

BEFORE THE DANE COUNTY BOARD OF ADJUSTMENT

In the Matter of the Appeal of:

YAHARA MATERIALS, INC.
6117 County Highway K
P.O. Box 277
Waunakee, WI 53597

Appeal 3706
Carlson Site

Appellant.

BRIEF IN SUPPORT OF APPEAL OF DECISION OF THE DANE COUNTY ZONING ADMINISTRATOR

INTRODUCTION

Yahara Materials, Inc. (“Yahara”) submits this supplemental brief and accompanying exhibits in support of its appeal of the Dane County Zoning Administrator’s decision dated May 14, 2020 (the “Decision”) finding that a portion of Tax Parcels 050/0907-064-8500-1, 050/0907-061-9360-2, 050/0907-61-9500-2, and 050/0907-061-8000-9 (the “Carlson Site”) is not considered legally nonconforming for non-metallic mineral extraction. On the basis of the law and the facts in the record, the Decision is erroneous, and it unlawfully deprives the Carlson Site of its proper nonconforming use status for non-metallic mining, contrary to the longstanding Diminishing Asset Rule as well as both historic and recent Dane County practice in the application of the Diminishing Asset Rule.

THE DECISION

In 1969, a portion of the Carlson Site—located in the NE ¼ SW ¼ and the NW ¼ SE ¼ of Section 6 in the Town of Roxbury (the “Registered Parcel”)—was registered as a nonmetallic mineral extraction site with Dane County Zoning. On May 28, 2019, Assistant Zoning Administrator Dan Everson informed the owners of the Carlson Site that, under a newly adopted

Dane County Ordinance, preserving the Site's legal nonconforming status required the Owners submit, within 12 months of the Ordinance's effective date of May 20, 2019, a reclamation plan and a deed notice describing the boundaries of the non-conforming mineral extraction site. Yahara, acting on behalf of the Owners, timely submitted such reclamation plan and deed notice for the Carlson Site on May 14, 2020.

Immediately following Yahara's submission, Dane County Assistant Zoning Administrator, Dan Everson, responded via email explaining that the submitted materials would not be approved before the 12-month deadline set by the Ordinance and, therefore, mineral extraction on the Carlson Site would likely require a conditional use permit. Less than ten minutes later, Zoning Administrator Roger Lane informed Yahara via email that the Carlson Site's "non-conforming status has been abandoned due to the lack of action on the landowners [*sic*] behalf as described under the Dane County Code of Ordinances" and thus "[a] conditional use permit will need to be obtained for non-metallic mineral extraction operation to occur." This email chain is attached to Yahara's Notice of Appeal and Appeal dated June 12, 2020.

On May 19, 2020, Dane County's Assistant Corporation Counsel, David Gault, informed Yahara that the Zoning Administrator reached the conclusion that the Carlson Site lost its legal nonconforming status because Yahara's deed notice included the entire Carlson Site rather than limiting the notice to the portion of the Carlson Site that was registered in 1969 for nonconforming mineral extraction and located to the south of State Highway 188. Mr. Gault explained that the portion of the Carlson Site located to the north of State Highway 188 did not have legal nonconforming status. Mr. Gault also informed Yahara that it may be able to save its nonconforming status for that originally registered portion if Yahara submitted a deed notice covering only that area and excluding the remainder of the Carlson Site located to the north of

State Highway 188. At the direction of the Zoning Administrator, Yahara followed these instructions to ensure it did not lose the Carlson Site's nonconforming status altogether and submitted a deed notice limiting the nonconforming property accordingly.

DIMINISHING ASSET RULE

The Zoning Administrator's conclusion that the Carlson Site's nonconforming use status was limited to the portion of the Registered Parcel located south of Highway 188 is simply irreconcilable with the Diminishing Asset Rule. The Diminishing Asset Rule delineates precisely how a nonmetallic mining site's nonconforming status extends to commonly owned, contiguous property, and may not simply be discarded by zoning authorities in favor of some contrary interpretation. The Diminishing Asset Rule provides that "when contiguous parcels are owned by the same entity and excavation operations are in existence on part of the land, all land constituting an integral part of the operation may be deemed 'in use.'" *Sturgis v. Winnebago Cty. Bd. of Adjustment*, 141 Wis. 2d 149, 151, 413 N.W.2d 642, 642 (Ct. App. 1987). This accounts for the unique nature of mineral extraction, where the land itself is consumed in the process of use. Unlike other uses of land that may be in fixed location, mining activity is necessarily expansive. Thus, a mining site's nonconforming use status is not confined to that portion of land that was actively being mined at the time the property became nonconforming.

First, the Decision contravenes this Rule because it confines the Site's nonconforming status to only a *portion* of the Registered Parcel. The Zoning Administrator provides no authority for treating the sections of the parcel on either side of State Highway 188 as two separate parcels. And the Diminishing Asset Rule pointedly rejects such a construction for purposes of legally nonconforming mining sites. The Rule's extension of non-conforming status to all commonly owned parcels contiguous to an active mining operation is simply incompatible with the Decision's

conclusion that nonconforming status fails to extend to even the boundaries of the Registered Parcel. Before one can ask whether a parcel is contiguous to another, one must first determine what the relevant parcel is. Here, the parcel at issue encompasses the property to the north and south of Highway 188. Therefore, even if there were no contiguity with other commonly owned parcels, the Carlson Site would, at a minimum, include the full parcel on which the registered mineral extraction operations took place.

Second, even if the parcel interceded by Highway 188 were treated as two separate parcels, it is still entitled to nonconforming use status under the Diminishing Asset Rule because the parcels are contiguous. It is well settled law in Wisconsin that an owner of property abutting a street has title to the center of the street, subject only to the public easement. *Spence v. Frantz*, 195 Wis. 69, 217 N.W. 700, 701 (1928). Here, that means that, for purposes of ownership, the portions of the Carlson Site abutting Highway 188 extend to, and physically meet in the center of street. Such properties would plainly be contiguous, within both the common meaning of the word as well as the technical definition afforded it in the Dane County Ordinances. *See* Dane County Ordinances Sec. 10.004(49) (defining “[c]ontiguous” as “[l]ots or parcels that share a common boundary for a distance of at least 66 feet.”).

Abutting property owners’ rights to the soil below the street further confirms this principle as it applies to property used for mining. The owner of property abutting a public road retains the right to all minerals that lie beneath the road; the only right given up to the public is the right to use the road itself, with which the property owner may not interfere. *Barclay v. Howell's Lessee*, 31 U.S. 498, 499, 8 L. Ed. 477 (1832). *See also Norcross v. Griffiths*, 65 Wis. 599, 27 N.W. 606, 609 (1886); *Randall v. City of Milwaukee*, 212 Wis. 374, 249 N.W. 73, 75 (1933); *Town of Moorcroft v. Lang*, 779 P.2d 1180, 1182 (Wyo. 1989).

Even if the parcels cannot be said to physically meet at the center point of the street, they are contiguous. Under Wisconsin law, contiguity does not require a physical meeting, and public streets are excepted from the analysis of whether pieces of property are contiguous to one another. The Wisconsin Supreme Court confirmed this when it engaged in an exacting analysis of the meaning of contiguity in *Town of Lyons v. City of Lake Geneva*, 56 Wis. 2d 331, 335, 202 N.W.2d 228, 231 (1972). That case explained that “‘contiguous’ does not always mean the land must be touching” and that public roads do “not destroy the concept of ‘contiguous’ *regardless of ownership*.” *Town of Lyons v. City of Lake Geneva*, 56 Wis. 2d 331, 336, 202 N.W.2d 228, 231 (1972). *Cf. In re Annexation of Smith Prop.*, 2001 WI App 201, ¶ 19, 247 Wis. 2d 946, 956, 634 N.W.2d 840, 844 (finding a river running between properties did not render them non-contiguous). Consistent with this analysis, “[p]ublic roads are excepted and need not be counted for purposes of determining contiguity.” *Town of Delavan v. City of Delavan*, 168 Wis.2d 566, 571– 72, 484 N.W.2d 343 (App. 1992), review granted 490 N.W.2d 21, reversed on other grounds 500 N.W.2d 268, 176 Wis.2d 516.

DANE COUNTY PRACTICE

With respect to other nonmetallic mining sites, Dane County Planning & Zoning applies the Diminishing Asset Rule consistent with Yahara’s position in this case. Attached to this brief are exhibits containing records for various similar properties, wherein the County has recognized that nonmetallic mining sites include both the underlying parcel registered in 1969 as well as contiguous, commonly owned parcels. Such application of the Diminishing Asset Rule by the County also includes commonly owned parcels separated by roads.

Attached to this brief are the following Exhibits:

Exhibit A: Gilles Trust Site Record

Exhibit B: Beuthin Site Record

Exhibit C: Wipperfurth Site Record

Exhibit D: October 4, 1989 Letter from Dane County Corporation Counsel Cal Kornstedt

Exhibit E: October 17, 1989 Letter from Dane County Zoning Administrator William Fleck

Exhibit F: Carlson Site Mineral Extraction Registration

Exhibit G: March 26, 1969 Letter from Capitol Sand & Gravel Co. Regarding Carlson Site

Exhibit H: December 12, 2016 Letter from Dane County Planning & Development Senior Planner Brian Standing Regarding Carlson Site

Exhibit I: Dane County Map of Carlson Site

CONCLUSION

This brief provides the foundation for the legal arguments and introduces the exhibits that counsel for Yahara intends to rely and expand upon in the upcoming hearing in this matter scheduled for September 9, 2021.

