



Dane County Board of Adjustment

Decision of the Dane County Board of Adjustment

Administrative Appeal: 3706. Administrative appeal by Yahara Materials Inc. (Eric McLeod, Husch Blackwell, agent) appeal a decision of the Zoning Administrator related to the status of a non-metallic mineral extraction operation (Carlson Site) located at 7849 & 7830 State Highway 188 being a tract of land in the NE ¼ and SE ¼, Section 6, Town of Roxbury.

FINDINGS OF FACT

Having heard the testimony and considered the evidence presented, the Board determines the facts of this case to be:

Filing Date: June 12, 2020.

Meeting notice published: August 26 and September 2, 2021, Wisconsin State Journal. Affidavit of publication/posting is on file.

Hearing Date: September 9, 2021

Appellant: Yahara Materials, Inc. (Attorneys Eric McLeod, agent)

1. On January 17, 2019, the Dane County Board of Supervisors adopted 2018-OA-20, which comprehensively revised the Dane County Zoning Ordinance (Chapter 10, Dane County Code). In addition, the town of Roxbury adopted the new Dane County Zoning Ordinance on April 21, 2019.
2. Under section 10.102(7)(b), registered nonconforming mineral extraction sites are now subject to the provisions of the new zoning ordinance. See attached document.
On May 28, 2019, Dane County Planning prepared and sent out a letter to John and Dennis Carlson (current landowner) indicating the adoption of the new zoning ordinance and that the registered mineral extraction site would have to adhere to the new requirements for existing non-conforming sites.
3. Dane County staff (Everson) prepared the Deed Notice as part of the new ordinance requirements recognizing parcel 0907-064-8500-1 as having non-conforming status with a map. The Deed Notice was to be signed and notarized.
4. Staff originally indicated that lands lying south of STH 188 in the SE ¼ of Section 6 in the town of Roxbury, approximately 49 acres was identified as non-conforming and mapped this way for

approximately 50 years. The original registration, on March 26, 1969 by Capitol Sand and Gravel on behalf of Lloyd Carlson indicated 52 acres more or less.

5. Yahara Materials challenged the prepared Deed Notice by submitting a reclamation plan for the entire farm. That reclamation plan was rejected by county staff.

6. Timeline History

1955 – Evidence from aerial photo of a mineral extraction site on lands south of STH 188.

1969 – A 52 acre +/- site was registered with the county by Capitol Sand and Gravel on the NW $\frac{1}{4}$ of the S $\frac{1}{2}$, and West $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Town of Roxbury, Section 6 on behalf of Lloyd Carlson.

1969/1970 – Registration status report by the county accepted the registration of described lands. County mapping records indicate the subject described lands as a nonconforming registered site for the next 50 years with no request for determination or intent of expansion. See attached map.

1981 – County changes non-conforming use for mineral extraction so that existing sites do not terminate when abandoned or cease to operate in a one year timeframe.

1986 - Recorded lease document between Lloyd Carlson and BR Amon and Sons for mineral extraction uses on SE $\frac{1}{4}$ SE $\frac{1}{4}$, approximately 20 acres. I believe that description is wrong. That 40 acre parcel was never under the ownership of Lloyd Carlson and historical images never shows any mineral extraction uses in that area.

1993 – Managed Forest Lands agreement document recorded between Lloyd Carlson and DNR.

2001 – Dane County adopts Ch. 74 Reclamation Ordinance. All existing and new mineral extraction sites must have an approved reclamation plan on file with the county prior to any material removed from property. This particular site never applied for a reclamation permit until 2019 by Yahara Materials. The operator was proposing the entire farm, both sides of STH 188 in the reclamation plan, now operated by John and Dennis Carlson.

2018 – TDI document recorded, Lloyd Carlson passed away 8/11/2018

2019 - Recorded lease document between John and Dennis Carlson and Yahara Materials for mineral extraction uses.

2020 – Warranty Deed recorded, John and Dennis Carlson to Carlson Brothers LLC

2020 – Yahara Materials submits an application for a reclamation plan for parcel 0907-064-8500-1. Plan is ultimately approved by Land and Water Resources and Dane County Planning.

