

BEFORE THE DANE COUNTY BOARD OF ADJUSTMENT

In the Matter of the Appeal of:

KRUEGER QUARRY LLC,
a Wisconsin limited liability company,
DALE KRUEGER and
R.G. HUSTON COMPANY, INC.,
a Wisconsin corporation,

Appeal No. 3708

Appellants.

**PRE-HEARING BRIEF OF KRUEGER QUARRY LLC, DALE KRUEGER
AND R.G. HUSTON COMPANY, INC.**

I. INTRODUCTION.

The Appellants, Krueger Quarry, LLC, Dale Krueger and R.G. Huston Company, Inc., appeal a Stop Work Order by Assistant Dane County Zoning Administrator, Daniel Everson (“Zoning Administrator”). The Zoning Administrator concluded that non-metallic mineral extraction on the Kruegers’ property could not extend beyond the boundary of a 40 acre parcel, included as part of one hundred forty-four (144) acres of contiguous land owned by the Kruegers. The Zoning Administrator apparently takes the position that a conditional use permit is necessary to conduct non-metallic mineral extraction operations outside the 40 acres that the County has previously recognized as a legal non-conforming mineral extraction site.

The Zoning Administrator erred in his decision to issue a Stop Work Order because the Kruegers’ entire site, including all 144 acres, satisfies the legal requirements for classification as a legal non-conforming site. As a result, a conditional use permit is not required to conduct mineral extraction activities at the site for which the Zoning Administrator has issued a Stop Work Order.

A specific legal rule applies to non-metallic mineral extraction in Wisconsin, and throughout the United States, based upon the unique characteristics of metallic mineral-bearing land. Non-metallic mineral deposits cannot practically or commercially be extracted all at once from an entire area of deposit. Instead, non-metallic mineral extraction proceeds progressively and sequentially, rolling forward, while fully restoring areas after excavation. Due to the unique characteristics of non-metallic mineral extraction, Wisconsin treats entire non-metallic mineral bearing tracts of land as a whole for purposes of determining whether a vested non-conforming use is implicated. This legal principle, specifically applicable to non-metallic mineral extraction sites, is known as the “diminishing assets” rule.

In this appeal the sole issue before the Board of Adjustment is whether the use of the Kruegers’ property, in its entirety, for non-metallic mineral extraction constitutes a legal non-conforming use by application of the diminishing assets rule.

The diminishing assets rule “unitizes” contiguous mineral extraction property for purposes of determining its status as a nonconforming use. Where the diminishing assets rule applies, an entire tract of land is deemed to be a legal non-conforming use. If non-metallic mineral extraction is a legal non-conforming use of the Kruegers’ property, then that use is grandfathered from the requirement to obtain a conditional use permit. For that reason, the Zoning Administrator’s Stop Work Order should be reversed by the Board of Adjustment.

Non-metallic mineral extraction constitutes a legal non-conforming use in this case, in the first instance, by virtue of a Dane County Zoning Ordinance adopted in 1968 that grandfathered non-metallic mineral extraction as a non-conforming use upon registration with the Dane County Zoning Department prior to April 16, 1969. Here, the Krueger property was timely registered and, therefore, is acknowledged by the Zoning Administrator to be a non-conforming use, but he says

only as to a limited portion of the Kruegers' property. The diminishing assets rule, however, requires that the Kruegers' entire contiguous mineral-bearing property be recognized as a legal non-conforming use. As such, mineral extraction is allowable on the property at issue, contrary to the Zoning Administrator's Stop Work Order.

II. STATEMENT OF ANTICIPATED FACTS.

1. Daniel Everson, Assistant Zoning Administrator for Dane County, issued a Stop Work Order on December 17, 2020 to Krueger Quarry, LLC and Dale Krueger.

2. The Stop Work Order claimed that Krueger Quarry, LLC and Dale Krueger were conducting non-metallic mining operations outside of an approved non-conforming use area.

