
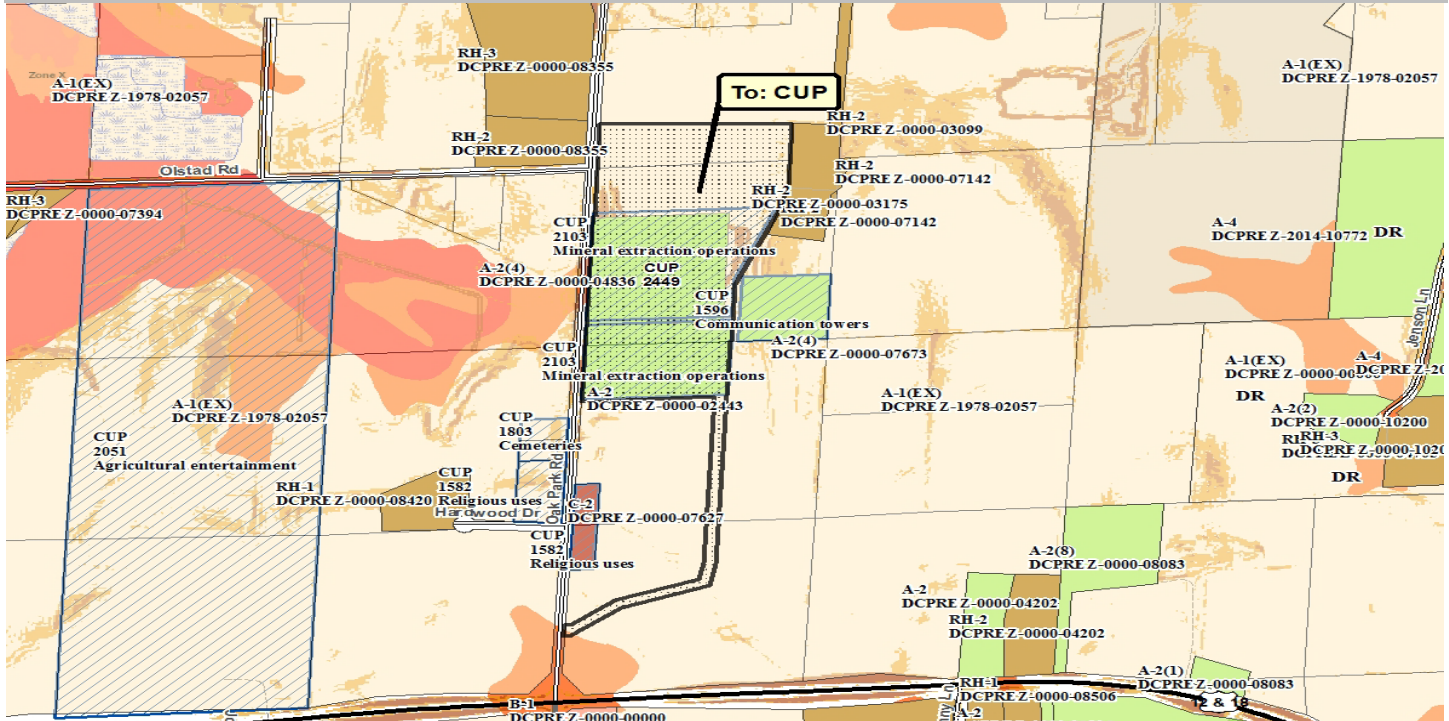


Staff Report  Zoning and Land Regulation Committee	<u>Public Hearing:</u> January 22, 2019 February 12, 2019¹		CUP 02449
	<u>Zoning Amendment Requested:</u> CUP for Mineral Extraction		<u>Town/Section:</u> Deerfield, Section 29
	<u>Size:</u> 141.44 Acres	<u>Survey Required?</u>	<u>Applicant:</u> Oak Park Quarry, LLC
	<u>Reason for the Request:</u> CUP for Mineral Extraction		<u>Address:</u> 1/4 1/4 North and South of 3522 Oak Park Road