Dated this 19th day of August, 2021

HUSCH BLACKWELL LLP
Attorneys for Appellant

By: 

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kirsten.atanasoff@huschblackwell.com



DANE COUNTY PLANNING DEVELOPMENT

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

TO: Tim Geoghegan
Yahara Materials

FROM: Dan Everson, Assistant Zoning Adm.

DATE: October 26, 2016

RE: Mineral extraction - non conforming status

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

Planning
(608)266-4251, Rm. 116

Records & Support
(608)266-4251, Rm. 116

Zoning
(608)266-4266, Rm. 116

Dear Mr. Geoghegan,

This memo serves as a response to the inquiry of how many acres of the Gilles Trust farm, located in Section 4 and 5 of the Town of Vienna, are considered to have a non-conforming status regarding mineral extraction uses. Dane County staff has determined the legal boundaries of the non-conforming mineral extraction site within the attached map.

The property, described originally as 8 acres within the NW ¼ NW ¼ Section 4, Town of Vienna was registered as an existing aggregate site with Dane County by Melvin Paulson in 1969 under the ownership of Elmira Schroeder.

Dane County Planning does recognize that adjacent parcels #0909-051-8000-7, 0909-051-9500-0 and 0909-042-9070-2 are considered to have a non-conforming status as well due to the lands are contiguous to the original parcel that was registered and the lands are under common ownership. This is based on the original ownership at the time of registration. Additional parcels owned by the Gilles Trust are not considered grandfathered.

Thank you for your consideration. If you have questions, please contact me directly or Zoning Administrator, Roger Lane.

Dan Everson
Assistant Zoning Administrator
267-1541
everson.daniel@countyofdane.com

CC:
Town of Vienna



DANE COUNTY PLANNING DEVELOPMENT

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

December 12, 2016

GILLES TR
5849 MEEK RD
LODI WI 53555

Planning
(608)266-4251, Rm. 116

Records & Support
(608)266-4251, Rm. 116

Zoning
(608)266-4266, Rm. 116

Dear Dane County Landowner,

Dane County Zoning records indicate that a portion or all of your property at the following parcel numbers is registered with Dane County as an existing "nonconforming" mineral extraction site.

Parcel Numbers: 090904285307

The registration occurred in 1969, and all such mineral extraction sites were subsequently deemed nonconforming (a/k/a "grandfathered") uses. The nonconforming use status means that mineral extraction operations could be conducted on your property, without the need to first obtain approval of a conditional use permit from the town and county – a requirement that applies to all other new mineral extraction operations.

This designation applies to your property, regardless of whether or not any mineral extraction activity has taken place since 1969, and regardless of whether or not you have any interest in conducting mineral extraction activities in the future. Yours is one of approximately 40 such dormant nonconforming mineral extraction sites in Dane County. These inactive nonconforming sites are either depleted, abandoned or reclaimed.

Currently, the county is working on updating the zoning ordinance. As part of that effort, we are working on updating policies related to sites registered back in 1969. It is almost 50 years since these sites were originally registered and many of these sites remain dormant. In response, the Comprehensive Revision of Chapter 10 Subcommittee is considering deleting the following ordinance language:

"10.(d) Mineral extraction sites that were registered as nonconforming sites as provided by this ordinance shall not be considered abandoned or discontinued if the site is inactive for more than one year."

Please note that the committee has not taken action on this change. The committee and county staff wish to inform you of what is being discussed and considered, and would like your feedback. We anticipate that this, and numerous other changes to the zoning ordinance will not formally take place until September of 2017. More committee meetings, and public hearings at the county Zoning and Land Resources (ZLR) Committee, and ultimately the full County Board must take place before changes to the ordinance are made.

If the ordinance change is ultimately approved, any future mineral extraction activity on your property would require approval of a conditional use permit by the town and county. Additional information on the Comprehensive Revision of the Dane County Zoning Ordinance is available on the county website here: https://www.countyofdane.com/plandev/zoning/comprehensive_revision_special_projects.aspx

The Comprehensive Revision of Chapter 10 Subcommittee will take this issue up again at its **January 9th, 2017 meeting, at 4:00 p.m. in Room 357 of the City County Building, 210 Martin Luther King, Jr. Blvd in Madison**. You are welcome to attend that meeting, if you like. Whether you plan on attending or not please contact me before that date and let me know what your plans are for the potential mineral deposits on your property. I'd also be happy to answer any questions you may have.

I can be reached by phone at **(608)267-4115** or by email at standing@countyofdane.com. You can also ask Dan Everson, Assistant Zoning Administrator, who can be reached by phone at **(608)267-1541** or by email at everson.daniel@countyofdane.com.

I've enclosed two other documents:

1. Additional information regarding nonconforming mineral extraction operations, and
2. A form and instructions to relinquish the registered nonconforming mineral extraction status on your property. If you decide you do not, under any circumstances, wish to extract the resources (if any) on your property you can:
 - a. Complete the attached form
 - b. Sign it and have it notarized, and
 - c. return it to me at the address above.

We will see that it gets recorded with the Register of Deeds. The Department of Planning and Development will pay the \$30 recording fee. Keep in mind that this is a permanent decision, that cannot be undone.

Thank you for your attention and participation. I look forward to hearing from you soon.

Best wishes,



Brian Standing, Senior Planner

.cc Town of Vienna Clerk
Dave Ripp, Dane County Supervisor, District 29

memo

FROM

MELVIN PAULSON

1963 FEBRUARY 1963

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

1963 MARCH 1963

S	M	T	W	T	F	S
						1
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

- ✓ 1. Landowner: Elmira Schroeder
2. Township of Vienna
3. Section 4, NW $\frac{1}{4}$ of the NW $\frac{1}{4}$
4. Eight acres claimed for mineral deposits
5. Stone Quarry
6. First worked in October, 1962

Signature:

Melvin Paulson

45
CYANAMID

EXHIBIT A

2014年12月10日

OWNER

REGISTERED BY

DESCRIPTION OF LAND REGISTERED

ZONING DISTRICT

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>101-101</u>	<u>2-107</u>	<u>YES</u>	<u>YES</u>	<u>YES</u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
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<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

COMMENTS



EXHIBIT A

MINERAL EXTRACTION REGISTRATION

TOWN Vienna SECTION h

OWNER Elaine Schroeder

REGISTERED BY Malvin Paulson, Contractor

DESCRIPTION OF LAND REGISTERED NE 1/4

ZONING DISTRICT A-1

ZONING DEPARTMENT VERIFICATION

<u>1/4</u>	<u>AERIAL PHOTO NO.</u>	<u>PHOTO EVIDENCE</u>	<u>FIELD EVIDENCE</u>	<u>ACCEPTED</u>
<u>NE 1/4</u>	<u>2-107</u>	<u>yes</u>	<u>yes</u>	<u>OK</u> ✓
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
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<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

COMMENTS



EXHIBIT A

9 5 3 3 6 4 1
Tx:9096867

NOTICE

Use black ink

WHEREAS, DANE COUNTY, pursuant to Ch. 10.0004(1)(b)3., hereby gives notice that the following described property in the Town of MAZOMANIE indicates the presence of an active nonconforming mineral extraction site.

The described property is as follows:

034/0806-101-8500-9 and 034/0806-101-9000-2

The W ½ of the NE ¼ of Section 10, T8N, R6E, except Certified Survey Map No. 927, recorded as Document No. 1339388, also except a parcel of land described as follows: Beginning at the N ¼ corner of said Section 10 as marked by a railroad spike in Mathewson Road; thence E 529.15 feet; thence S 330.00 feet; thence W 528.71 feet; thence N 00° 04' 33" W along the N-S ¼ line 330.00 feet to the point of beginning of this exception.

034/0806-102-9840-5

All that part of the SE ¼ of the NW ¼ of Section 10, T8N, R6E, lying SE of the railroad right-of-way.

034/0806-103-8000-2

Part of the N ½ of the NE ¼ of the SW ¼ of Section 10, T8N, R6E, more fully described as follows: Beginning at the NE corner of said NE ¼ of the SW ¼; thence S 495 feet; thence W 297 feet; thence S 33 feet; thence W 115.5 feet; thence S 117 feet; thence W to intersection with the railroad right-of-way; thence NE along said railroad right-of-way to the N line of said NE ¼ of the SW ¼; thence E to the point of beginning.

034/0806-101-8500-9

034/0806-101-9000-2

034/0806-102-9840-5

034/0806-103-8000-2

PARCEL IDENTIFICATION NUMBER(S)

This Deed Notice provides information regarding the presence of a nonconforming mineral extraction site and its location satisfying one of the requirements of DCCO Ch. 10.004(1)(b)3.

Cancellation of this Notice may be accomplished by filing a Cancellation of Notice form with the Dane County Register of Deeds Office. The Cancellation of Notice form is available from the Register of Deeds office and requires the following:

- 1) Signature of the County/Town official listed on the original Notice, or an equivalent office-holder.
- 2) Reference document number of original Notice.
- 3) Legal description of property.
- 4) Explanation of reason for cancellation.

