left the partnership and my dad (Vernon) became the owner of both farms.

We moved as a family to farm #1 in 1959. I worked on both farms as a kid and into my teenage years, never seeing a gravel pit on farm #2. There was a large hole in the ground on farm #1. This hole was made from the extraction of gravel that was used for a DOT road project. The hole where this gravel was taken out of farm #1 in section 9 was later filled in with refuse, as it was used by the Village of Deerfield as their dump.

There was not a gravel pit on farm #2 until 1978 when my dad, Vernon Mandt, started the pit there.

My dad was a farmer, not a gravel pit man. He needed the crop land to raise crops to feed his 90+ head of milk cows and livestock; he even rented another 100 acres every year to produce enough feed for the cattle. He would not have wasted valuable crop space for a gravel pit. My dad sold the cows and farm #1 around 1970. He sold farm #2 to Jon Halverson in 2010.

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 17 day of November, 2014
Dennis W. Mandt
Dennis W. Mandt

NOTARY ACKNOWLEDGEMENT

STATE OF WISCONSIN, COUNTY OF DANE ss;

This Affidavit was acknowledged before me on this 17 day of November, 2014, by Dennis W. Mandt, who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him, and that the matters stated herein are true to the best of his information, knowledge and belief.



Heidi M. Alt
Notary Public
MSRH
Title (and Rank)

My commission expires November 11, 2018

Affidavit of Daniel L. Kelly

STATE OF WISCONSIN
COUNTY OF DANE

The undersigned, Daniel L. Kelly, being duly sworn, hereby deposes and says:

1. I am over the age of 18 and am a resident of the State of Wisconsin. I have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.

I am the son of Leroy A. and Annie E. C. Kelly. I was born January 16, 1955 on the Leroy A. Kelly farm, located in sections 20 & 29, Town of Deerfield. The farm address is 1186 Liberty Rd. My parents purchased this property in 1948 from the Lee family. I own the property formerly owned by my parents, along with my wife Jane E. Kelly, and we reside there.

The Kelly farm borders the Vernon Mandt property adjacent on the NE corner, and is separated by Liberty Road on the North boundary.

I attended Liberty Country School until the 5th grade; the school was located south of St. Paul Liberty Lutheran Church parking lot which used to be a part of the Mandt farm. I attended Sunday school and was a confirmed member of St. Paul's Liberty Lutheran church until my marriage on June 30, 1978. St. Paul's is located across the road from the Mandt property.

As a youngster, I explored neighboring properties, including the Mandt property. My parents also owned a second farm in Christiana Township, and to get to it I took many trips past the Mandt farm on tractors and in later years in the pick-up truck.

I formed a partnership with my parents in 1979.

There has been a quarry on the Reque/Lee/Kelly property since around 1850. It was a working quarry on and off until the late 1970's.

In the late 1970's I personally persuaded Carl Rude to break his lease with my parents. Carl wanted to retire and needed a longer lease in order to sell his antiquated machinery, so he made a new lease with Vernon Mandt. The Deerfield town board approved the Mandt land for a quarry, it was registered, and the lease was sold to Ammon, along with Rude's machinery.

It is my understanding that the first C.U.P. at the Mandt quarry was made in 1981 when Fred Nelson was the town Chairman.

In all my travels in and around the Mandt property, I have never heard or seen any activity of an active quarry until after Rude's move there from my parents' property.

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 12 day of Dec, 2014

Daniel L. Kelly
Daniel L. Kelly

NOTARY ACKNOWLEDGEMENT

STATE OF WISCONSIN, COUNTY OF DANE ss;

This Affidavit was acknowledged before me on this 12 day of Dec, 2014, by Daniel L. Kelly, who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him, and that the matters stated herein are true to the best of his information, knowledge and belief.

Barbara A Smith
Notary Public
Personal Banker
Title (and Rank)

My commission expires 9.11.16

Affidavit of Frederick K. Nelson

TOWN OF DEERFIELD
COUNTY OF DANE
STATE OF WISCONSIN

I, Frederick K. Nelson, being first duly sworn, on oath state:

1. I am an adult resident of the state of Wisconsin being born 12/30/1937, presently residing at 1045 County Hwy BB, Deerfield, WI 53531.
2. I have resided in the Town or Village of Deerfield since birth.
3. I am very familiar with the Reque/Lee/Kelly quarry having grown up on the farm next door.
4. The Reque/Lee/Kelly quarry has been in existence since the mid-1800's and mined on-and-off until very late in the 1970's.
5. Carl Rude, the quarry operator at the time of the Kelly quarry closing, leased property from Vernon Mandt to open a new quarry.
6. Carl Rude applied to the Town of Deerfield for a mining permit which was approved; he then sold his equipment to Ammon. The first C.U.P. for the mine was issued in 1981.
7. There was no visible activity of any active quarry at the Mandt property until 1978.
8. I was Town of Deerfield Chairman at the time of the Kelly quarry closing and the opening of the Mandt quarry.