PROPOSAL SUMMARY & BACKGROUND

- **Agent/Applicant:** Rachael Halverson
- **Owner:** Oak Park Quarry LLC
- **Size, zoning, use of existing parcel:** 141.44 acre conditional use permit area, covering the current conditional use permit (CUP #2103 set to expire on 3/24/2019), plus an expansion area.
- **Rezone/CUP desired:** This conditional use permit application is for renewal and expansion of an existing limestone quarry mineral extraction operation. This request is for a permit period of 10 years. The site will provide material for both public and private projects.
- **Other county permits:** Chapter 14 (Erosion Control/Stormwater management) and Chapter 74 (non-metallic mining reclamation). The applicant has submitted material to meet both of these requirements.
- **Town Action:** The Deerfield Town CUP Board approved CUP 2449 with seven (7) conditions on Monday, March 11, 2019.

¹ Note that the January 22, 2019 ZLR Public Hearing was canceled due to inclement weather; items on the January 22 agenda were instead taken up at the February 12 ZLR meeting.



HISTORY: This quarry has existed and been in operation since the 1970s. CUP #1316 became effective on 3/26/1996 and expired on 3/26/2001. CUP 1757 became effective on 4/9/2002 and expired on 4/9/2007. The CUP currently on the property, #2103, became effective on March 24, 2009 and expires on March 24, 2019. The owner and agent at that time was B.R Amon & Sons, Inc.

Jon Halverson acquired the property in November 2010 and applied for a conditional use permit (proposed CUP#2262) in 2014 to continue and expand the quarry operation. That proposal met with resistance from homeowners and St. Paul's church. Blasting levels were the key issue, and ultimately the permit was not approved. On June 17th, 2014, the town of Deerfield Board, with one member abstaining, voted 4:0 to deny conditional use permit #2262. The basis for their decision was that the proposal failed to meet 4 of the 6 standards noted in section 10.255(2)(b).

During this time the town started working on a town blasting ordinance to set levels well below those allowed by the state of Wisconsin. The ordinance was created with the help of a town blasting committee, and was adopted in March of 2015. According to blasting logs, the last blast at the Oak Park Quarry took place on December 4th, 2015. Prior to that blast, existing condition reports were conducted for a residence at 1225 Liberty Rd., St. Paul's Liberty Lutheran Church, and the St. Paul's Liberty Lutheran Church Education Center. In September existing conditions surveys were conducted at the same three locations. More details can be found in the "Oak Park Quarry, LLC Activities Log" provided as part of the application materials.

DESCRIPTION OF OPERATION: The applicant submitted a complete application including various attachments to describe the operation including a quarry activity log, an operations plan, a fugitive dust control plan, blasting best management practices, and a storm water pollution prevention plan. The detailed documents can be found in the public hearing information packet.

The operation includes site development, extraction, blasting, processing, product delivery and reclamation. There is no asphalt or concrete plant as part of this CUP. Site development includes removing top soil to use for constructing screening berms. The berms also serve to store topsoil for reclamation. Stripping and piling of overburden for sale and use in reclamation will expose the limestone. Drilling and controlled blasting will be done to displace the limestone from the quarry face. No extraction will take place below the water table. The loosened rock will be processed with portable crushing equipment, stockpiled, and then hauled out as demand dictates. Acres not used in the operation will remain in row crops. The expansion is estimated to be approximately one half acre per year.

Operations will continue upon approval of the CUP replacing CUP #2103. Based on the amount of material and estimated demand, extraction at this quarry is expected to be 30 to 40 years. The requested permit period for this proposal is 10 years.

Proposed hours of operation are 6 am to 6 pm Monday through Friday, 7 am to 1 pm on Saturday and closed on Sunday. It will also be closed on the following holidays – New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving day and Christmas day.

Truck traffic will exit the current quarry driveway south onto Oak Park Rd. Trucks will use a length of approximately 2,700 feet of Oak Park Rd. to access Hwy 12&18. A different driveway will be used in the future which will require trucks to use only 525 feet of Oak Park Rd. and will locate the driveway south of the church. Traffic flow will continue to go only south on Oak Park Rd., except for local deliveries that are north of the quarry on Oak Park Rd.

As part of the application, the following was included in the original application: Oak Park Quarry Activities Log, Fugitive Dust Control Plan, Blasting Best Management Practices, Ground Water and Storm Water Pollution Prevention & Spill Response Plan, and letters of support. A supplement to the application provided on 1/10/2019 contains a collection of materials addressing 6 concerns related to the proposal. The six concerns are: clean fill, traffic safety, groundwater & wells, property values, fly rock, and blasting vibration & damage.