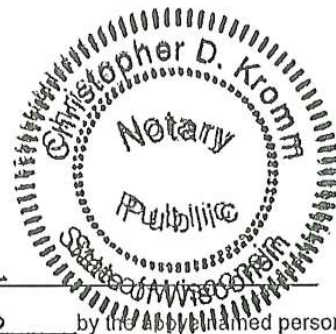
This document was drafted by:
(print or type name below)

Dane County Zoning Administrator

*Names of persons signing in any capacity must be typed or printed below their signature.
P&D form 2/20/2001

Frederick & Virginia Beuthin 1-25-20
Signature of Landowner Date

Frederick & Virginia Beuthin Owners
Name printed Title



STATE OF WISCONSIN, County of Dane

Subscribed and sworn to before me on 1/25/2020 by the above named person(s).

Signature of notary or other person authorized to administer an oath (as per s. 706.06, 706.07) Christopher D. Kromm

Print or type name: Christopher Kromm

Title Notary Public Date commission expires: 2/18/2022

EXHIBIT A

R. Lane FEB 17 2020
Signature of County Official Date

ROGER LANE DANE COUNTY ZONING ADMINISTRATOR
Name printed Title

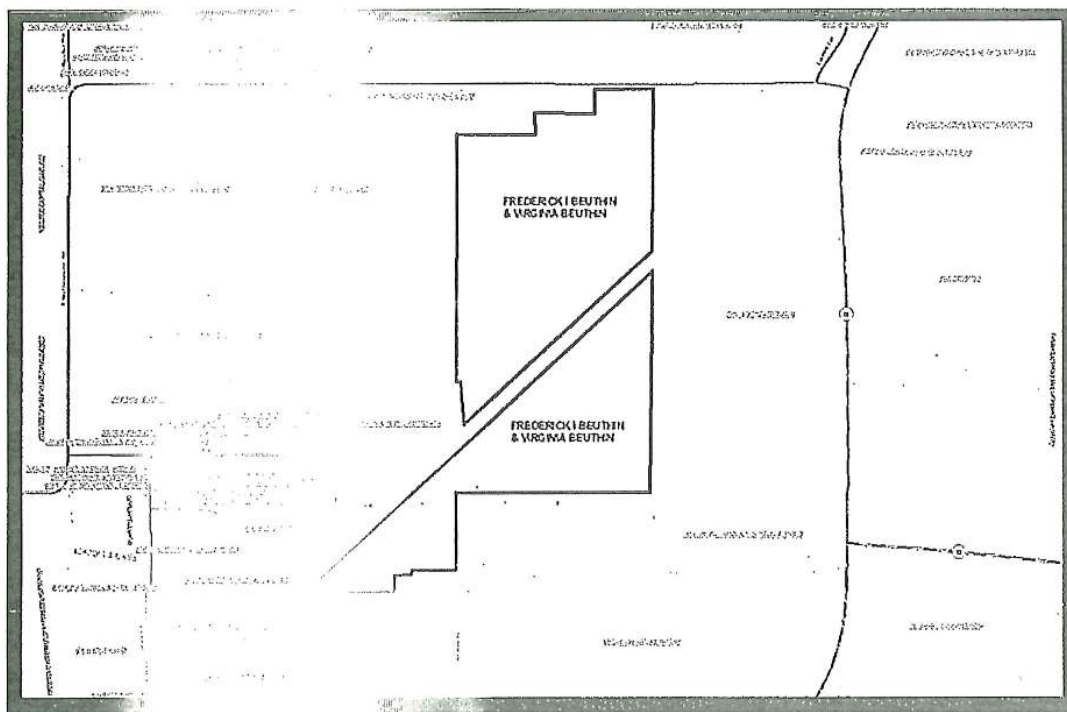
STATE OF WISCONSIN, County of Dane

Subscribed and sworn to before me on 2-17-2020 by the above named person(s).

Signature of notary or other person
authorized to administer an oath K. Kroll
(as per s. 706.06, Stats.)

Print or type name: Katherine Kroll

Title Real Estate Specialist Date commission expires: 11-4-2021





DANE COUNTY PLANNING DEVELOPMENT

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

March 24, 2014

Tim Geoghegan
Yahara Materials
PO Box 277
Waunakee, WI 53597

RE: Nonconforming status of Beuthin Site

Dear Mr. Geoghegan,

This letter is to inform you that the Dane County Zoning Division has conducted further research into the history of the ordinance provisions pertaining to non-conforming mineral extraction. The additional research will change the interpretation regarding registered non-conforming mineral extraction sites. The letter that was sent to you from Assistant Zoning Administrator Dan Everson dated January 31st explained that the mineral extraction ordinances adopted in 1968 did not include language that would allow registered non-conforming mineral extraction sites to continue operation if abandoned for more than one year. The January 31st letter went on to explain that it was not until 1981 that language was added to the zoning ordinance to allow a registered site to retain a non-conforming status even if left dormant for years. The letter concluded that the Beuthin site located in Section 10 of the Town of Albion was dormant between the years of 1969 to 1981 and thus terminated the non-conforming status.

The Zoning Division has discovered that an appeal was brought before the Dane County Board of Adjustment in 1984 about this very same issue regarding the status of registered non-conforming mineral extraction sites. Appeal #1141, Drover's Woods Homeowners Association vs. Dane County Zoning Administrator, challenged the Zoning Administrator's interpretation that mineral extraction sites are allowed to lay dormant for an undetermined period of time without affecting their non-conforming status of the land use.

In this case, the Zoning Administrator at the time, William Fleck, made a ruling that a registered non-conforming mineral extraction site located just west of the Drover's Woods Subdivision in the Town of Sun Prairie was allowed to begin once again extracting gravel from the site under its non-conforming status even though it was left dormant for approximately 14 years (1968 to 1982). The appellant, Drover's Woods Homeowners Association, claimed that the site lost its non-conforming status due to the fact that the activity was abandoned for more than one year and the Administrator's interpretation violated sec. 59.97(10) [now 59.69.10] of the Wisconsin Statutes.

Appeal #1141 was heard by the Board of Adjustment. The Board made the following conclusion regarding registered non-conforming mineral extraction sites: "Conclusion: Although the Zoning Ordinance – does not specifically state that non-conforming

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

Planning
(608)266-4251, Rm. 116

Records & Support
(608)266-4251, Rm. 116

Zoning
(608)266-4266, Rm. 116

mineral extraction could be continued regardless of lapse of time, the nature of the use must be considered. A site not being used for periods of time, which may be substantial in some cases, is inherent to the nature of the business and so constitutes a normal, to be expected use of these sites." The Board of Adjustment upheld the Zoning Administrator's interpretation. The appellant filed a certiorari review with Dane County Circuit Court.

The Board of Adjustment's decision was sustained in Circuit Court under Case #83CV2808. Furthermore, the case was appealed to the Wisconsin Court of Appeals. The appellate court affirmed the Circuit Court's review under District IV Case #84-1178.

In light of this new information, it is apparent that the current concern with regards to registered non-conforming sites has already been addressed at a previous point in time. I have concluded that the interpretation from the previous Zoning Administrator has been thoroughly vetted by the Dane County Board of Adjustment and the court system. Further, I personally spoke with William Fleck to confirm what transpired in 1968 with the adoption of mineral extraction ordinances, the process of the registration of sites, and the reasoning behind his interpretation.

With this new information found, I feel compelled to amend the recent Dane County Zoning Division's interpretation regarding the status of the Beuthin registered mineral extraction site located in Section 10, Town of Mazomanie.

Please be informed that the Beuthin site located in Section 10 in the Town of Mazomanie, as shown on the attached map, is a legally registered non-conforming site for non-metallic mineral extraction. This site may remain dormant until such time as the necessity arises to extract sand and gravel from the site. The site will not lose its non-conforming status and thus negate the need to obtain a conditional use permit as current ordinances dictate at this time.

If you have any questions or concerns regarding this matter, please feel free to contact me directly at 266-9078.

