



Staff Report

Zoning and Land Regulation
Committee

Public Hearing: **May 22, 2018**

Zoning Amendment:
**TO CUP: Concrete batch plant
in the A-1 Agriculture Zoning
District**

Acres: 39.6
Survey Req.

Reason:

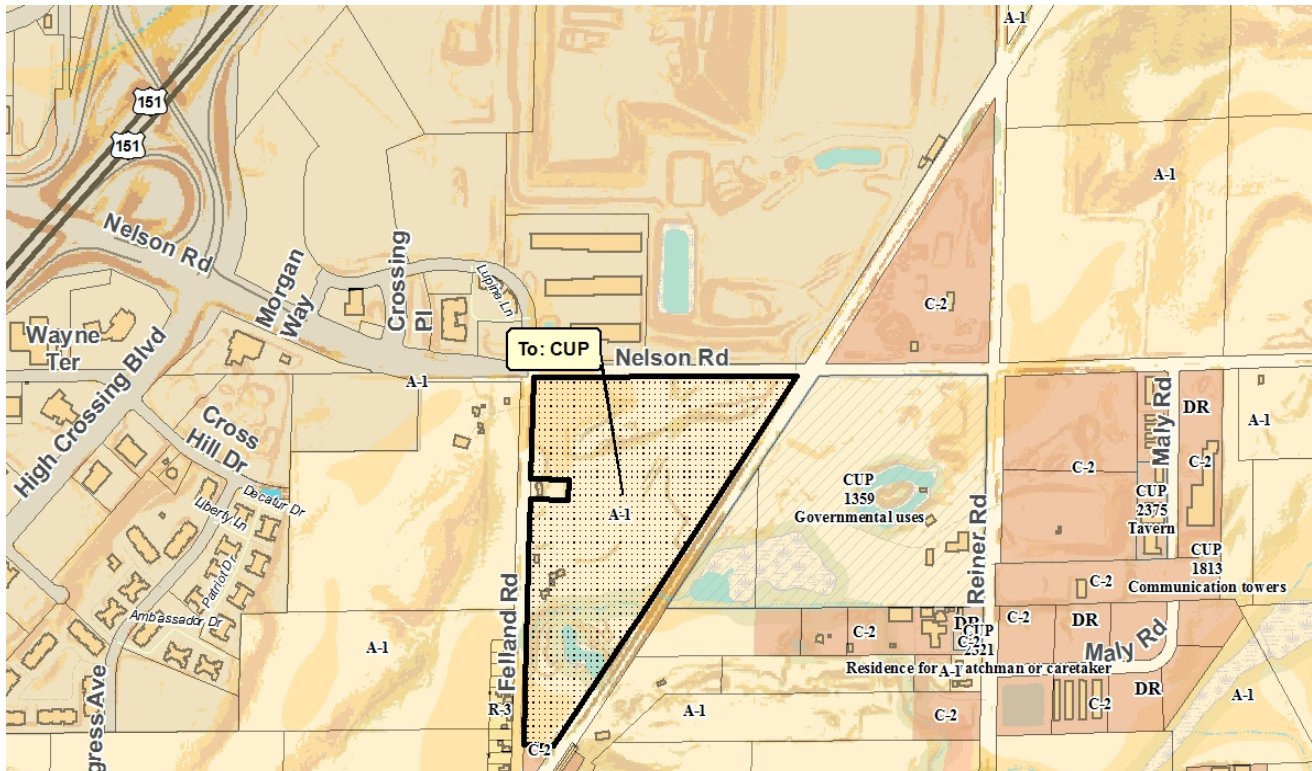
**CUP application to allow for a
concrete batch plant**

Petition: **CUP 02416**

Town/sect:
BURKE, Section 23

Applicant
**MILLS STREET
PARTNERS LLP**

Location:
5336 FELLAND



DESCRIPTION: The applicant is applying for a conditional use permit (CUP) to operate a ready-mix plant. The CUP area is 39.6 acres in size, but the operations portion will be approximately 12 acres. The owner is Mills Street Partnership, and the agent and operator is Zignego Ready Mix, Inc.

OBSERVATIONS: This site is surrounded by various mineral extraction land uses. There is an existing site at the southern tip of the CUP area, one north of the site, and another operation northeast of the site on the other side of Nelson Road that is an operational ready-mix plant. Other surrounding uses include agricultural land, single family residences, developed land in the city of Madison, and parkland owned by the Sun Prairie School District (CUP 1359). There are additional mineral extraction sites located a bit farther out to the south and northeast of the proposed site.