3. According to the Stop Work Order, the area of mineral extraction at issue, on Parcel 061103440767, requires a conditional use permit because the site does not qualify as a non-conforming use.

4. Krueger Quarry, LLC and Dale Krueger are owners of the property that is the subject of this appeal.

5. The Krueger family has continuously owned 144 acres of land located in the SE ¼ of the SW ¼ and the NE ¼ of the SW ¼, Section 3, in the Town of Pleasant Springs, Dane County, Wisconsin.

6. The Krueger property, consisting of 144 acres in total, is entirely contiguous and the entirety of the land has been commonly owned since at least 1955.

7. R.G. Huston Company, Inc., is the Lessee of the property that is the subject of this appeal and the operator of the non-metallic mineral extraction operation on the property.

8. The Krueger mineral extraction site was registered with the Dane County Zoning Department on April 10, 1969, pursuant to the provisions of a Dane County Zoning Ordinance,

which provides that mineral extraction sites registered with the Dane County Zoning Department are grandfathered as legal-nonconforming mineral extraction sites for which no conditional use permit is required.

9. The Kruegers received a letter from the Dane County Zoning Department advising that the deadline to register mineral extraction operations, in order to be grandfathered, was April 16, 1969.

10. The notice from Dane County Zoning quoted the relevant zoning ordinance as follows:

“All existing mineral extraction operations shall be deemed non-conforming uses and may be continued providing that they have been worked prior to the date of adoption of this ordinance and they have been registered with the County Zoning Supervisor within one year of the date of adoption of this ordinance.”

11. The relevant Dane County Zoning Ordinance was adopted on April 16, 1968, thereby making April 16, 1969, the deadline to register for grandfather classification.

12. In this case, the Krueger mineral extraction site was timely registered, and the registration stated that the Krueger quarry first began operations in July 1955.

13. Mineral extraction operations have continued ever since registration in 1969 on the Krueger mineral extraction site, most recently since 2002 by the R.G. Huston Company.

14. Although the Krueger property that is the subject of this appeal constitutes a contiguous whole of 144 acres, the Dane County Zoning Department has only been willing to recognize 40 acres as having non-conforming use status.

15. The Zoning Administrator has noted that the Krueger registration listed 2 acres as being quarried at the time of registration, but the Zoning Administrator nonetheless has recognized the site to include a 40 acre sub-parcel owned by the Kruegers - - but no more.

16. The Zoning Administrator contends that quarrying beyond the 40 acre portion of the land owned by the Kruegers requires a conditional use permit.

17. All of the Kruegers' 144 acres of property, however, are contiguous and of undifferentiated characteristics i.e., it is all good mineral-bearing land.

18. The Kruegers, moreover, have always intended that their entire 144 acres would be used for non-mineral extraction operations, in an orderly progression emanating forth from the original mining site.

19. The Kruegers' intent is evidenced by the fact that they have steadfastly not sold any of their property for other development despite opportunities to do so.

20. Soil borings from the Krueger property also bear out that the entire acreage includes valuable mineral deposits.

21. In fact, the immediate area that is subject to the Stop Work Order is perhaps the richest area of the Krueger property in terms of mineral deposits.

22. Quarrying operations, as occurring on the Krueger property, must proceed in an orderly progression; property with valuable mineral deposits cannot be quarried, in its entirety, at a single point in time.

23. Quarrying, instead, progresses in a rolling fashion, like on the Krueger property.

24. The site that is the subject of the Stop Work Order is in the logical path of a natural progression following the non-metallic mineral deposits being extracted.

25. Restoration of quarried land, moreover, is constantly ongoing on the Krueger property.

26. After an immediate area is quarried, that area is restored, frequently to a better condition than prior to being quarried.

27. Pictures from the Krueger mineral extraction site submitted as part of this appeal depict the restoration that is ongoing.