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 15 day of Dec., 2014

Frederick K. Nelson
Frederick K. Nelson

NOTARY ACKNOWLEDGEMENT

STATE OF WISCONSIN, COUNTY OF DANE ss;

This Affidavit was acknowledged before me on this 15 day of Dec, 2014, by Frederick K. Nelson, who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him, and that the matters stated herein are true to the best of his information, knowledge and belief.

Barbara A Smith
Notary Public
Personal Banker
Title (and Rank)

My commission expires 9.11.16

Affidavit of Karen A. Harbort

STATE OF WISCONSIN
COUNTY OF DANE

The undersigned, Karen A. Harbort, being duly sworn, hereby deposes and says:

1. I am over the age of 18 and am a resident of the State of Wisconsin. I have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.

I live at 1225 Liberty Rd, Deerfield, Wis. Our property borders the Oak Park Quarry LLC property on the north. My husband and I purchased 7 acres of the Mandt farm from my sister and her husband, Dolores and Vernon Mandt in 1973. We built our home and moved into it on Labor Day weekend in 1974.

There was not a quarry on the Mandt farm on Oak Park Road until 1978.

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 2 day of December, 2014

Karen A. Harbort
Karen A. Harbort

NOTARY ACKNOWLEDGEMENT

STATE OF WISCONSIN, COUNTY OF DANE ss;

This Affidavit was acknowledged before me on this 2nd day of December 2014, by Karen A. Harbort, who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him, and that the matters stated herein are true to the best of his information, knowledge and belief.



David R. Dinkel
Notary Public
Notary Public
Title (and Rank)

My commission expires July 17, 2017

Affidavit from Jeff Kraemer of Stantec

AFFIDAVIT OF JEFF KRAEMER

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Jeff Kraemer, being duly sworn on oath, deposes and states as follows:

1. I am an adult resident of Dane County, Wisconsin.
2. I make this affidavit on the basis of my personal knowledge of the facts set forth herein.
3. I am employed at Stantec, a nationwide environmental consulting firm, as “Principal Scientist, Environmental Services,” at Stantec’s Cottage Grove, WI office.
4. A true and correct copy of my professional resume is attached hereto as Exhibit A.
5. Aerial Photography qualifications. A significant part of my job responsibilities includes assessment and mapping of environmental resources and land use. In my 12 years as an environmental consultant, I have completed field assessments and mapping on 1000’s of properties to identify various environmental resources. Every project begins with a desktop assessment, which involves review and interpretation of aerial photographs to identify various landforms and resources. Following the desktop assessment, a field assessment is completed to verify the findings completed during the aerial photograph review. I have developed exceptional aerial photographic interpretation skills, which I am able to continuously calibrate primarily by frequently field verifying what is interpreted on aerial photographs. In my experience in most cases field reviews confirm what has been interpreted on aerial photographs. Many projects that

I support require various levels of recent and historic aerial photograph review and interpretation to understand historic and recent land uses, and effects on specific landforms and environmental resources. I have served as an expert witness for aerial photographic interpretation on behalf of the Lake Koshkonong Wetlands Association in Rock Koshkonong Lake District, et al v. WDNR, 2006 CV 1846 (and administrative law proceedings prior) to assess historic and recent shoreline erosion, wetland community types and changes over time, and water-level fluctuations. In addition, I have served as an expert witness in a similar capacity in support of Margaret van Boldrik v. Wahabuddin Syed, et al (Dane County case no. 2006 cv 1617) to assess recent and historic land uses involving a property line dispute. Furthermore, my day to day job responsibilities include overseeing more than 100 environmental staff within Stantec. This includes mentoring and training staff in various aspects of their job duties including historic and recent aerial photograph interpretation and field verification and assessment.

6. I have been retained as an expert consultant on behalf of Mr. Jon Halverson and Oak Park Quarry, LLC.

7. I was asked to address whether historical aerial photography focused on an area to the east of Oak Park Road in the Town of Deerfield, Wisconsin, depicted evidence of man-made disturbances consistent with a quarry type land use.