PUBLIC CONCERNS: The greatest concerns come from members of St. Paul's Liberty Lutheran Church. Their key concern is the impact that they believe blasting at the quarry operation has had, and if approved will continue to have, on the structure of the church and monuments in the cemetery. The church was built in 1851 with a foundation that was dug all the way to bedrock. They consulted with a structural engineer who believes that the foundation being built on bedrock makes the building more susceptible to damage as a result of blasting.

There is not enough definitive research on the impact on various blasting levels on a structure of that exact age and construction. Please see the letter provided by church leaders in the public hearing packet. The church has provided a letter outlining how they believe the proposal does not meet the first three of the six standards required for granting a conditional use permit (see those standards below). To see the details in the documents provided to the county, please see the materials in the public hearing packet.

PUBLIC SUPPORT: The Planning & Development Department has received numerous letters of support addressed to the Zoning & Land Regulation (ZLR) Committee. Comments include information about current and future need for mineral resources essential for construction, infrastructure and agriculture; concerns that if mineral extraction sites are difficult to approve the sites will become farther and farther away from where aggregates are needed and more expensive as a result; the good quality of the business providing good jobs; concerns that permitting is not consistent across the county; and the fact that the quarry has existed at this location for many years. To date (1-8-2019) we have received 192 such letters.

DANE COUNTY PLANNING STAFF COMMENTS

OBSERVATIONS: The site is surrounded by agricultural uses and scattered single family homes. A historic church built in 1851, Saint Paul's Liberty Lutheran Church, is located southwest of the operation. Please see the Operations Plan provided in the application materials, for distances between neighboring uses. A mineral extraction site (often referred as the "Kelly pit"/Tierney mineral extraction site) is located 1,800 ft. (0.3 mile) from the current Oak Park quarry CUP area. The active portion of that site is located in the Village of Deerfield and the inactive portion is located in the town.

APPLICATION PROCESS: County Planning & Development staff have provided information and process assistance with this proposal since October. Roger Lane (Zoning Administrator), and Dan Everson (Assistant Zoning Administrator) met with the applicant to discuss the requirements of an application for a CUP for a mineral extraction operation. At that meeting, it was advised that the operator hire a new blaster. In November, in effort to bring the applicant and church leadership to discuss issues surrounding the proposal, Roger met with Jeff Furseth (operator for Oak Park Quarry LLC), Rachael Halverson (owner of Oak Park Quarry LLC), Molly Slater (St. Paul's Pastor) and Todd Birkrem (St. Paul's Church Council President) in Deerfield. Because blasting was the biggest concern, Roger suggested a test blast at the levels allowed under the town blasting ordinance. The operator was willing to conduct a test blast, but given their concerns, the church representatives were not comfortable with the idea at that time. Later, Todd Birkrem (Council President) and Holly Slater (Pastor) met with Todd Violante (Director of Planning & Development) and Mary Kolar (Chair of the ZLR Committee) to discuss concerns related the proposal and department staff. In early February, county planning staff met with the applicant and a member of the Town of Deerfield Board to discuss public concerns and potential conditions for CUP 2449.

HOW IS THIS APPLICATION DIFFERENT FROM PREVIOUS CUP APPLICATION (CUP#2262): This proposal includes rerouting the entrance driveway to reduce traffic on Oak Park Road; the construction of a screening (vision and sound) berm at the location of the existing entrance; and additional pre-blast surveys for residences within 1,320 feet. The operator has also put into place a formal community response program so that concerns are documented and investigated.

The underground pipeline that had run across the northern portion of the site will soon be relocated, by the power company, to the south along the 12/18 corridor. The operator will be using a new blaster. Now that there is a town blasting ordinance in place, this proposal will need to meet town blasting level requirements that are much lower than those required by the state. The proposed hours of operation are slightly more restrictive than the last proposal or the current CUP. The hours on Saturday will be 7 a.m. to 1 p.m. instead of 6 a.m. to 1 p.m.