28. The Krueger mineral extraction site, moreover, is located remote from current residential development and the site has long been operated safely and unobtrusively to the benefit of the locality.

29. The product quarried from the Krueger property is used for beneficial projects in the immediate area, including by municipal bodies.

30. Non-metallic mineral extraction in the local area in which the product is used by municipalities and contractors not only reduces the cost of transporting the product but also minimizes wear and stress on roadways by reducing the distance the product must be transported and the volume of transported product and reduces consumption of fuel in transportation of the product.

31. The owners of the Krueger mineral extraction site, for their part, have always intended for their entire 144 acres to be ultimately quarried.

32. By contrast, arbitrarily limiting mineral extraction to a 40 acre sub-parcel will deprive the Kruegers of the valuable income-producing use of their property.

33. Limiting non-metallic mineral extraction to 40 acres would be arbitrary and not based on the non-metallic mineral-bearing characteristics of the Krueger property, which characteristics do not stop at the line recognized by the Zoning Administrator, and which line is legally inconsistent with applicable Wisconsin law.

III. THE DIMINISHING ASSETS RULE APPLIES TO NON-METALLIC MINERAL EXTRACTION ON CONTIGUOUS PROPERTY UNDER COMMON OWNERSHIP.

The “diminishing assets” rule must be applied in determining whether the Kruegers’ property in its entirety may be used for non-metallic mining activities as a legal non-conforming use. Wisconsin, like most states, evaluates quarry operations under the diminishing assets rule, due to the unique characteristics of mineral extraction.

In *Sturgis v. Winnebago Cty. Bd. of Adjustment*, 141 Wis. 2d 149, 413 N.W.2d 642 (Ct. App. 1987), the Wisconsin Court of Appeals determined that a conditional use permit was unnecessary to expand a quarrying operation because of the unique nature of mineral extraction. Applying the diminishing assets rule, the Court explained:

Because of the unique nature of mineral extraction, many courts have adopted the “diminishing assets” rule, which we deem applicable here. “In a quarrying business the land itself is a mineral or resource. It constitutes a diminishing asset and is consumed in the very process of use. Under such facts, the ordinary concept of use, as applied in determining the existence of a non-conforming use, must yield to the realities of the business in question and the nature of its operations. We think that in cases of a diminishing asset, the enterprise is ‘using’ all that land which contains the particular asset and which constitutes an integral part of the operation, notwithstanding the fact that a particular portion may not yet be under actual excavation. It is in the very nature of such business that reserved areas be maintained which are left vacant or devoted to incidental uses until they are needed.” *Id.* at 153, 413 N.W. 2d (quoting *Du Page Cty. v. Elmhurst-Chicago Stone Co.*, 18 Ill. 2d 479, 165 N.E.2d 310, 313 (1960)).

“The very nature of the excavating business contemplates the use of land as a whole, not a use limited to a portion of the land already excavated.” *Lessard v. Burnett Cty. Bd. of Adjustment*, 256 Wis. 2d 821, 836, 649 N.W.2d 728 (quoting *I Anderson*, § 6.52, at 647-48).

Wisconsin is not alone in applying the diminishing assets rule to quarrying operations. Most courts throughout the Country have adopted the doctrine under circumstances similar to the

current case. *Ready Mix, USA, LLC v. Jefferson Cty.*, 380 S.W. 3d 52, 70 (Tenn. 2012). The Tennessee Supreme Court summarized the rationale as follows:

Unlike other non-conforming uses where the land is incidental to the business operations, the mining and quarrying industry is comprised of the excavation and sale of the very natural resources that make up the property. *Weise*, 434 NYS. 2d 150, 414 N.E. 2d at 654-55. In *Weiss*, New York's highest court recognized that areas are left in reserve, un-excavated for long periods of time, until their resources are actually needed and that many jurisdictions have adopted the diminishing assets doctrine to settle land use disputes related to that industry. *Id.* The doctrine provides that reserves yet to be mined, quarried, or excavated are nonetheless pre-existing uses in the event of a more restrictive zoning change: "An owner of a non-conforming use may sometimes... have a... right to use an entire tract even though only a portion of the tract was used when the restrictive ordinance was enacted. *Stephan & Sons, Inc. v. Municipality of Anchorage Zoning Bd. of Examiners & Appeals*, 685 P.2d 98, 101-02 (Alaska 1984).