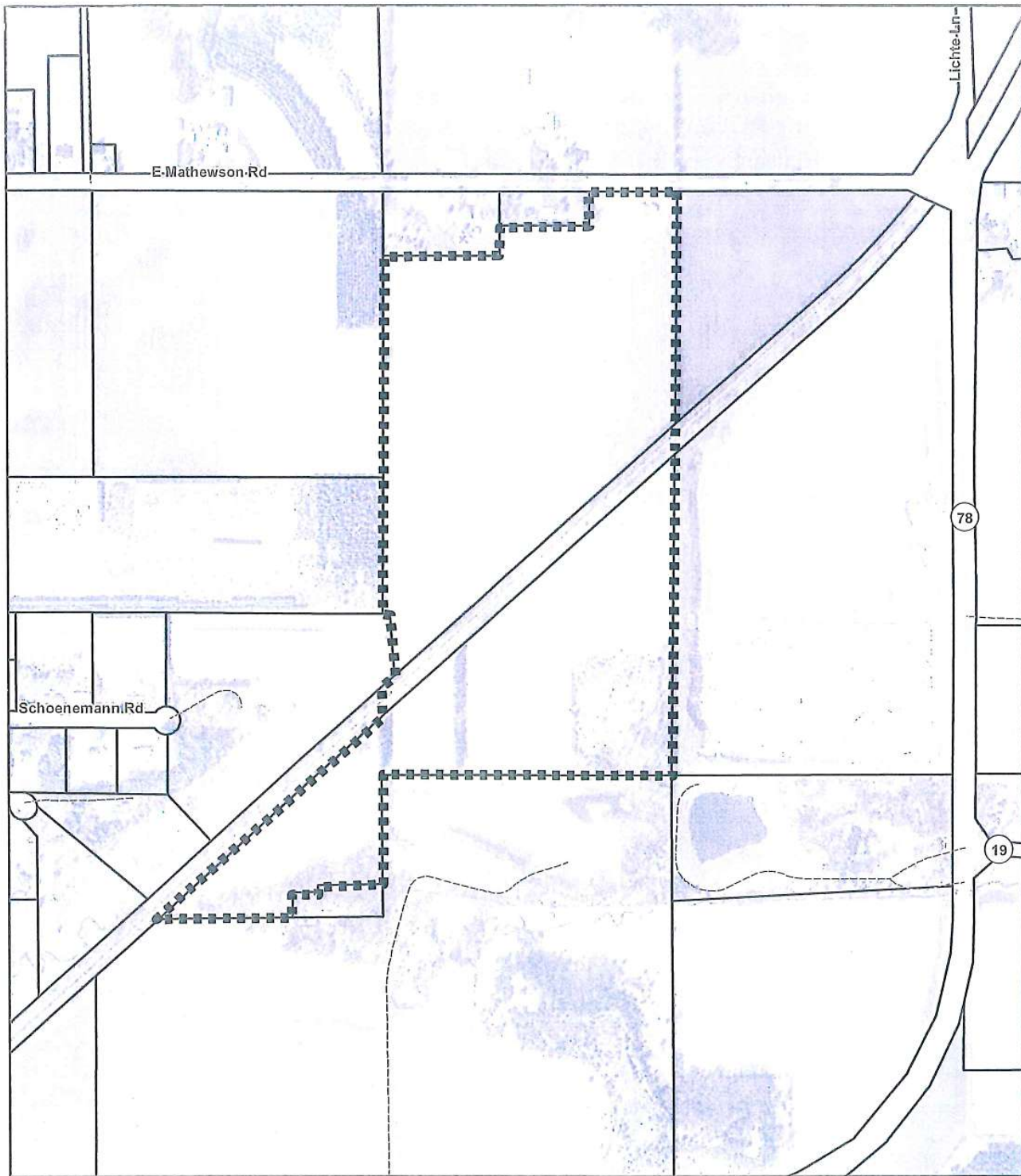
Respectfully,



Roger Lane
Dane County Zoning Administrator

Cc: Maria Van Cleve, Town of Mazomanie Clerk
Fredrick and Virginia Beuthin, 10129 Mathewson Road, Mazomanie, WI 53560

Enclosure: Map showing the Beuthin site



0 250 500 1,000 Feet



**Beuthin
Registered
Mineral Extraction Site**

9 5 3 3 6 4 1
Tx:9096867

NOTICE

Use black ink

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034/0806-101-8500-9 and 034/0806-101-9000-2

The W 1/2 of the NE 1/4 of Section 10, T8N, R6E, except Certified Survey Map No. 927, recorded as Document No. 1339388, also except a parcel of land described as follows: Beginning at the N 1/4 corner of said Section 10 as marked by a railroad spike in Mathewson Road; thence E 529.15 feet; thence S 330.00 feet; thence W 528.71 feet; thence N 00° 04' 33" W along the N-S 1/4 line 330.00 feet to the point of beginning of this exception.

034/0806-102-9840-5

All that part of the SE 1/4 of the NW 1/4 of Section 10, T8N, R6E, lying SE of the railroad right-of-way.

034/0806-103-8000-2

Part of the N 1/2 of the NE 1/4 of the SW 1/4 of Section 10, T8N, R6E, more fully described as follows: Beginning at the NE corner of said NE 1/4 of the SW 1/4; thence S 495 feet; thence W 297 feet; thence S 33 feet; thence W 115.5 feet; thence S 117 feet; thence W to intersection with the railroad right-of-way; thence NE along said railroad right-of-way to the N line of said NE 1/4 of the SW 1/4; thence E to the point of beginning.

034/0806-101-8500-9

034/0806-101-9000-2

034/0806-102-9840-5

034/0806-103-8000-2

Recording area

Name and return address:

Yahara Materials, Inc.

6117 County Hwy. K,
Wauanakee, WI 53597

PARCEL IDENTIFICATION NUMBER(S)

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- 3) Legal description of property.
- 4) Explanation of reason for cancellation.

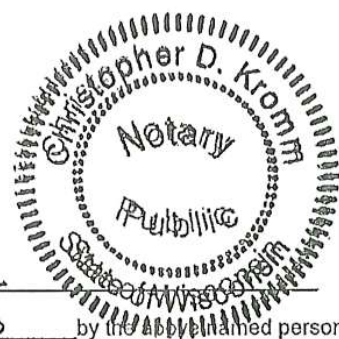
This document was drafted by:
(print or type name below)

Dane County Zoning Administrator

*Names of persons signing in any capacity must be typed or printed below their signature.
P&D form 2/20/2001

Frederick & Virginia Beuthin 1-25-20
Signature of Landowner Date

Frederick & Virginia Beuthin Owners
Name printed Title



STATE OF WISCONSIN, County of Dane

Subscribed and sworn to before me on 1/25/2020 by the above named person(s).

Signature of notary or other person authorized to administer an oath (as per s. 706.06, 706.07) Christopher D. Kromm

Print or type name: Christopher Kromm

Title Notary Public Date commission expires: 2/18/2022

EXHIBIT B

R. Lane FEB 17 2020
Signature of County Official Date

ROGER LANE DANE COUNTY ZONING ADMINISTRATOR
Name printed Title

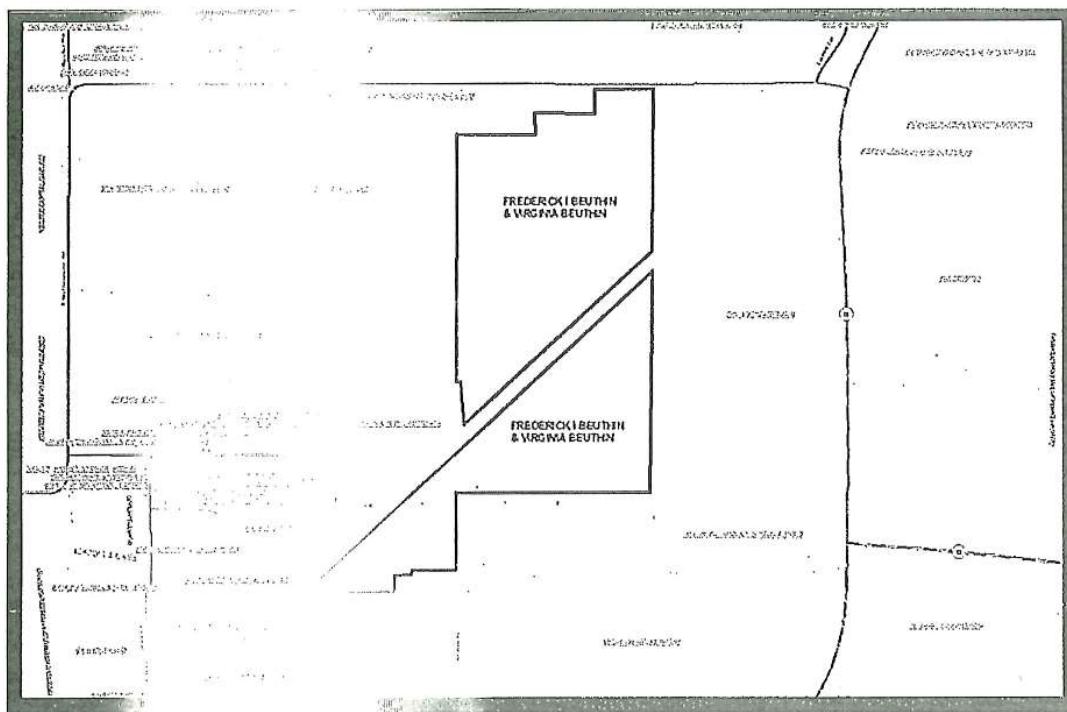
STATE OF WISCONSIN, County of Dane

Subscribed and sworn to before me on 2-17-2020 by the above named person(s).

Signature of notary or other person
authorized to administer an oath *K. Kroll*
(as per s. 706.06, Stats.)

Print or type name: Katherine Kroll

Title Real Estate Specialist Date commission expires: 11-4-2021





DANE COUNTY PLANNING & DEVELOPMENT

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

TO: Tim Geoghegan
Yahara Materials

FROM: Dan Everson, Assistant Zoning Adm.

DATE: January 29, 2014

RE: Mineral extraction - non conforming status

CC: Roger Lane, Zoning Administrator

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

Planning
(608)266-4251, Rm. 116

Records & Support
(608)266-4251, Rm. 116

Zoning
(608)266-4266, Rm. 116

Dear Mr. Geoghegan,

This memo serves as a response to your question with whether or not the Richard and Barbara Wipperfurth property located in Section 10, Town of Mazomanie has non-conforming status with regards to mineral extraction. Dane County staff has determined that this site meets the criteria necessary to qualify as a legal non-conforming mineral extraction site.