SIX STANDARDS OF A CUP: The Applicant provided information related to how the proposal meets the six standards of granting a CUP. Saint Paul's Liberty Lutheran Church provided information of how the proposal does not meet the first three of the six standards. The standards are:

Compliance with Standards Required for Granting Conditional Uses: Chapter 10 provides six standards for granting a CUP in Section **10.255(2)(h)**, as follows:

1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare.

2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.
3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.
5. That adequate measures have been or will be being taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and
6. That the conditional use shall conform to all applicable regulations of the district in which it is located.

The applicant provided information to describe how the proposal meets these 6 standards (see application materials). St. Paul's provided information to describe how the proposal does not meet the first 3 of the 6 standards (See the letter dated 11-27-2018).

It should be noted that State Statutes, Wisconsin Act 67, 2017 defined processes for approving conditional use permits. In it, the state requires that decisions are based on "substantial evidence". Substantial evidence is defined as "...facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons must accept in support of a conclusion." It further describes that decisions cannot be based on hearsay, speculation, emotion; any condition imposed must be based on substantial evidence; applicant must demonstrate that conditions established will be satisfied, supported by substantial evidence; county/town decisions to approve or deny must be supported by substantial evidence; and that there may be contradictory substantial evidence.

TOWN PLAN: The subject parcel is located in the *Agricultural Transition* district of *the town of Deerfield Comprehensive Plan*. The purpose and policy of this land use district is to "Preserve in agriculture and open space until development may be appropriate; Town may identify these lands in the future for more intensive development; and the same policies as *Agricultural Preservation* until then".

RESOURCE PROTECTION: The expansion area of the quarry operation is not located in an environmental corridor, and there are no sensitive features on the proposed site.

TOWN: As noted above, the Deerfield Town Board approved CUP 2449 with seven (7) conditions (see pages 8 and 9 below) on Monday, March 11, 2019 on a vote of 3 to 1 (with one member abstaining).

RECOMMENDED CONDITIONS: If the permit is approved, staff recommends that all of the following conditions be applied to CUP 2449. The conditions below are divided into three sections. The first section of conditions are those required of *all* conditional use permits. The second set of conditions below are *standard* for all conditional use permits *for mineral extraction*. The third and final set of recommended conditions are based on the specifics of this site and proposed operation, and where appropriate, the concerns expressed during the Town Board meeting and comments received in advance of the ZLR public hearing. If approved by ZLR, staff recommends that all three sections of conditions below be applied to CUP 2449, in addition to those approved by the town of Deerfield and with which ZLR is in agreement.

Standard CUP Conditions. The town board and zoning committee shall impose, at a minimum, the following conditions on any approved conditional use permit, which are common across all CUPs:

- 1) Any conditions required for specific uses listed under s. 10.103 (see list below).

- 2) The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and phasing plan.
- 3) New and existing buildings proposed to house a conditional use must be constructed and maintained to meet the current requirements of the applicable sections of the Wisconsin Commercial Building Code or Uniform Dwelling Code.
- 4) The applicant shall apply for, receive and maintain all other legally required and applicable local, county, state and federal permits. Copies of approved permits or other evidence of compliance will be provided to the zoning administrator upon request.
- 5) Any ongoing business operation must obtain and continue to meet all legally required and applicable local, county, state and federal licensing requirements. Copies of approved licenses or other evidence of compliance will be provided to the zoning administrator upon request.
- 6) Existing onsite wastewater sewage disposal systems, if any, serving the conditional use must be inspected by a licensed plumber to determine its suitability for the proposed or expanded use. Deficient systems must be brought, at the owner's expense, into full compliance with the current requirements for new development of the state plumbing code and Chapter 46, Dane County Code.
- 7) All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
- 8) Off-street parking must be provided, consistent with s. 10.102(8).
- 9) If the Dane County Highway, Transportation and Public Works Department or the town engineer determine that road intersection improvements are necessary to safely accommodate the conditional use, the cost of such improvements shall be born by the landowner. Costs born by the landowner shall be proportional to the incremental increase in traffic associated with the proposed conditional use.
- 10) 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. Zoning staff conducting inspections or investigations will comply with any applicable workplace safety rules or standards for the site.
- 11) The owner must post, in a prominent public place and in a form approved by the zoning administrator, a placard with the approved Conditional Use Permit number, the nature of the operation, name and contact information for the operator, and contact information for the Dane County Zoning Division.
- 12) The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site, available for inspection to the public during business hours.
- 13) Failure to comply with any imposed conditions, or to pay reasonable county costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit. The holder of a conditional use permit shall be given a reasonable opportunity to correct any violations prior to revocation.