Id. at 69. Consistent with this rationale, decisions from other jurisdictions demonstrate that courts have "permitted mining and quarrying companies not only to continue, but to expand operations after a zoning change which would have otherwise prohibited their activities." *Id.* at 71.

The diminishing assets rule has consistently been applied by Wisconsin courts. In fact, in *Smart v. Dane Cty. Bd. of Adjustments*, 177 Wis. 2d 445, 501 N.W. 2d 782 (1993), the Wisconsin Supreme Court applied the diminishing assets rule to a decision by the Dane County Board of Adjustment involving a quarry owned by Wingra Stone Company. In that case, the Supreme Court concluded that the Dane County ordinance treating registered mineral extraction operations as non-conforming uses was not limited to a 40 acre parcel being mined at the time of registration. The Dane County ordinance, adopted in 1968, provided in relevant part as follows:

All existing mineral extraction operations shall be deemed non-conforming uses and may be continued providing that they have been worked prior to the date of adoption of this ordinance and they have been registered with the County Zoning Supervisor within one year of the date of the adoption of this ordinance. *See Smart*, 177 Wis. 2d at 450.

The Supreme Court affirmed the conclusion of the Dane County Zoning Administrator that mining was a valid non-conforming use of Wingra's entire 80 acres, by application of the diminishing assets rule discussed in *Sturgis*:

The fact situation in *Sturgis* was very similar to the instant case. In 1979 Winnebago County adopted an ordinance that provided for permits to be granted, as a matter of right to all extraction operations existing at the time the ordinance was adopted. Conditional use permits were required for extensions of existing operations or creations of a new extraction operation. The core of the dispute in *Sturgis* was whether a 30 acre parcel, where extraction had started, and a 10 acre parcel where it had not, would be considered one 40 acre parcel for the purpose of finding an existing use. The 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." *Sturgis*, 141 Wis. 2d at 154, 413 N.W. 2d 642.

Id. at 453–54.

The Wisconsin Court of Appeals again considered mineral extraction operations in *Schroeder v. Dane Cty. Bd. of Adjustment*, 228 Wis. 2d 324, 596 N.W.2d 472 (Ct. App. 1999). In *Schroeder*, a quarry operator had registered its operation pursuant to the applicable Dane County ordinance, identifying a 40 acre parcel as a non-conforming mineral extraction site. The quarry operator subsequently expanded mining outside of the registered area, at which time the Dane County Zoning Administrator issued a Stop Work Order on the expanded area. On appeal, the quarry operator claimed that the diminishing assets rule applied to the expanded site, while the zoning administrator argued that the diminishing assets rule applied only to the registered area. The Court of Appeals concluded that the entire area of intended use was not limited by the area registered. The Court stated that the Dane County Ordinance only required "registration and approval of the existing mineral extraction operation, but not the area of intended use." *Id.*

at 339. The Court further concluded that the diminishing assets rule applied to the entire area under review, not just the registered area.

IV. THE KRUEGERS' PROPERTY CONSTITUTES A LEGAL NON-CONFORMING USE IN ITS ENTIRETY UNDER THE DIMINISHING ASSETS RULE.

The Zoning Administrator does not dispute that a 40 acre part of the Kruegers' property constitutes a legal non-conforming use as a non-metallic mineral extraction operation. The Krueger mineral extraction site was registered with the Dane County Zoning Department by letter dated April 10, 1969. The excavation site, moreover, has been quarried continuously, including since 2002 by the Kruegers' lessee, the R.G. Huston Company. That being the case, the Zoning Administrator recognizes 40 acres of the Krueger excavation site as a legal non-conforming mineral extraction site under the present and past provisions of the Dane County Zoning Ordinance. In fact, however, the entire Krueger site, including the 104 acres that are outside the 40 acres recognized by the Zoning Administrator, also satisfy the legal requirements for treatment of the property as a legal non-conforming site.