TOWN PLAN: The subject property is in the *Medium Residential* land use district of the Town of Burke Comprehensive Plan (adopted November 2013). This parcel is just outside of the urban service area (USA) where medium density residential use is not yet feasible. To the north and south the plan identifies commercial and industrial uses. The corner of the property where the operation will be located is across the road from properties identified as future commercial and industrial use. As a conditional use, the proposal does not require city approval under the terms of the town/city intergovernmental cooperative planning agreement.

RESOURCE PROTECTION: There are ponds and an area of wetlands located near the southern corner of the CUP area.

OTHER AGENCY COMMENTS: The City of Madison shared concerns about this petition. The City of Madison's Nelson Neighborhood Development Plan and the Comprehensive Plan recommend residential uses on the site which they believe is incompatible with the proposed use.

STAFF: As indicated above, the property is located in an area planned for future residential development as shown on the town of Burke *Comprehensive Plan* and in the city of Madison's *Nelson Neighborhood Development* plan. However, as noted above, there are similar mineral extraction-related uses that comprise a significant proportion of the existing land use pattern in the immediate area. The subject property is not currently within the Central Urban Service Area, and staff is unaware of any near term plans by the City of Madison to petition the Capital Area Regional Planning Commission for an Urban Service Area extension to service new development. City of Madison planning staff has been contacted about the proposal and advised that they may wish to document in writing any concerns the city may have with the proposal.

Staff has provided a summary of issues and concerns related to the proposal's consistency with adopted plans, below.

Should the zoning committee find that the proposed Conditional Use satisfies the standards found in section 10.255(2)(h) of the zoning code, staff has compiled a list of possible conditions of approval, below, that seek to minimize the potential for any negative impacts that could be associated with a concrete batch plant.

OVERVIEW

The operation will take place in an 11.6 acre portion of the CUP area in the northeastern corner (see site plan). This corner is the farthest from existing residential uses. The entire concrete batching process will take place inside of a building. The building includes dust collection equipment. All trucking in and out of the site will take place on Nelson Road, and the majority of the trucking will use Nelson Road to Hwy 151. A berm will be used to screen the plant from view from Nelson Rd. Additional screening will be provided with trees planted along the railroad tracks along the eastern border and along the western edge of the acres being used.

A new well and septic will be installed to service the site, and a new paved driveway will be installed to reduce dust leaving the site. All interior roads and storage areas will be paved, and will be swept and watered for dust control. For storm water control, the site will be graded to contain all drainage on site. To avoid congestion on public roads, ingress and egress will take place by a bi-directional driveway installed on the northeast portion of the property. This will allow trucks easy access in and out of the site.

The proposed activities on the site include: transfer and storage of raw materials in the form of cement and various types of sand and stone; manufacturing and loading of ready mixed concrete; office and maintenance functions for coordinating and implementing concrete operations; selling and distributing manufactured materials; and refueling of equipment. Concrete mixing and storage will be indoors, and storage and transferring of sand and stone and refueling equipment will occur outdoors. Other outdoor activities include parking of delivery vehicles, storage of excess concrete, transfer of mix materials, loading of concrete trucks, and refueling the trucks. Outdoor lighting will be used and in a way that minimizes impacts on adjacent properties.

The proposed plant is estimated to initially employ up to 15 employees, and if demand increases the site could use up to 40 employees. Anticipated customers include private, commercial and municipal users.

May 22nd ZLR Meeting: The Committee postponed action due no town action and public opposition. The At the meeting, neighbors were opposed to the batch plant expressing concerns about aesthetics; being a nuisance on weekends for people visiting the adjacent Town Park; diminishing property values; the proposal may spur additional heavy commercial activity; the plant having a negative effect on the ground water; the plant having a negative effect on property values; and the plant will place too much traffic on Nelson Road. Town will not be reviewing the proposal again until June 20th.

June 12th ZLR Meeting: The Committee held a second public hearing to hear additional testimony on the proposed conditional use permit. Bob Ness, representing the Ambassador Condominiums, stated that the proposed plant was incompatible with the surrounding land uses; the plant would have a negative impact on property values; the land would be more suitable for other land uses such as residential; and the truck traffic would present a serious safety hazard.

TOWN ACTION: On June 20th, the Town Board approved the conditional use permit with 10 conditions. The conditions limit the hours of operation and include specific site designs in order to meet the six standards to obtain a conditional use permit.

STAFF UPDATE

The applicant has provided additional information that attempts to address public concerns raised at previous meetings. See attached information provided by applicant.

Comprehensive plan and a conditional use permit

The Madison Planning Division has expressed strong concerns that the proposed concrete batch plant conflicts with the City of Madison and Burke Comprehensive Plans. County Staff had initial reservations as well. In researching the Wisconsin Statutes, [Wisc. Stats. 66.1001](#), County Staff found that local municipalities have more discretion when it comes to conditional use permits than a zoning district being assigned to a property.