If the property was actively mined from the time it was registered in 1969 to 1981 and the property was under contiguous ownership, the entire property would be recognized as an existing legal non-conforming site using the criteria established within the diminishing assets case law.

The property was registered with Dane County in 1969 under Roy C. Cooke, Section 10, Town of Mazomanie (139 acres). In December 1981, Zoning Amendment #2795 was approved, which allowed mineral extraction sites that were registered as non-conforming sites to not be considered as abandoned or discontinued if the site was inactive for more than one year.

In August of 2002, the property was sold to Richard and Barbara Wipperfurth. Aerial photos from 1969, 1976, and 1979 through 1981 verify that there was an existing mined site at the above described property. In addition to the historical aerial photos, staff has reviewed the Dane County mineral extraction registration records, the documentation you provided from a registered geologist identifying the mineral asset in the existing mine and the written documentation by the existing landowners establishing that the proposed area was intended to be mined.

Please note this finding is based on the information that you supplied. If any of this data is inaccurate, or if there are substantive changes, the legal non-conforming status may change. This legal non-conforming status is only for the area described in the attached legal description. Mining activities cannot take place outside of this area unless otherwise approved. Mineral deposits may be removed from the property once the requirements of the Ch. 74, Dane County Reclamation Ordinance have been met.

Thank you for your consideration. If you have questions, please contact me directly or Zoning Administrator, Roger Lane.

Dan Everson
Assistant Zoning Administrator
267-1541

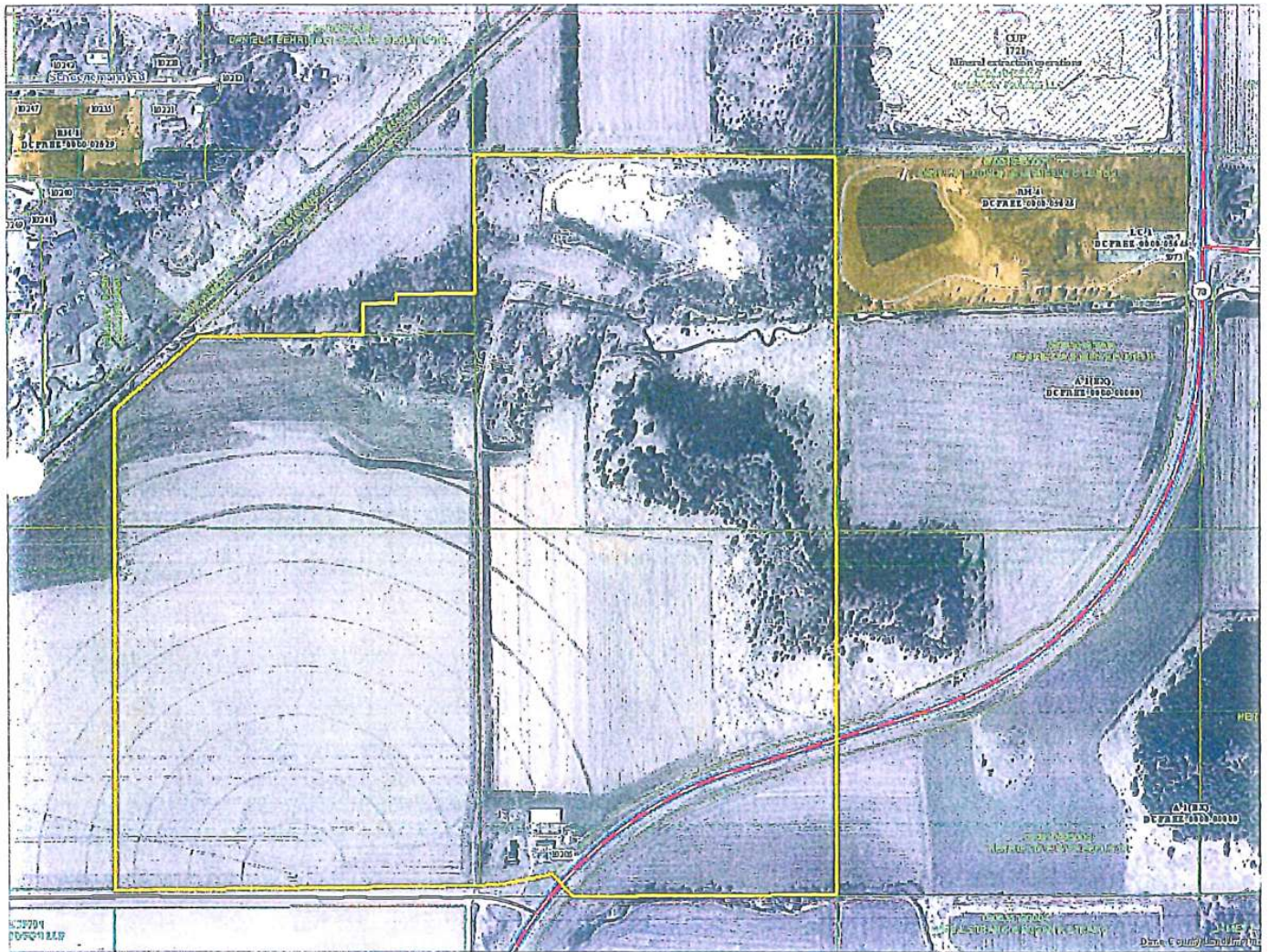


EXHIBIT C

9 5 3 3 6 4 2
TX:9096867

NOTICE

Use black ink

WHEREAS, DANE COUNTY, pursuant to Ch. 10.0004(1)(b)3., hereby gives notice to the following described property in the Town of MAZOMANIE in the presence of an active nonconforming mineral extraction site as follows:

The described property is as follows:

034/0806-103-8210-8
NE 1/4 of the SW 1/4 of T8N, R6E, lying SE of the railroad right-of-way, except the NE corner of said 297 feet; thence S 33° W to intersection with railroad right-of-way to the point of beginning.

034/0806-103-9500-5
SE 1/4 of the SW 1/4 of T8N, R6E

034/0806-104-8500-6
W 1/2 of the SE 1/4 of T8N, R6E

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
5563842
02/19/2020 10:03 AM
Trans Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 2

Recording area

Name and return address:

Yahara Materials, Inc.

6117 County Hwy. K,
Wauanakee, WI 53597

034/0806-103-8210-8
034/0806-103-8440-0
034/0806-103-9500-5
034/0806-104-8500-6
034/0806-104-9000-9

PARCEL IDENTIFICATION NUMBER(S)

This Deed Notice provides for the requirements of DCCO Ch.

regarding the presence of a nonconforming mineral extraction site and its location satisfying one of the

Cancellation of this Notice is accomplished by filing a Cancellation of Notice form with the Register of Deeds Office. Cancellation of Notice is available from the Register of Deeds Office and requires the following:

- 1) Signature of the official listed on the Notice, or an equivalent holder.
- 2) Reference document original Notice.
- 3) Legal description of the property.
- 4) Explanation of reason for cancellation.

This document was signed by (print or type name)

Dane County Zoning

*Names of persons in capacity must be typed below their signature. P&D form 2/20/2001

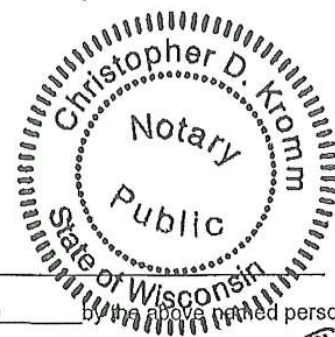
Barbara Wipperfurth
Signature of Landowner

01/31/2020
Date

Wipperfurth Acres LLC
Name printed

Owners
Title

Richard + Barbara Wipperfurth



STATE OF WISCONSIN, County of Dane

Subscribed and sworn to before me on 1/31/2020

by the above named person(s).