The entirety of the Krueger property has been under common ownership and is entirely contiguous. The entirety of the property, including the immediate area subject to the Stop Work Order, is similarly mineral bearing as the 40 acres recognized by the Zoning Administrator. In fact, the area of mining that is the immediate subject of the Stop Work Order is perhaps the richest mineral-bearing area of the Kruegers' property. The owners of the Krueger property also have always had the intention to mine the deposit, which they have done since at least 1955.

The present circumstances present a clear case under the diminishing assets rule for recognizing the rights of the Kruegers and the R.G. Huston Company to continue as a legal non-conforming use. The land has been under common ownership throughout the relevant period of time with a persistent intent to mine the entirety of the property. The R.G. Huston Company, for

its part, is proceeding to mine the property in a reasonable, orderly and logical manner, which cannot be done at once upon the entire property. Nor is the operator required to hopscotch around on the property under the diminishing assets rule in order to protect its rights. Both the owners and the operator/lessee in this case have all along intended to mine the entire site, but of course, only in an economically sensible manner as the diminishing assets rule permits.

In the end, all 144 acres of the Krueger mineral extraction site are entitled to the benefits of legal non-conforming mineral extraction status, which permits mineral extraction throughout the site without the need for a conditional use permit.

V. NONCONFORMING USES CONSTITUTE VESTED PROPERTY RIGHTS.

The fact that the Kruegers' property is presently zoned for use other than as a non-metallic mineral extraction is not dispositive. Legal non-conforming uses are by definition located in areas presently zoned for uses different than the grandfathered use. The rights created by a legal non-conforming use, nonetheless, remain protected. "Once a property owner has acquired a proprietary or 'vested' interest in a use, the use will be protected from subsequent zoning elimination." *Waukesha Cty. v. Seitz*, 140 Wis. 2d 111, 117, 409 N.W. 2d 403 (Ct. App. 1987). "A nonconforming use existing at the time a zoning ordinance goes into effect cannot be prohibited or restricted by statute or ordinance...Zoning regulations cannot be made retroactive, and neither can prior non-conforming uses be removed nor existing conditions be affected thereby." *Des Jardin vs. Town of Greenfield*, Wis. 2d 43, 47-48, 53 N.W. 2d 784 (1952).

The Zoning Administrator cannot extinguish vested rights in a legal non-conforming use by the expedient of requiring a conditional use permit. The Kruegers are not required to obtain a conditional use permit for the continued operation of their quarry site, including the progressive use of their property for non-metallic mineral extraction, once previously qualified as a non-

conforming use under Dane County zoning. *See Kraemer Co., LLC v. Pierce Cty. Bd. of Adjustment*, 290 Wis. 2d 510, 712 N.W. 2d 86. Here, the Zoning Administrator cannot seriously deny the principle that the Kruegers' property qualifies as a legal nonconforming use under Dane County ordinances, by application of the diminishing assets rule.

Courts from other states also have consistently applied principles of vested rights in the context of the diminishing assets rule. In *Seherr-Thoss v. Teton Cty. Bd. of Cty. Comm'rs*, 329 P.3d 936, 949 (Wyo. 2014), for example, the Wyoming Supreme Court recognized that an owner of a non-conforming use may be found to have a vested right to use an entire tract even though only a portion of the tract was used when a restrictive ordinance was enacted.