Standard Mineral Extraction CUP Conditions. The following are conditions for all mineral extraction conditional use permits. The town board and zoning committee shall impose, at a minimum, the following conditions on any approved conditional use permit for mineral extraction:

- 1) Topsoil, or appropriate topsoil substitute as approved in a reclamation plan under Chapter 74, Dane County Code, from the area of operation shall be saved and stored on site for reclamation of the area. Topsoil or approved topsoil substitute must be returned to the top layer of fill resulting from reclamation.
- 2) The applicant shall submit an erosion control plan under Chapter 14, Dane County Code covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
- 3) The Town and Committee will set an expiration date for the conditional use permit based on the quantity of material to be removed and the expected duration of mineral extraction activities.
 - a) Extensions. Due to uncertainty in estimating duration for mineral extraction, conditional use permit holders who have operated without violations, may have the duration of their permit extended for a period not to exceed five years, based on an administrative review by the zoning administrator, in consultation with the town board. No more than one such extension shall be granted over the lifespan of the conditional use permit, and all

conditions shall remain the same as the original permit. Further extensions or any modifications of conditions shall require re-application and approval of a new conditional use permit.

- 4) Reclamation shall meet all requirements of Chapter 74 of the Dane County Code of Ordinances. In addition, all reclamation plans must meet the following standards:
 - a) Final land uses after reclamation must be consistent with any applicable town comprehensive plan, the Dane County Comprehensive Plan and the Dane County Farmland Preservation Plan.
 - b) Final slopes shall not be graded more than 3:1 except in a quarry operation.
 - c) The area shall be covered with topsoil and seeded to prevent erosion.
 - d) The area shall be cleared of all debris and left in a workmanlike condition subject to the approval of Dane County
 - e) Highwalls shall be free from falling debris, be benched at the top, and certified by a civil engineer to be stable.
- 5) The driveway accessing the subject site shall either be paved or covered with crushed asphalt for a minimum distance of 100 feet from the public right-of-way. 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 access to the driveway shall have gates securely locked when the extraction site is not in operation. The site shall be signed "no trespassing."
- 7) All surface and subsurface operations shall be setback a minimum of 20' from any property line that does not abut a public right of way.
- 8) Excavations below the grade of an abutting public street or highway shall be set back from the street or highway a distance at least equal to the distance that is required for buildings or structures under s. 10.102(9). The committee and town board may require greater setbacks where necessary to avoid subsidence, or for consistency with Chapters 11, 14, 17 or 74, Dane County Code.
- 9) The Town and Committee will assign hours of operation appropriate to the particular application. No operations of any kind shall take place on Sundays or legal holidays. The committee and town board may approve limited exceptions to normal hours of operations for projects associated with Wisconsin Department of Transportation or municipal road projects requiring night work. [Note: Typical hours of operation are from 6:00 a.m. to 6:00 p.m., Monday through Friday, and 8 a.m. to early afternoon on Saturday. If there are residences nearby, hours may be more limited (e.g., start at 7:00 a.m. with no Saturday hours).] See specifics for this operation below.
- 10) There shall be a safety fence around the entire extraction area at all times. That safety fence shall be a minimum of 4 feet in height.
- 11) Except for incidental removal associated with dust spraying or other routine operations under this permit, water shall not be pumped or otherwise removed from the 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, Wisconsin Administrative Code.
- 14) Dane County and the Town shall be listed as additional named insureds on the operator's liability insurance policy, which shall be for a minimum of \$1,000,000 combined single limit coverage per occurrence. The operator shall furnish a copy of a Certificate of Insurance as evidence of coverage before operations commence. The liability insurance policy shall remain in effect until reclamation is complete.
- 15) At their own initiative or at the applicant's request, the town board and zoning committee may set further reasonable restrictions on a mineral extraction operation , or prohibit any mineral extraction accessory use.
- 16) Additional conditions for particular circumstances. Where any of the following circumstances apply, the zoning committee and town board shall also impose the following conditions on any approved conditional use permit for mineral extraction:
 - a) Blasting:
 - (1) Blasting Schedule. Blasting shall occur between sunrise and sunset, as required by SPS 307. The zoning committee and town board may set further daily limits on hours when blasting may occur, to minimize impact on neighboring properties. Schedules for blasting need not conform to hours of operation for the overall mineral extraction project.
 - (2) Notice of Blasting Events. Prior to any blasting event, notice shall be provided to nearby residents as described in SPS 307, Wisconsin Administrative Code. In addition, operators will honor the requests of