Signature of notary or other person authorized to administer an oath
per s. 706.08, 706.07)

Christopher D. Kromm

Print or type name: Christopher Kromm

Title: Notary Public

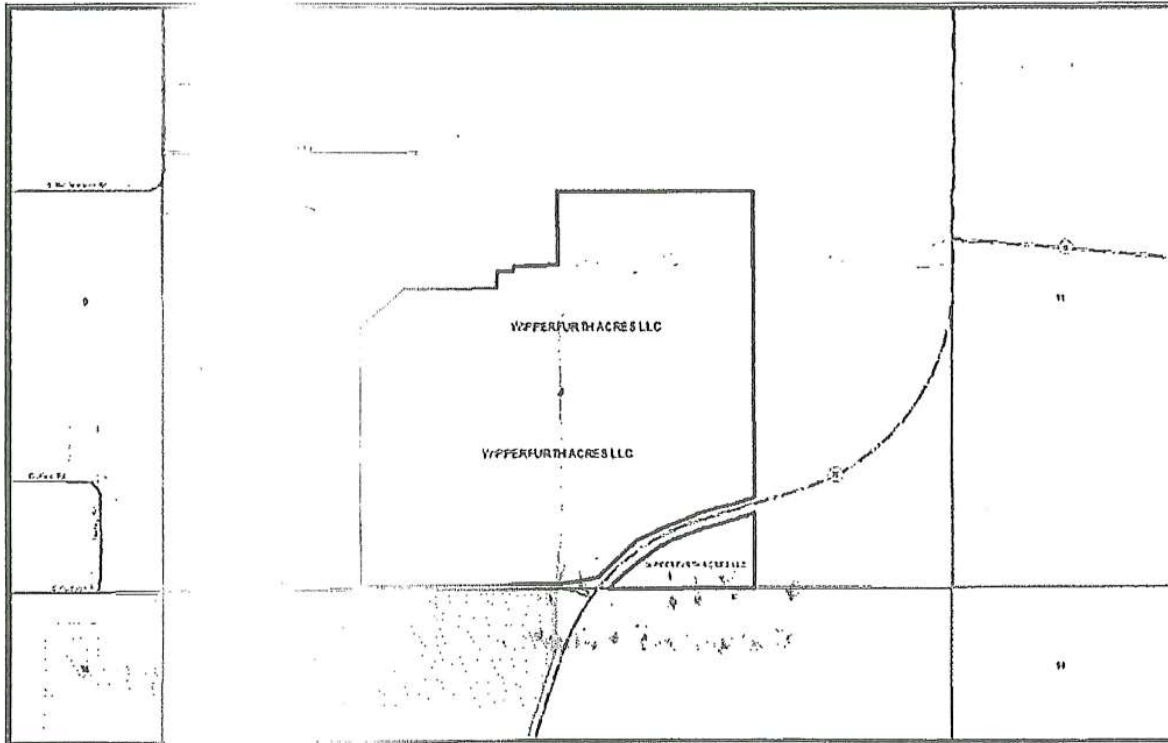
Date commission expires: 2/18/2022

EXHIBIT C

[Signature] FEB 17 2020
Signature of County Official Date

ROGER LANE DANE COUNTY ZONING ADMINISTRATOR
Name printed Title

STATE OF WISCONSIN, County of Dane
Subscribed and sworn to before me on 2-17-2020 by the above named person(s).
Signed by me as a Notary or other person authorized to administer an oath [Signature]
(as provided in Stats., §§ 19.06, 705.17)
Print Name: Katherine Kroll
Title: Estate Specialist Date commission expires: 11-4-2021





OFFICE OF THE
CORPORATION COUNSEL

October 4, 1989

William Fleck, Zoning Administrator
Dane County Department of Land Records
116 City-County Bldg
210 Martin Luther King, Jr., Blvd.
Madison, WI 53709

Dear Mr. Fleck:

You ask whether it would be proper for you to decide that a particular parcel of land is grandfathered as a nonconforming use under the mineral extraction registration provisions of Dane's zoning ordinance.

The facts relevant to your inquiry are as follows. In 1969, Dane County adopted a zoning ordinance which, inter alia, provided that mineral extraction operations were prohibited in the A-1 Agricultural District, except for those active mineral extraction operations which antedated the enactment of the ordinance. Pre-existing mineral extraction operations were required to be registered to achieve this nonconforming status. Shortly after enactment of the ordinance, XYZ company proposed to register two adjoining 40 acre parcels in the town of Verona but the then zoning administrator would only accept registration for one of the parcels on the ground that the second parcel had not as of that date been actively mined. The company asks for reconsideration of that decision as it applies to the second parcel.

Since the date of the initial decision, the case of Sturgis v. Winnebago Board of Adjustment, 141 Wis. 2d 149 (Ct. App. 1987), has been decided. In Sturgis the court addressed the propriety of a board of adjustment holding that a parcel contiguous to an active mineral extraction operation enjoys the same nonconforming status as the active site. The Sturgis court agreed with the board of adjustment, reasoning that the diminishing assets rule applied. Under this rule, all contiguous land containing the asset is part of the operation notwithstanding that a portion is not yet under actual excavation. The court went on to say that "We therefore hold

William Fleck
October 4, 1989
Page 2

that when a single owner has contiguous parcels on which an excavation operation is in existence, all land which constitutes an integral part of the operation is deemed 'in use,' notwithstanding the fact that a particular portion may not yet be under actual excavation."

The facts in the situation you present are for all practical purposes identical to those of Sturgis. I see no reason why, as you suggested, you may not apply the holding in Sturgis to this situation and reverse the prior determination.

Sincerely,



Cal W. Kornstedt
Corporation Counsel

ZON946



Dane County Land Regulation & Records

Room 116, City-County Building
Madison, Wisconsin 53709

Gene R. Rankin, J.D.
DIRECTOR
608/267-4115

Land Division Review
608/266-9086

Property Listing
608/266-4120

Surveyor
608/266-4252

Zoning
608/266-4266

October 17, 1989

Mr. Robert Shea, President
Wingra Stone Company
Post Office Box 4284
Madison, WI 53711

RE: Status of nonconforming mineral extraction registration for property located in the SE 1/4 NW 1/4 and NE 1/4 SW 1/4 of Section 9, Town of Verona (Marty Pit, 80 acres, more or less).

Dear Mr. Shea:

You have requested that I review the status of the above listed registration to determine the potential of including the entire 80 acres in the nonconforming classification. Your request was prompted by disclosure of a decision of the Wisconsin Court of Appeals in 1987 in the Sturgis Versus the Winnebago County Board of Adjustment Case.

My review is as follows:

1. The Dane County Zoning Ordinance was amended in 1968 to include regulation of mineral extraction. Opportunity was provided to register the sites that were in operation at that time to classify and identify them as being nonconforming and allow their continued operation.
2. Wingra Stone registered the Marty Pit property along with other sites on October 23, 1968. The property included 80 acres, more or less, and included the SE 1/4 NW 1/4 and NE 1/4 SW 1/4 of Section 9, Town of Verona. Ownership was held by Wingra Stone and Payne and Dolan, each holding an undivided 1/2 interest. Documentation of said ownership has been filed with our office.
3. Registration were reviewed by Dane County Zoning and approved if there was evidence of a mineral extraction operation on the property registered. The approved sites were restricted to the specific 1/4 1/4 in which the mineral extraction was located. Therefore, Wingra Stone's registration was approved only for the SE 1/4 NW 1/4 of Section 9. The requirement to restrict the registration to the specific 1/4 1/4 was not included in the Ordinance and I cannot find any other documentation in our records that would substantiate its validity.

4. The Sturgis Case is similar in that the approved mineral extraction was restricted to the parcel on which the excavation was located and expansion to an adjacent parcel under the same ownership was not permitted. The Wisconsin Appeals Court held "that when a single owner has contiguous parcels on which an excavation operation is in existence, all land which constitutes an integral part of the operation is deemed 'in use' notwithstanding the fact that a particular portion may not yet be under actual excavation."
5. I requested an opinion from Cal Kornstedt, Dane County Corporation Counsel with regard to your request and the Sturgis Case. Mr. Kornstedt stated "the facts in the situation you present are for all practical purposes identical to those of Sturgis. I see no reason why, as you suggested, you may not apply the holding in Sturgis to this situation and reverse the determination." A full copy of this opinion is enclosed.
6. The Dane County Board of Adjustment on September 16, 1980 also rendered a decision which is pertinent to your situation. Section 10.21(1) (a) of the Dane County Zoning Ordinance provides in part as follows: "The lawful use of a building or premises existing at the time of the adoption of this ordinance may be continued as a nonconforming use ---." The Board in a decision pertaining to the expansion of a nonconforming mineral extraction site stated "that the word 'premises' as used in Section 10.21(1) and in reference to nonconforming mineral extraction Section 10.12(2) (a) 5. shall mean the entire land owned by a registrant in 1968 but shall not include any lands owned by other than a registrant."

In summary, the relevant facts are:

1. The entire 80 acres was appropriately registered as a nonconforming mineral extraction.
2. The restriction to limit the nonconforming mineral extraction area to the specific 1/4 1/4 is not required by the ordinance.
3. The Sturgis Case and the Board of Adjustment definition of "premises" with regard to nonconforming mineral extraction support inclusion of all of the land that was integral to the operation and appropriately registered in 1968.

Nonconforming min. ext.
Page 3

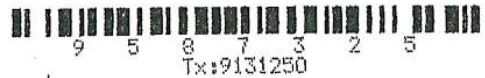
Based on these facts, please be advised that your nonconforming mineral extraction in Section 9, Town of Verona, rightfully includes both the SE 1/4 NW 1/4 and the NE 1/4 SW 1/4 for a total of 80 acres, more or less. Our zoning maps will be amended to reflect this change.

Sincerely yours,


William Fleck,
Zoning Administrator

WF:klw

CC: Verona Town Clerk
Verona Town Board Members
Attorney Bruce Kaufmann
Michael, Best and Friedrich - (Bill White)
Enclosure:



NOTICE

Use black ink

WHEREAS, **DANE COUNTY**, pursuant to Ch. 10.0004(1)(b)3., hereby gives notice that the following described property in the Town of **ROXBURY** indicates the presence of an active nonconforming mineral extraction site.

The described property is as follows:

See map on page 2, below, depicting the approximate boundaries of the property that is the subject of this Notice; and Exhibit A, attached.

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
5597723
06/05/2020 12:26 PM
Trans Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 3

Recording area

Name and return address:

Yahara Materials, Inc.