In *Hansen Brothers Enterprises, Inc. vs. Board of Supervisors of Nevada County*, 12 Cal. 4th 533, 907 P.2d 1324, 1337 (Cal. 1996), the California Supreme Court noted that “most courts which have addressed the particular issue involved have been nearly unanimous in holding that quarrying, as a non-conforming use, cannot be limited to the land actually excavated at the time of enactment of the restrictive ordinance because to do so would, in effect, deprive the land owner of his use of the property as a quarry.”

In *City of University Place vs. McGuire*, 30 P.3d 453, 459 (Wash. 2001), the Washington Supreme Court also applied the doctrine of diminishing assets to determine the lawful scope of the non-conforming use of a mining operation:

“We agree with the overwhelming number of jurisdictions considering the issue. The proper scope of a lawful non-conforming use in an exhaustible resource is the whole parcel of land owned and intended to be used by the owner at the time the zoning ordinance was promulgated.”

In that case, the Court concluded that the non-conforming use attached to an entire parcel and that “non-conforming uses are treated like vested property rights.” *Id.*

Likewise, in *Crumbaker vs. Hunt Midwest Mining, Inc.*, 69 P.3d 601, 609 (Kans. 2003), the Kansas Supreme Court considered whether a property owner had a vested right to conduct quarry operations over its entire property because of the diminishing asset rule. The Court first noted that zoning drafters generally limit the expectancy of nonconforming uses by restricting the landowners' right to expand the use, "but an exception is the diminishing assets doctrine, generally applicable to mining or quarrying operations." *Id.* The Court explained that "the basis for the doctrine is a recognition that the land itself is a resource consumed during operations...If there were evidence of an intent to expand excavation to any other portion of the land at the time the zoning law had been implemented, expanded excavation is not considered an unlawful nonconforming use." *Id.*

The law protects legal nonconforming uses because of concern that retroactive application of zoning ordinances would render them constitutionally suspect. *See State ex rel. Covenant Harbor Bible Camp of Cent. Conf. of Evangelical Mission Covenant Church of Am. v. Steinke*, 7 Wis. 2d 275, 283, 96 N.W. 2d 356 (1959) ("Legislatures have generally refrained from requiring an immediate discontinuance of nonconforming uses presumably because of doubt that such a provision would be constitutional"). This concern is embodied in the "vested rights" doctrine. *Des Jardin vs. Town of Greenfield*, Wis. 2d. 43, 47-48, 53 N.W. 2d. 784 (1952) (a nonconforming use existing at the time a zoning ordinance becomes effective cannot be prohibited or restricted by statute or ordinance).

Whether a nonconforming use is popular or embraced by present zoning authority does not determine its legality. Here, the Kruegers have a vested property right in the continued productive use of their property for quarrying, as the Board of Adjustment should acknowledge and protect.

VI. THE KRUEGERS DID NOT ABANDON OR RELINQUISH USE OF THEIR PROPERTY FOR QUARRYING ACTIVITY.

1. The Kruegers' Nonconforming Use Has Not Been Discontinued.

The nonconforming use of the Krueger property was not abandoned by reserving the area in question for active quarrying until recently. Prior nonuse of the reserved area for mining does not disqualify it as a continuing nonconforming use, by virtue of the diminishing assets rule. To conclude that areas of non-use constitute an abandonment of nonconforming rights would be tantamount to denying meaning to the diminishing assets rule. Such an argument, if accepted, by the Board of Adjustment, would vitiate the diminishing assets rules as applied to mineral extraction operations.

The Wisconsin Supreme Court's recent decision in *Village of Slinger v. Polk Properties, LLC*, 2021 WI 29, 396 Wis.2d 342, 957 N.W.2d 229 (2021), is instructive in recognizing that nonconforming use rights are not casually lost. In *Village of Slinger*, the Supreme Court reaffirmed that Wisconsin law requires two elements for abandonment of a legal nonconforming use: (1) actual cessation of the nonconforming use; and (2) an intent to abandon the nonconforming use. (Slip Opinion at 8 citing *State ex rel. Schaetz v. Manders*, 206 Wis. 121, 124, 238 N.W. 835 (1931).) Both elements must be proved for an abandonment to occur. Both are missing in the present case.

