

DCPCUP-2022-02582 :
 : Before the Rutland Board
Filed on behalf of K&D Stone llc :
 : Before DC ZLR Committee
Re: Residents' list of conditions :

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Foreword:

Residents living near the Center Road quarry maintain that the Conditional Use Permit (CUP) application 2582 lacks substantial evidence to meet all eight standards in Dane County ordinances under 10.103(15) Mineral Extraction. In contrast, we have provided substantial and significant evidence to that effect and maintain that no potential conditions will enable it to meet them.

Nevertheless, should the Rutland Board and or the County Zoning Committee decide to approve the CUP, notwithstanding the insufficient evidence that it does meet the standards, we propose the following list of conditions to attach to the permit.

Background:

CUP conditions fall into four categories.

First, Dane County ordinances require certain basic conditions for all CUPs. These are termed *Standard CUP conditions* and are obligatory.

Second, there are further obligatory conditions attached to all mineral extraction CUPs. These are termed *Standard mineral extraction CUP conditions*.

Third, there are potential conditions specific to a CUP site, subject to modification by the ZLR Committee. These are termed *Conditions Unique to CUP xxxx*.

Fourth, there are conditions originating from the Town based on citizen or other technical input. These are termed *Town Action and Conditions*.

The following list of conditions is what we propose that the Town attach to any communications it sends to the ZLR Committee.

Suggested conditions for CUP 2582:

1. That hours of operations be limited to 7am – 4pm, weekdays only, for all aspects of the business including blasting and trucking. No weekends and no exceptions.

Rationale: The proposed site is near homes in an area that is increasingly residential. Home and property owners want the peace and quiet that a rural setting affords to be taken into consideration. This is particularly so on weekends when people spend more time at home and outdoors, wishing to enjoy their properties in more tranquil surroundings.

In the application for CUP 2582 the “hours of operation” were set at 7:00 a.m. to 7:00 pm Monday through Saturday, a full 12 hours, and 6:30 a.m. to 7:00 a.m. for warm up. By contrast, “if there are residences nearby”, the DC ordinance suggests “hours may be more limited (e.g., start at 7:00 a.m. with no Saturday hours”. (10.103(15)(b)9).

2. Operations area must be at least 1,000 feet away from any home, graveyard or structure listed on the National Register of Historic Places.

Rationale: The 1,000-foot metric is a prominent benchmark within the DC Comprehensive Land Use Plan wherein on page 40 it states, “Allow nonfarm development within 1,000 feet of identified significant mineral resources only after it has been demonstrated that the proposed land use or development would not significantly preclude or hinder future nonmetallic mineral extraction.”

By the same token, existing residents are entitled to the same consideration when a new pit with its disruptive potential for their home’s valuation, structural integrity and peaceful ambience enters their sphere.

In the application for CUP 2582 there are six single-family homes identified as falling within the 1,000’ radius among which one is listed on the National Register of Historic Places (CUP application, figure 7). The historic Graves cemetery also falls within the zone. About 80% of two neighboring undeveloped but potentially developable fields are similarly situated, placing their future under a cloud.

Pits closer to homes than 1,000’ have been permitted but with circumstances notably different. CUP 2511 placed a pit within the 1,000’ radius of two homes but this CUP was barred from “blasting, crushing or washing”. CUP 2567 was similarly within the 1,000’ perimeter of about 10 homes but again came with the condition that “there shall be no blasting, crushing or washing”. In the application, blasting and crushing, with all their attendant disturbances, will be well within the zone where residential development is restricted. Its boundaries therefore should be pushed back to maintain the 1,000’ separation.

3. Berms must be built at least 15’ high, maintained until extraction is complete and be planted with trees to provide a screen.

Rationale: An open pit by its nature is an unnatural intrusion into an environment and creates blight. This detracts from the neighborhood's desirability, devaluing nearby properties that are faced with an uncamouflaged view of the operation. A properly maintained and landscaped berm of a height that blocks potential views from a second story residence along with vegetative cover mitigates the side effects on neighboring properties.

In the application for CUP 2582 there is an injunction to "plant vegetation, especially evergreens, that buffer sound year-round" (CUP application appendix K). However, its plan states the "berm will be seeded" without specifying the seeds nor giving any indication that any "evergreens" will be included while specifying only an 8-10' high berm and that on an interim basis (CUP application, pg. 8).

4. Noise levels from the open pit mine and site operations shall not exceed 65 decibels (dBa scale), as measured from any point along any property line.

Rationale: Noise is perhaps the single biggest adverse, most objectionable by-product of a mining operation. Noise intensity levels as high as 80 decibels were recorded in random sampling of nearby conditions. (Henry Spelter Statement of Objection

<https://dane.legistar.com/LegislationDetail.aspx?ID=5533226&GUID=7B23206C-280E-4DA2-A6DE-E576CE510E8C&Options=&Search=>.)