66.1001(2m)(b) (b) *A conditional use permit that may be issued by a political subdivision does not need to be consistent with the political subdivision's comprehensive plan.*

Looking at the Wisconsin Statutes in depth, it appears that the time given to institute overall land use policies is when a zoning district is assigned to the property. Once assigned, the listed land uses within that zoning district are intended to achieve the overall goals of the comprehensive plan.

This particular property was assigned the zoning district classification of A-1 Agriculture, similar to the majority of land in the Town of Burke. The zoning district permits single-family residences which would be very consistent with the residential planning area as designated by the Burke Comprehensive Plan. However, the A-1 Agriculture also lists other land uses which could potential be compatible within the district. Unfortunately, these land uses include concrete batch plants, salvage yards, land fills, and airports. Right or wrong, the assigned A-1 Agriculture District has set the boundaries of which land uses are potentially acceptable for the property.

As noted, the proposed concrete batch plant is listed as a conditional use under the A-1 Agriculture Zoning District. Being a conditional use, emphasis now turns to how the proposed land use relates the neighboring land uses. With the recent adoption of Legislative ACT 67, the law enforces the point for municipalities to really take a look to see if a listed conditional use within a district can be found acceptable in a neighborhood if certain reasonable conditions are imposed.

Further analysis is explained in a separate attached memo.

Aesthetics

The neighbors expressed concerns regarding the aesthetics of the plant. This issue appears to be addressed by the applicant agreeing to preserve of the existing trees, the natural berms along Nelson Road, the applicant adding significant landscaping to the east and west sides of the operation area, and prohibiting signs on the proposed tall building.

The primary structure consists of a 30'x50' building which is 95 feet tall. The building is proposed to be faced with corrugated metal. The building's appearance is very similar to silo or grain bins which are

common in Dane County. To address the concerns, Staff would suggest that the CUP be conditioned on prohibiting lighting above 25 feet and prohibiting wall signs to reduce the visual impact of the building. It is also suggested that the CUP have conditions regarding on the preservation of trees and installation of landscaping screening.

Note: A-1 Zoning District does not allow wall signs on buildings.

Lighting

The neighbors expressed concerns regarding lighting nuisance. The applicant has submitted a lighting plan which limits lighting to six exterior wall lights on the building and two post lights at the fueling station. Staff would suggest that the CUP be conditioned upon lighting having down-lit lighting at a maximum of 25 feet and having no higher than 0.5 foot-candle intensity at the CUP boundary line to avoid light beyond the operation area.

Noise nuisance

The neighbors expressed concerns regarding the operation producing excessive noise. County Staff has recorded the ambient daytime noise levels along Nelson Road at 75 decibels DbA. This is primarily due to traffic and the neighboring industrial activities. The applicant has reviewed noise levels at their other plants and found a noise level of 60 decibels, 400 feet away from the plant. To address the concern, Staff is suggesting that a condition be placed on the CUP that limits the noise level of the plant operation to 75 decibels DbA measured along Nelson Road and Felland Road so that the operational noise will be in tune with the ambient noise levels of the area. It is also suggested to prohibit the use of loudspeakers.

Property values

The neighbors expressed concerns regarding property value reductions due to the proposed concrete batch plant. The applicant has conducted a property value impact report specifically referencing the Ambassador Condominiums. The consultant, Scott MacWilliams, concluded that the proposed batch plant will not adversely impact the property values of the Ambassador Condominiums.

Ground water

The neighbors expressed concerns regarding the proposed water usage of the plant affecting the ground water and interfering with flow patterns. The applicant has conducted a hydrological report for the property. The consultant, GZA Environmental, has concluded that the extraction of water at a rate of 5 gallons/minute will not affect the ground water supply. The consultant did express concerns regarding the potential migration of groundwater from the existing landfill to the east. He suggested that the well be moved to the southerly portion of the CUP boundary, outside the nature flow pattern of the ground water by the landfill. The applicant has revised the operations plan by shifting the batch plant and well to the southern portion of the CUP boundary.

Traffic

The neighbors expressed concerns regarding traffic impact. The driveway is located on Nelson Road which is a designated truck route. The proposed batch plant will produce approximately 150 vehicle trips per day. In speaking with the MPO, the Nelson/Reiner roads are at 40% design capacity and could handle additional traffic. Nelson Road is controlled by the Town of Burke. To address the concern, Staff suggests that a condition be place on the CUP which requires the Town Engineer to approve the driveway design for the site. The applicant will be responsible for all improvements.

Future Development

The neighbors have expressed concerns that additional development could occur on the remaining lands. In order for any additional development to occur, approvals will be needed by the Town of Burke, City of Madison, and Dane County. The current A-1 Agricultural Zoning District only permits one principal use on the land. The proposed batch plant would be considered the principal land use for the entire 39 acres. For other commercial/industrial development to occur, a land division, change of zoning, or conditional use permit would be required.