2021 – County staff conducted an inspection and noted that a small driveway has been installed off of STH 188, a metal gate has been installed as well and signage indicating an active mineral extraction on premises. No other area has been disturbed or material removed for mineral extraction purposes.

7. Non-conforming status of the subject site has never been contested for over 50 years by several operators as well as the previous and current landowner.
8. The site south side of STH 188 has been used as Boy Scout Camp, known as Camp Carlson for many decades.
9. The subject lands are in common ownership but the north and south portions are divided by STH 188.
10. Mineral extraction operations ceased in the mid 1980's.
11. When the subject site was registered in 1969, 52 acres was written down by the operator for estimated acreage reserved for deposit. No evidence was introduced by Petitioners to establish an intent by Lloyd Carlson in 1969 to expand nonmetallic mineral extraction beyond the registered area.
12. Dane County Planning and Development has recognized for over 50 years that lands lying south of STH 188, approximately a 49 acre parcel has non-conforming status.
13. Recorded documents over the years between the past and current owners have entered into agreements over the years with the state DNR for Managed Forest Lands.
14. Dane County Register of Deeds document #5552053 is a Managed Forest Law Order of Designation issued by the Wisconsin Department of Natural Resources for 25 years for parcels 0907-061-8000-9 and 0907-061-9500-2 with an effective date of January 1, 2020 and contains a notice of appeal or review rights.
15. Lloyd Carlson signed Woodland Tax Law – Order of Entry 1611016, Volume 1038, page 607 (Included in Zoning Administrator's Exhibits.) November 17th, 1978, for 71 acres of woodland. The first line of that document stated: "having been duly filed stating that the owner of the land hereinafter described believes such land to be more suitable for the growing of timber and other forest products and that the lands are not more useful for any other purpose."

CONCLUSIONS OF LAW

Based on the above findings of fact the Board concludes that:

1. The Wisconsin Court of Appeals in the Sturgis case (Cited in Appellant's Brief.) stated on page 152 of that case: "The relevant inquiry is 4X Corporation's intent and ownership of the property coupled with the unique use of extraction." To establish a nonconforming use for mineral extraction the intended extent of that use by the owner at the time that vested right was being created is important. That owner had the right to intend all their property could eventually be used for mineral extraction. On the other hand, that owner also had the right to intend mineral extraction eventually extend to just a limited part of their property and the remainder be put to other uses.

2. No evidence has been submitted to the County or the Board to show that Lloyd Carlson intended in 1969 to eventually conduct mineral extraction operations on the entire 130.5 acres, and specifically that portion north of STH 188. Later actions by later owners do not establish the original owner's intention to do so at the time the ordinance was implemented and when Lloyd Carlson's nonconforming use for mineral extraction was established.
3. The Petitioner has not established a right to expand mineral extraction beyond the 52 acres registered by Lloyd Carlson in 1969, which was mapped for over 50 years by Dane County Zoning as lying south of STH 188, and which was never challenged at any point in those 50 years. Any mineral extraction expansion beyond this by later owners and those they lease to should require a conditional use permit.
4. Appellant would have us rightly consider the unique nature of mineral extraction as a use that requires many years for the resource to be mined. We note that managed forest lands are another use of a unique nature that require decades of management before that resource can be harvested. The evidence shows mineral extraction operations ceased in the mid-1980s. The evidence shows acreage in the land north of STH 188 has been enrolled in managed forest since 1978.

On the basis of the above findings of fact, conclusions of law and the record in this matter the Board denies the appeal and upholds the determination of the Zoning Administrator.

Appeals. This decision may be appealed by a person aggrieved by this decision or by any officer, department, board or bureau of the municipality by filing an action in certiorari in the circuit court for this county within 30 days after the date of filing of this decision. The municipality assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to expiration of this 30-day period.

I certify that this is the decision of the Dane County Board of Adjustment:

Al Long, Chairman Sign: _____ Date: _____

Filed with the Dane County Planning and Development Department, Zoning Division:

Todd Violante, Director Sign: _____ Date: _____