6117 County Hwy. K,
Wauanakee, WI 53597

050/0907-064-8500-1

PARCEL IDENTIFICATION NUMBER(S)

This Deed Notice provides information regarding the presence of a nonconforming mineral extraction site and its location satisfying one of the requirements of DCCO Ch. 10.004(1)(b)3.

Cancellation of this Notice may be accomplished by filing a Cancellation of Notice form with the Dane County Register of Deeds Office. The Cancellation of Notice form is available from the Register of Deeds office and requires the following:

- 1) Signature of the County/Town official listed on the original Notice, or an equivalent office-holder.
- 2) Reference document number of original Notice.
- 3) Legal description of property.
- 4) Explanation of reason for cancellation.

John W Carlson
Signature of Landowner

5-28-2020
Date

JOHN W CARLSON
Name printed

OWNER
Title



STATE OF WISCONSIN, County of Dane

This document was drafted by:
(print or type name below)

Dane County Zoning Administrator

*Names of persons signing in any capacity must be typed or printed below their signature.
P&D form 2/20/2001

Subscribed and sworn to before me on 5-28-2020 by the above named person(s).

Signature of notary or other person authorized to administer an oath
(as per s. 706.06, 706.07) Daniel J Kienow

Print or type name: Daniel J Kienow

Title Myr Date commission expires: 4/2/24

EXHIBIT F

R. Lane
Signature of County Official

6-5-2020
Date

ROGER LANE DANE COUNTY ZONING ADMINISTRATOR
Name printed Title

STATE OF WISCONSIN, County of Dane

Subscribed and sworn to before me on 6-5-2020 by the above named person(s).

Signature of notary or other person
authorized to administer an oath
(as per s. 706.06, 706.07) *Shelly J. Seehafer*

Print or type name: Shelly J. Seehafer

Title RE Specialist+ Date commission expires: 3-16-2024

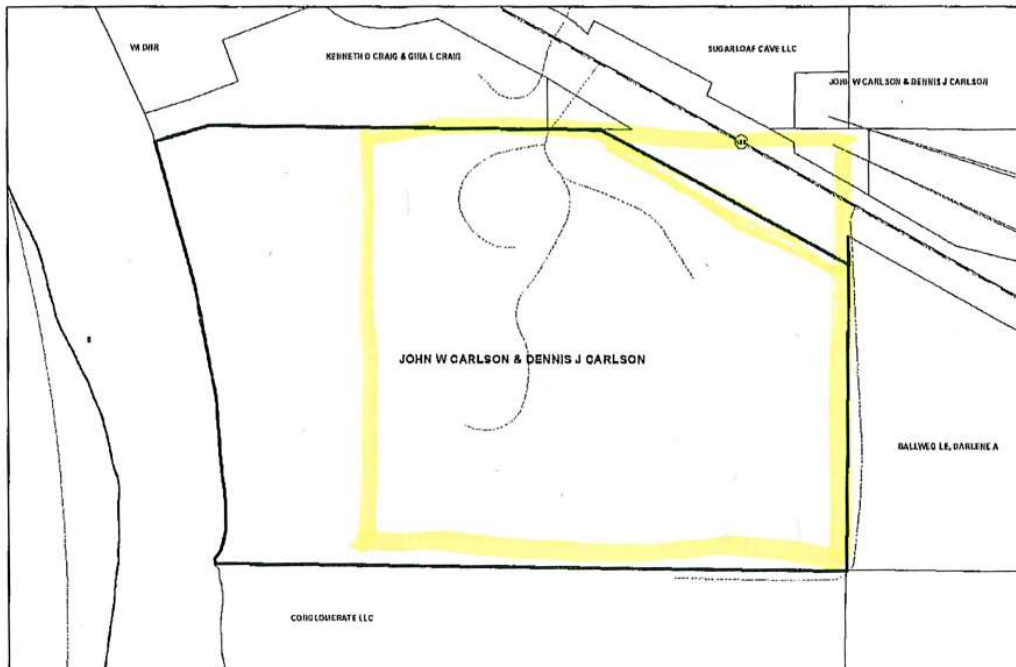


Exhibit A

A parcel of land located in Government Lot 4 and the NW 1/4 of the SE 1/4, all in Fractional Section 6, T9N, R7E, Town of Roxbury, Dane County, Wisconsin, being more particularly described as follows:

Beginning at the Center 1/4 Corner of said Fractional Section 6; thence S 89°42'41" E along the north line of said NW 1/4 of the SE 1/4, 617.63 feet to the southeast right of way line of State Highway "188" per Department of Transportation Division Job No. 1760; thence S 60°55'18" E along said southeast right of way line, 796.57 feet to a point on the east line of said NW 1/4 of the SE 1/4; thence S 00°21'19" W along said east line, 936.69 feet to the Southeast corner of said NW 1/4 of the SE 1/4; thence N 89°42'21" W along south line of said NW 1/4 of the SE 1/4 and the south line of said Government Lot 4, 1,742.02 feet to a meander line of the Wisconsin River; thence along said meander line for the next two course N 08°59'03" W, 782.51 feet; thence N 14°32'16" W, 551.74 feet; thence N 73°26'25" E, 50.00 feet to a point on the north line of said Government Lot 4; thence S 89°42'41" E along said north line, 646.80 feet to the point of beginning. Including all of the land lying westerly of the meander line to the ordinary high water mark of the Wisconsin River. The above described parcel contains 2,384,122 sq. ft. +/- or 54.73 acres +/-.

DAN.

FORMING MINERAL EXTRACTION SITE

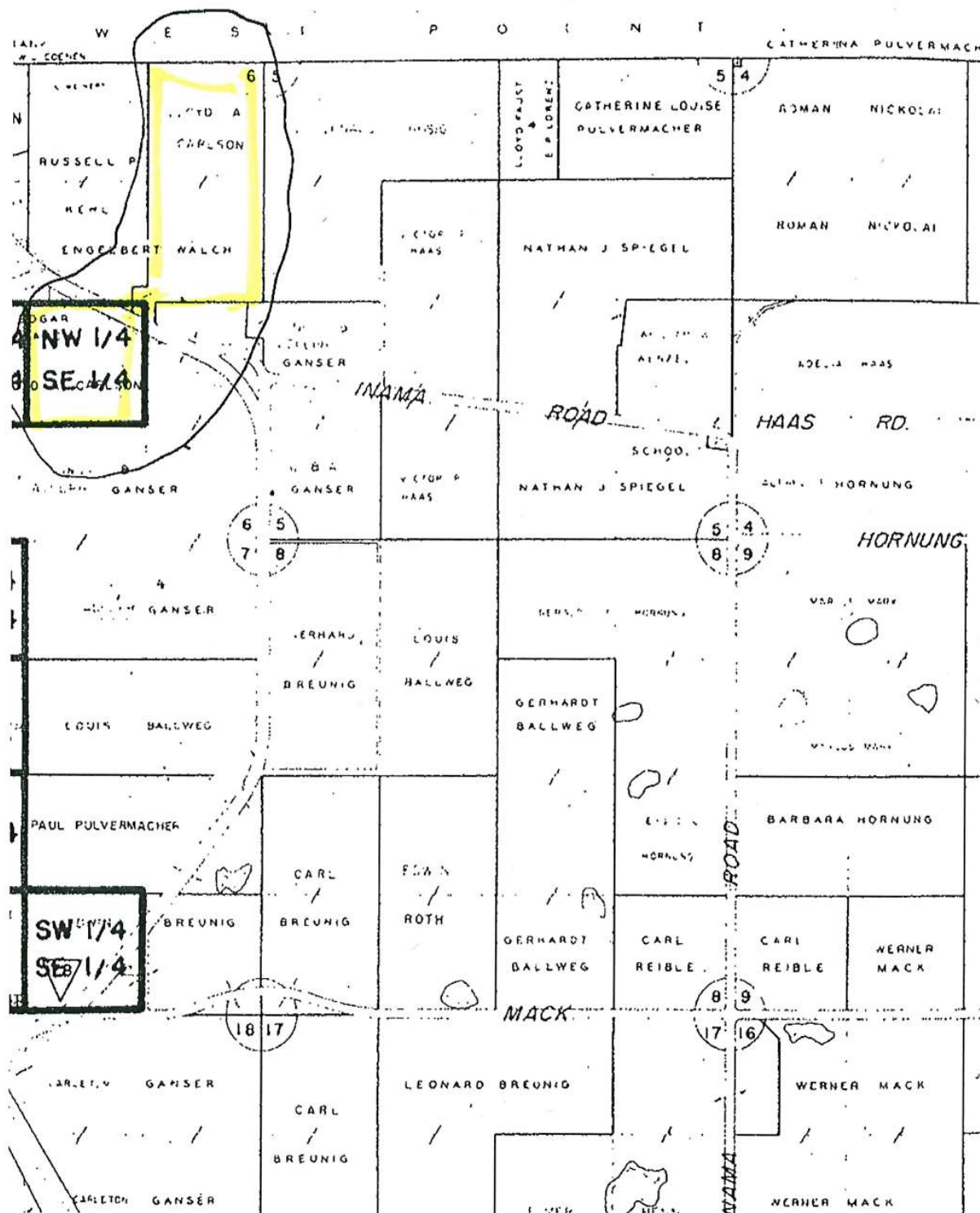


EXHIBIT F

MINERAL EXTRACTION REGISTRATION

TOWN Roxbury SECTION 6

OWNER Lloyd A. Carlson

REGISTERED BY Capitol Sand and Gravel Company

DESCRIPTION OF LAND REGISTERED S₂ W₂ NW₄ SE₄

ZONING DISTRICT A-1

ZONING DEPARTMENT VERIFICATION

1/4 AERIAL PHOTO NO. PHOTO EVIDENCE FIELD EVIDENCE ACCEPTED

NE_{1/4} SW₄ 3JJ-210

NW₄ SE₄ "

COMMENTS _____

知



EXHIBIT F

CAPITOL SAND AND GRAVEL COMPANY

PHONE 798-3051
CROSS PLAINS, WIS.