Conditional Use Standards

In order for an applicant to obtain a Conditional Use Permit, the Zoning and Land Regulation Committee must find that all of the following standards are met for the proposed land use:

1. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare.
2. 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. 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. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made; and
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.

POTENTIAL CONDITIONS OF APPROVAL FOR CUP 2416:

Staff has prepared a list of conditions that may be used in order to meet the six standards as listed above to allow the conditional use on the property. Please note that the conditions may need to be changed or additional conditions added to address potential nuisances that may come to light during the public hearing. These conditions are based on those the ZLR commonly apply to permits for concrete batch plant operations, customized to the particular site and operation, including conditions proposed by the applicant and reviewed by the town. The following list reflects the conditions included in the proposal blended with the county's standard set of conditions.

- 1) The Conditional Use Permit is limited to the 12 acres described as follows: COMMENCING AT A POINT ALONG THE SOUTHERLY RIGHT OF WAY LINE OF NELSON ROAD THENCE S 35°00'47" W ALONG THE NORTHWESTERLY RIGHT OF WAY OF THE WISCONSIN AND SOUTHERN RAILROAD, 1172.59 FEET; THENCE N 90°00'00" W, 214.16 FEET; THENCE N 00°00'00" E, 978.75 FEET, THENCE N 89°41'46" E ALONG THE SOUTHERLY RIGHT OF WAY OF NELSON RD, 853.03 FEET TO THE POINT OF THE BEGINNING.
- 2) The operator shall operate the site in accordance with the submitted site operations plan and shall be required to follow the information contained within the operations narrative.
- 3) Hours of operation shall be 6:00 a.m. to 8 p.m. Monday through Friday and 6 a.m. to 2 p.m. on Saturday. Occasional operations may be necessary in the event of emergencies and to meet contractual obligations. If hours of operations are extended for a period of five (5) days or more, the operator shall provide a written notice to the Town Clerk no less than 24 hours in advance of extending the hours of operation.
- 4) The operator shall take reasonable measures to control dust on the property and shall comply with Wisconsin DNR Best Management Practices for fugitive dust. Interior roads and storage areas shall be swept and/or watered as necessary to reduce dust.
- 5) The operator shall meet DNR standards for particulate emissions as described in NR 415.
- 6) The operator shall obtain all permits for concrete production from the Wisconsin DNR regarding Wisconsin Pollutant Discharge Elimination System (WPDES) program prior to operation.
- 7) The applicant shall obtain permits regarding Dane County Code of Ordinances Chapter 14 for erosion control and storm water management. All storm water facilities shall be installed and maintained per approved plans.
- 8) Fuel storage tanks on site shall meet applicable State and Federal standards including spill

prevention.

- 9) The applicant shall apply for and receive all other required local, state and federal permits.
- 10) The site and driveway shall be paved as designated on the operations plan.
- 11) Outdoor lighting on the property shall be down cast to minimize impact on neighboring properties. The light intensity shall be no more than 0.5 foot candles at the conditional use permit boundary line. The luminaires shall be installed at maximum height of 25 feet above the ground.
- 12) Landscaping screening shall be located in accordance with the operations plan. The evergreen trees and hardwood trees shall be planted prior to operation. The evergreens and hardwood trees shall be maintained and any dead trees removed and replaced. All existing trees within 25 feet of the east property line shall remain to provide additional screening.
- 13) The existing trees, shrubs, and berms (undisturbed area) within 150 feet of Nelson Road shall not be removed unless they interfere with the vision triangle of the ingress and egress.
- 14) The operation of the concrete batch plant shall not exceed a noise limitation of 75 decibels DbA as measured along Nelson Road and Felland Road.
- 15) Outdoor loudspeakers are prohibited.
- 16) Any signs installed on the property shall comply with Dane County Sign Ordinances. Wall signs are prohibited on any buildings or towers.
- 17) An annual road maintenance fee of \$2,000 submitted to the municipality by December 31st of each year.
- 18) The site plan including driveway location, ingress, egress, turn lanes, etc. shall be approved by the Town Engineer prior to construction. The operator shall install any driveway improvement features as deemed necessary by the Town Engineer.
- 19) The operator and all haulers shall access the CUP site via Nelson Road as described in the operations plan.
- 20) The operator shall require all trucks to have muffler systems that meet or exceed the current industry standards for noise abatement.
- 21) A copy of the conditional use permit shall be kept on site.
- 22) 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.
- 23) If any portion of these conditions is held invalid the remainder of these conditions and provisions shall not be affected thereby.
- 24) The conditional use permit is limit to Zignego Ready Mix, Inc. Sale of the property or batch plant to another operator will terminate the conditional use permit.