8. I collected and reviewed the following aerial photographs:

- a. 1937 Aerial Photograph (sourced from the Robinson Map Library at the University of Wisconsin-Madison)
- 1940 Aerial Photograph (sourced from National Archives and Records Administration, College Park, MD).
- b. 1949 Aerial Photograph (sourced from Dane County)
- c. 1955 Aerial Photograph (sourced from the Robinson Map Library at the

University of Wisconsin-Madison)

- d. 1962 Aerial Photograph (sourced from the Robinson Map Library at the University of Wisconsin-Madison)
- e. 1968 Aerial Photograph (sourced from the Robinson Map Library at the University of Wisconsin-Madison)
- f. 1976 Aerial Photograph (sourced from the Robinson Map Library at the University of Wisconsin-Madison)
- g. 1980 Aerial Photograph (sourced from the Robinson Map Library at the University of Wisconsin-Madison)

9. Discuss observations of key photos.

- a. 1937 Aerial Photograph. The subject area clearly has a different land use than the adjacent lands which were in agricultural crop production. The subject area was not in crop production and appears vegetated. The boundaries between the crop land use and the non-crop land use are not symmetrical and form a thumb shaped feature projecting northeast from Oak Park Road. The subject area is relatively clear of trees, with the presence of a larger tree obvious in the southeast portion. A fairly linear feature is apparent projecting northeast into the subject area connecting to Oak Park Road and forms a somewhat horseshoe shape into the subject area which may be an access route. There appears to be abrupt topographic changes along the perimeter of the linear feature within the subject area that appear to be man-induced activity within the area. Along the east central portion of the subject area a light colored linear feature is

apparent. This may be some type of rock outcropping that was present at the time.

b. 1940 Aerial Photograph. In 1940 the land use within the subject area and surrounding land use remain similar as 1937 with distinct boundaries between crop land and the non-cropped subject area. The large tree in the southeastern portion is still present. The linear feature identified in 1937 as a potential rock outcropping is no longer visible. Most notably, a linear feature with right angles along the central portion of the eastern perimeter of the subject area is present which includes the area in 1937 where the potential rock outcrop was identified. Right angles are defined by this linear feature in the central portion of the eastern perimeter, the linear feature is then continuous along the entire eastern perimeter of the subject area extending at approximate 45 degree angles nearly to Oak Park Road at both the north and southern extents of the subject area. There appears to be an abrupt topographic difference along the edges of this linear feature that were not noted in 1937 at this location. The access path identified in 1937 near the southwest portion of the subject area connecting from Oak Park Road into the central portion of the area is distinct. See Exhibit B of 1940 aerial photograph with features described above labeled.

c. 1947 Aerial Photograph. The 1947 aerial photograph is of lower resolution than the previous and details within the subject area are more difficult to discern. The land use difference and boundaries within the subject area and adjacent lands are consistent with previous years. The

large tree still remains in the southeast portion of the site and vegetation appears to be herbaceous. There are distinctly darker shades and shadowing effects within the central portion of the subject area with distinct unnatural borders, projecting towards the perimeter of the subject area indicating abrupt topographic changes.

- d. 1955 Aerial Photograph. In 1955 the land use differences and boundaries within the subject area and surrounding land use remain similar as previous years. The large tree in the southeastern portion is still present and the subject area is largely void of trees. The linear feature with right angles identified in 1940 is present along the central portion of the eastern perimeter of the subject area. There appears to be a shrub or tree line developing along the perimeter of this linear feature, further highlighting the linear nature and right angles. Within the northern portion of the subject area there appears to be a new linear feature with right angles developed. Based on color variations and shadowing effects, the subject area appears to have distinct topographic variations within the interior portion of the subject area extending from Oak Park Road to the defined linear features, with the interior appearing distinctly lower in elevation.
- e. 1962 Aerial Photograph. In 1962 the land use differences and boundaries within the subject area and surrounding land use remain similar as previous years. The large tree in the southeastern portion is still present. The linear feature with right angles identified in 1940 is present along the central portion of the eastern perimeter of the subject area. Shrub and/or

tree growth within the subject area is developing and the linear features identified in previous years have become slightly obscured by the vegetation growth, although still identifiable.