The diminishing assets rule, applicable to quarrying operations, is wholly consistent with the cessation requirement for abandonment. The unitizing effect of the diminishing assets rule requires that the entirety of the Kruegers' property be considered together as a single legal nonconforming use. As the Wisconsin Court of Appeals noted in *Sturgis*, 141 Wis. 2d at 153, "in cases of a diminishing asset, the enterprise 'is using' all that land which contains the particular asset and which constitutes an integral part of the operation, notwithstanding the fact that a

particular portion may not yet be under actual excavation.” The Wisconsin Supreme Court endorsed this understanding of the diminishing assets rule in *Smart*, 177 Wis. 2d at 453–54.

Here, the Kruegers have not discontinued their nonconforming use, when their property is considered in its entirety, as required by the diminishing assets rule. Nonuse of property under the diminishing assets rule is not considered a cessation of use because the entire property is deemed to be “in use.” In the present case, moreover, the evidence indicates a progressive advance of mining activity moving toward the area now in question. In short, there has been no cessation of quarrying as a nonconforming use, as required for there to be an abandonment.

2. The Kruegers Have Never Intended To Discontinue Quarrying.

Abandonment also fails under the *Village of Slinger* requirement that cessation and intent both be proved. Here, no cessation has occurred -- and no intent to discontinue quarrying will be established at hearing. On the contrary, the evidence will show that the Kruegers have always intended to quarry the full extent of the mineral deposits on the entirety of their property. The sincerity of that intent is evidenced by their having never sold the property over the years to interested developers.

Any potential argument of abandonment, therefore, ultimately fails. Quarrying as a legal non-conforming use has never ceased. That is decisive, by itself. In addition, the Kruegers have never intended to abandon their right to quarry the entirety of their property.

The vested right to continue the legal nonconforming use of the Kruegers’ property is supported by the evidence that will be presented at hearing. Nonconforming use rights have not been abandoned, including because no cessation of the nonconforming use has occurred and the intent to continue quarrying the property is undisputed.

VII. THE KRUEGER MINERAL EXTRACTION SITE PROVIDES A NECESSARY COMMODITY SAFELY AND UNOBTRUSIVELY.

Quarrying is a socially useful activity that provides materials necessary for community development. Proximity of materials from the Kruegers' mineral extraction site, in fact, reduces costs of development and stress on roadways, as shorter distances must be traveled to where materials are needed and reduces fuel consumption and traffic in hauling extracted materials.

The Zoning Administrator does not obviously question the Kruegers' mineral extraction site's value, but nonetheless he wants to sunset the activity by arbitrarily limiting quarrying to a small sub-parcel of the Kruegers' property. As a legal non-conforming use, however, the Kruegers have a vested right under the law to continue their extraction operation which is located remote from residential development. The efforts of the R.G. Huston Company to minimize potential neighbor concerns, moreover, should not be casually dismissed. In fact, quarried property is restored in many instances to a better condition than prior to mineral extraction.

The Kruegers' mineral extraction site has been operated safely and unobtrusively for nearly 70 years. They now have a vested right to continue productively using their property for non-metallic mineral extraction, in its entirety, contrary to the Stop Work Order issued by the Zoning Administrator.

VIII. CONCLUSION.

The Board of Adjustment should reverse the Stop Work Order issued by the Zoning Administrator at issue in this case.

Dated this 26th day of August, 2021.

BOARDMAN & CLARK LLP

By:

Electronically Signed by Richard L. Bolton

Richard L. Bolton, SBN: 1012552

Michael J. Lawton, SBN: 1016419

1 South Pinckney Street, Suite 410

P.O. Box 927

Madison, WI 53701-0927

T: 608.257.9521

E: rbolton@boardmanclark.com

Attorneys for R.G. Huston Company, Inc.