P. O. BOX 409
MADISON, WISCONSIN 53701

PHONE 80-798-3051
MADISON, WIS.

March 26, 1969

LLOYD A. CARLSON FARM

Highway 188
Rt. 2 Lodi, Wisconsin

Section 6
Town of Roxbury
Dane County
Wisconsin

Township 9N Range 7E

52 acres, more or less, located in the northwest quarter of the south half of Section 6, Township 9N, Range 7E, and also in the west half of the northwest quarter of the southeast quarter of Section 6.

CAPITOL SAND & GRAVEL COMPANY

R. A. GALLAGHER
President

RAG:seb

cc: Dane County Zoning Committee
cc: Wisconsin Department of Engineering

Information from Official Farm Plat Book and Directory,
1969 Edition.

Page No. 55.

13
Washed
Concrete Aggregates

Limestone
Driveways - Ag Lime

Top Soil
Fill Sand - Clay

EXHIBIT G



DANE COUNTY PLANNING DEVELOPMENT

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

December 12, 2016

LLOYD CARLSON & MYRNA CARLSON
7830 STATE HIGHWAY 188
SAUK CITY WI 53583

Planning
(608)266-4251, Rm. 116

Records & Support
(608)266-4251, Rm. 116

Zoning
(608)266-4266, Rm. 116

Dear Dane County Landowner,

Boy Scout Camp

Dane County Zoning records indicate that a portion or all of your property at the following parcel numbers is registered with Dane County as an existing "nonconforming" mineral extraction site.

Parcel Numbers: 090706485001

The registration occurred in 1969, and all such mineral extraction sites were subsequently deemed nonconforming (a/k/a "grandfathered") uses. The nonconforming use status means that mineral extraction operations could be conducted on your property, without the need to first obtain approval of a conditional use permit from the town and county – a requirement that applies to all other new mineral extraction operations.

This designation applies to your property, regardless of whether or not any mineral extraction activity has taken place since 1969, and regardless of whether or not you have any interest in conducting mineral extraction activities in the future. Yours is one of approximately 40 such dormant nonconforming mineral extraction sites in Dane County. These inactive nonconforming sites are either depleted, abandoned or reclaimed.

Currently, the county is working on updating the zoning ordinance. As part of that effort, we are working on updating policies related to sites registered back in 1969. It is almost 50 years since these sites were originally registered and many of these sites remain dormant. In response, the Comprehensive Revision of Chapter 10 Subcommittee is considering deleting the following ordinance language:

"10.(d) Mineral extraction sites that were registered as nonconforming sites as provided by this ordinance shall not be considered abandoned or discontinued if the site is inactive for more than one year."

Please note that the committee has not taken action on this change. The committee and county staff wish to inform you of what is being discussed and considered, and would like your feedback. We anticipate that this, and numerous other changes to the zoning ordinance will not formally take place until September of 2017. More committee meetings, and public hearings at the county Zoning and Land Resources (ZLR) Committee, and ultimately the full County Board must take place before changes to the ordinance are made.

If the ordinance change is ultimately approved, any future mineral extraction activity on your property would require approval of a conditional use permit by the town and county. Additional information on the Comprehensive Revision of the Dane County Zoning Ordinance is available on the county website here: https://www.countyofdane.com/plandev/zoning/comprehensive_revision_special_projects.aspx

The Comprehensive Revision of Chapter 10 Subcommittee will take this issue up again at its **January 9th, 2017 meeting, at 4:00 p.m. in Room 357 of the City County Building, 210 Martin Luther King, Jr. Blvd in Madison**. You are welcome to attend that meeting, if you like. Whether you plan on attending or not please contact me before that date and let me know what your plans are for the potential mineral deposits on your property. I'd also be happy to answer any questions you may have.

I can be reached by phone at **(608)267-4115** or by email at standing@countyofdane.com. You can also ask Dan Everson, Assistant Zoning Administrator, who can be reached by phone at **(608)267-1541** or by email at everson.daniel@countyofdane.com.

I've enclosed two other documents:

1. Additional information regarding nonconforming mineral extraction operations, and
2. A form and instructions to relinquish the registered nonconforming mineral extraction status on your property. If you decide you do not, under any circumstances, wish to extract the resources (if any) on your property you can:
 - a. Complete the attached form
 - b. Sign it and have it notarized, and
 - c. return it to me at the address above.

We will see that it gets recorded with the Register of Deeds. The Department of Planning and Development will pay the \$30 recording fee. Keep in mind that this is a permanent decision, that cannot be undone.

Thank you for your attention and participation. I look forward to hearing from you soon.

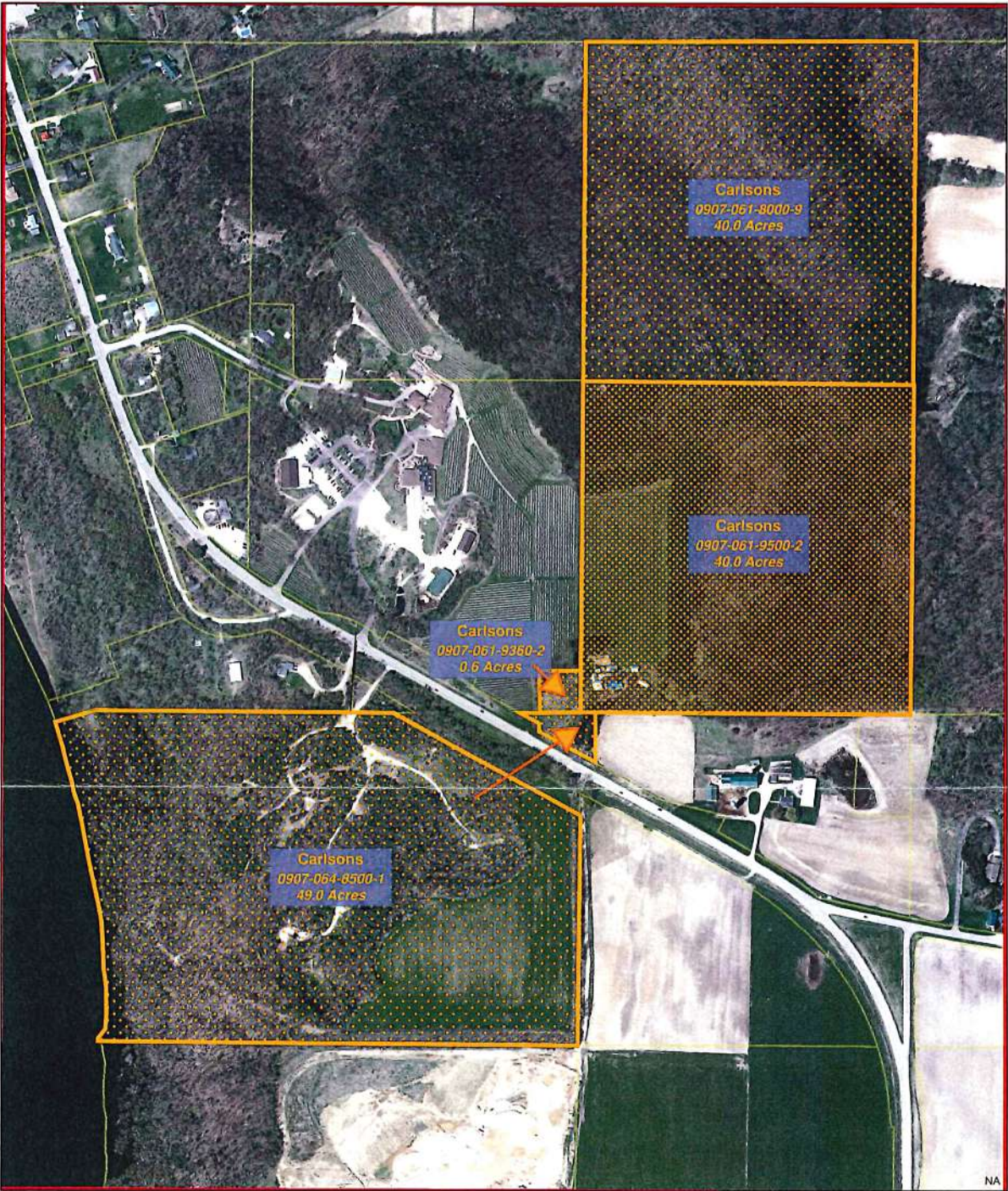
Best wishes,



Brian Standing, Senior Planner

.cc Town of Roxbury Clerk
 Dave Ripp, Dane County Supervisor, District 29

Dane County Map



March 14, 2019

Tax Parcels