- f. 1968 Aerial Photograph. In 1968 the land use differences and boundaries within the subject area and surrounding land use remain similar as previous years. Further development of tree and shrub cover has occurred throughout the subject area, nearly covering the majority of the area. The linear feature and right angle identified in previous years in the central portion of the eastern perimeter remain evident and define the establishing tree line. Similarly the linear features extending from this area at approximate 45 degree angles define the tree line at those locations.
- g. 1976 Aerial Photograph. In 1976 the land use differences and boundaries within the subject area and surrounding land use remain similar as previous years. The tree canopy has continued to mature and covers the majority of the subject area. Of note, there is an area in the northeast/central portion of the subject area where trees that were present in 1968 are not present in 1976. The southern and eastern edges of this area are linear and form a right angle at their conjunction. This particular area is consistent with the distinct lower lying area identified in previous years and lies inside of the linear features that were first identified in the 1940 aerial photograph.
- h. 1980 Aerial Photograph. In 1980 the land use differences and boundaries within the subject area and surrounding land use remain similar as

previous years. The tree canopy has continued to mature and covers the majority of the subject area. Similar to 1976, there is an area in the northeast/central portion of the subject area where trees that were present in 1968 are not present in 1980. The southern and eastern edges of this area are linear and form a right angle at their conjunction. This particular area is consistent with the distinct lower lying area identified in previous years and lies inside of the linear features that were first identified in the 1940 aerial photograph and were prevalent in other years.

10. Impressions / Conclusions

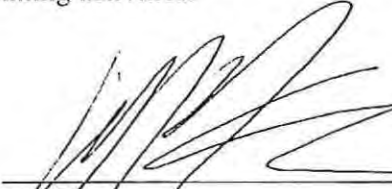
Based on my review of the available historic aerial photographs I can make the following conclusions relevant to past mining related activities within the subject area. There is strong evidence suggesting that man-induced activities of various degrees have occurred within the subject area throughout the duration of the available aerial photographs (1937-1980). These signatures are not consistent with agricultural uses or land uses adjacent to the subject area. Signatures identified on the aerial photographs are consistent with features often associated with mining activities. Most notably, the linear features that first appeared in the 1940 imagery appear to be the result of soil stripping, excavation, berm construction. The access path commencing from Oak Park Road from the southwest portion of the subject area into the central portion of the area is indicative of repetitive and maintained access to the areas with constructed features. There is distinct and abrupt topographic breaks along the perimeter of the central portions of the subject area that are consistent with signatures often associated with the headwall of a quarry site. These features are particularly evident in the 1940 and 1955 imagery.

Specifically within the area immediately interior (west) to the linear feature, there appears to be a flattened surface that lies at a lower elevation than the linear feature. This is indicative of surface soil stripping that may have been stripped for future mining activities while the linear feature is indicative of an earthen berm where the stripped top soil was placed. Furthermore, within the interior portion of the linear feature, slightly west of the potentially stripped surface there is a distinct and somewhat irregular signature indicative of an abrupt change in topography that is consistent with a headwall. This could indicate that the central portion of the subject area was actively being mined with the intent to continue expansion of mining activities to the east where the apparent surface stripping and berm construction may have occurred. There appears to be a contiguous access path from this apparent headwall southwest to Oak Park Road, further indicating repeated access to this location within the subject area.

Beyond 1955, the subject area appears to have developed tree and shrub growth.  However, the linear feature potentially associated with surface stripping and/or a headwall continues to be a distinct feature and seems to delineate the edge of the tree canopy. By 1968, much of the subject area appears to have developed tree coverage. Of interesting note, in the 1976 imagery, a clearing within the northeastern/central portion of the subject area is apparent and coincides with the apparent headwall location identified in 1955 subsequent to the tree growth. This area is also noted in the 1980 imagery.


In summary, based on review of the historic aerial photographs, there is clear indication of man-induced activity within the subject area, including activities that involved

reshaping the land surface, repetitive access to specific portions of the subject area from Oak Park Road, and removal of vegetation including trees in later years. The signatures identified and activities likely resulting in such signatures are consistent with activities involved in mining or quarry development. In my opinion the most plausible cause of the identified signatures was a result of mining activities.



Jeff Kraemer

Subscribed and sworn to before me this
3rd day of February, 2015.



Notary Public, State of Wisconsin
My commission expires: is perm.



1937 photo



1940 photo



1955 photo



1968 photo (portion of ljj-88 photo)



Close up of 1937 photo



Close up of 1940 photo



Close up of 1955 photo



Close up of 1968 photo

(portion of ljj-88 photo)



1940 photo of the Kelly Quarry on Liberty Road



1955 photo of the Kelly Quarry on Liberty Road



1968 photo showing the Kelly Quarry on Liberty Road (portion of ljj-88 photo)