Alongside intensity, persistence is an aggravating factor as crushing, loading, unloading and back up beeps are continuous during operating hours. These are more than a mere nuisance. In the same document the negative effects on health of long-term noise exposure were amply documented.

In the application for CUP 2582 it is asserted that "Best management practices outlined in the operation plan for the site will be used to reduce noise" but nowhere is that translated into a measurable metric that can be evaluated and monitored. As such, these assurances are without effect as they are undefined and therefore in the ear of the beholder, unable to be measured and held to account.

In past pit CUPs the ZLR has sometimes specified 75 decibels as the upper bound with the explanation that this is the standard number used. This usage is not based on any scientific or medical foundation and as such appears arbitrary. A decibel level of 75 is rated as between a vacuum cleaner and a dishwasher (CUP application Appendix J). That might seem tolerable at first blush but just as a water dripping on one's forehead seems trivial, when maintained for 8 or 10 hours straight it takes on a more alarming character and is often described as water torture.

5. Renewal of the CUP be required on an annual basis.

Rationale: Imposing conditions are ineffective without reliable enforcement. In the past residents have complained to the ZLR staff about operational violations, even providing visual evidence of unpermitted activity but each time the ZLR staff claimed to see no violation and failed to stop the activity.

The applicant requests a 25-year interval for the life of the CUP with a five-year renewal option. This means residents must endure violations for a generation before a chance presents itself to hold the operator to the conditions. Permits often come with considerably shorter operating terms (e.g, "CUP 2567 will expire on December 30th, 2030"). We request a shorter renewal condition to ensure timely adherence to set standards.

6. Pit owners supplement the cost of added wear and expense to Town roads caused by the increased heavy-duty truck traffic in the amount of \$25,000 per year.

Rationale: The truck traffic that this mine will generate, if approved, will accelerate town road degradation. The property taxes on the existing pit amounted to \$1,750. Compared to residences that are taxed much higher but put less wear on roadways this is in effect a subsidy from homeowners. To repave a mile of town road costs approximately \$200,000. Trucks from this site will navigate Center, Old Stone, and Old Stage and Lake Kegonsa roads. The modest increase in property taxes if the site is expanded will be insufficient to compensate the Town and other taxpayers for the increased wear.

7. Driveways into and out of the pit should be paved to reduce dust.

Rationale. The applicant states the "south driveway will be 30' wide with 100 feet of recycled asphalt" (CUP application, pg. 8). Longer stretches deep into the proposed CUP have not been paved and billowing dust clouds have been documented (Spelter Statement of Objection, *ibid*). Furthermore, the application affirms "utilizing asphalt millings when available for all interior driveways" and "in extreme circumstances there is the option to place pavement and sweep if needed" (CUP application "Proposed Operations, pg. 15). None of these claims represent obligatory commitments just possibilities as "when available" and "if needed". As such they are vague and unenforceable.

8. Trucks leaving the pit must be covered.

Rationale. Stones and gravel flying off speeding, unshrouded trucks are a hazard and have caused cracked windshields to passing cars (Jodi Igl letter of opposition, DC Legistar *ibid*).

9. No material to be brought into the pit for washing, crushing or any other process.

Rationale: The point of the quarry operation is to remove material from the site. Bringing in external material adds to traffic and noise.

10. The applicant will reduce the noise caused by truck and loader backup signals.

Rationale: The application states (CUP application appendix I) that "Additional protections have been suggested for implementation upon CUP approval including the use of strobe alarms (pending approval by MSHA)."

These suggestions were made over a year ago. Plenty of time has elapsed wherein the applicant could have determined whether MSHA approves these alarms or other similar less nerve-wracking backup

signals but have not done so. Without a specific injunction, the implementation of this measure is left up to the applicant's discretion with no recourse to neighbors.

11. Setbacks from fence lines are set at a minimum of 200 feet.

Rationale: The Town of Deerfield specifies a 200' setback while the Village of Windsor requires 300'. The 20' setback in the application is minimal and insufficient to support a high level berm. Setback width, berm height and berm vegetation collectively influence the noise decibel level received at the boundary. A minimal setback undermines the decibel limit requested in #4 above.

12. Condition Survey.

A condition survey should be completed on every building or significant structure within ½ mile of the proposed quarry. The condition survey should be overseen by a structural engineer licensed to practice in the state of Wisconsin. This should document both in field notes and photographs all cracks and other visual evidence of structural distress. Establish limits for Peak Particle Velocity specific to the condition and situation of the Graves Home.