residents within 500' of the mineral extraction site to either receive or stop receiving such notices at any time.

(3) Other standards. All blasting on the site must conform with all requirements of SPS 307, Wisconsin Administrative Code, as amended from time to time, or its successor administrative code regulations.

(4) Fly rock shall be contained within the permitted mineral extraction area.

- b) Fuel storage. All fuel storage must comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment.
- c) Mineral extraction at or near groundwater. All excavation equipment, plants, and vehicles shall be fueled, stored, serviced, and repaired on lands at least 3 feet above the highest water table elevation to prevent against groundwater contamination from leaks or spills.
- d) In the event that a mineral extraction operation will destroy an existing Public Land Survey Monument, witness monuments must be established in safe locations and a new Monument Record filed by a Professional Surveyor, prior to excavation and disturbance of the existing monument.

Conditions Unique to CUP 2449. Potential conditions of approval specific to CUP 2449 (note that these are *DRAFT* conditions subject to deliberation and modification by the Zoning and Land Regulation Committee):

- 1) Operations shall cease no later than 10 (ten) years from the date of CUP approval.
- 2) The haul route will be Oak Park Road South to USH 12.
- 3) 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 the following holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day or Christmas Day.
- 4) No blasting can take place until the operator has received a blasting license from the town of Deerfield. A copy of the license and/or approval from the town of Deerfield must be provided to Dane County Zoning.
- 5) Specific only to St. Paul's Liberty Lutheran Church, the following limits shall not be exceeded more than 1 out of 10 consecutive times during blasting events, as measured by a seismograph placed at St. Paul's Liberty Lutheran Church:
 - PPV of .20 in./sec.;
 - PPV of .15 in./sec. when Hz. is less than 14;
 - Airblast of 123 dB(L)

If any limit is exceeded more than 1 out of 10 consecutive times, blasting may be suspended for up to 30 days. If any limits are exceeded more than 1 out of 10 consecutive times twice within 12 months, blasting may be suspended for up to 60 days. If any limits are exceeded more than 1 out of 10 consecutive times for a third time within 12 months, blasting may be suspended for up to 180 days. After the third suspension within 12 months, the schedule will reset.

The suspensions above will go into effect 10 days after the permittee is provided notice of the violation, unless during that 10-day period the permittee appeals to the zoning committee or Board of Adjustment. The suspension is stayed during the appeal. The zoning committee or Board of Adjustment may specify the exact days of suspension if a violation is found. The option of suspension does not preclude the zoning committee or Board of Adjustment from taking other enforcement action, including revocation.

Reports of each blast will be submitted to the Dane County Zoning Administrator within 3 working days, and the Town will notify the County of any violations therein.

Town Conditions. The Town of Deerfield approved CUP 2449 on Monday, March 11, 2019 on a vote of 3 to 1 (with one member abstaining) with the five (5) conditions listed above, adding the following two (2) conditions:

- 6) The seismograph at St. Paul's Liberty Lutheran Church shall be placed by a third party agreed to by the church and the quarry, and will be paid for [by] the quarry. A copy of the agreement will be forwarded to the Town Clerk. In the event that a third party cannot be agreed upon, then the blaster shall place two seismographs at the church.

- 7) The operator shall contact St. Paul's Liberty Lutheran Church and the Town Clerk and the cemetery association by email 2 days in advance of blasting to verify that the church and/or cemetery will not be in use for Church services, weddings, or funerals during the proposed blasting date and time. Blasting will not take place during the week-long summer school, and the church will notify the quarry and the Town Clerk when summer school will take place. There will be no blasting on election days.