



Dane County Board of Adjustment

Decision of the Dane County Board of Adjustment

Administrative Appeal: Appeal 3713. Administrative appeal by Brett Daggett, Jeremy Knudson, and Doug Nelson (Tom Mathies, agent) appealing a decision of the Zoning and Land Regulation Committee related to the approval of conditional use permit #2509 for a non-metallic mineral extraction operation located at 1154 County Highway B being a tract of land in the NE ¼ of the SE ¼ Section 29, Town of Christiana.

FINDINGS OF FACT

In following the Rules and Procedures for an appeal of grant or denial of conditional use permit, having considered the evidence presented, the Board determines the facts of this case to be:

Filing Date: June 7, 2021.

Meeting notice published: September 9 and 16, 2021, Wisconsin State Journal.
Affidavit of publication/posting is on file.

Hearing Date: September 23, 2021

Appellant: Brett Daggett, Jeremy Knudson, and Doug Nelson (Tom Mathies, agent)

1. The Board accepts the official record of CUP 2509 as facts of the appeal.
2. A public hearing for CUP 2509 was held by the Zoning and Land Regulation Committee on January 26, 2021.
3. The Zoning and Land Regulation allowed additional public comment and testimony on CUP 2509 at the May 11, 2021 meeting.

CONCLUSIONS OF LAW

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

1. The January 26, 2021 public hearing before the Zoning and Land Regulation Committee satisfied the requirements of DCCO 10.101(7)(c)1.a. and Wis. 59.69(5e)(c).
2. The Zoning and Land Regulation Committee acted within their authority and followed proper procedures required by Roberts Rules of Order and Dane County Board Rules (DCCO Chapter 7).
3. Substantial evidence existed in the official record of CUP 2509.

4. The official record of CUP 2509 contained written findings of fact per the requirements of DCCO Chapter 10 and the Rules and Procedures of the Zoning and Land Regulation Committee.
5. The official approval document of CUP 2509 imposed the required standard conditions required by DCCO Chapter 10.

6. **Regarding Appellant's Claim 1.** "The ZLR reconsidered an approved CUP without authority to take this action."

Under CHAPTER 7 – COUNTY BOARD RULES, while standing committees are not provided a means to reconsider by specific rule, under 7.67 Suspension, Changing and Modification of Rules, 7.67(5) provides "All questions not covered by the above rules shall be governed by the most recent edition of Robert's Rules of Order." By this the ZLR had the authority to reconsider an approved CUP.

7. **Regarding Appellant's Claim 2.** "The ZLR Committee failed to make written findings of fact as required by the Zoning Ordinance."

Dane County Planning and Development Department Director Todd Violante's Memo of September 2, 2021, responds sufficiently to that issue on page four. His explanation of ZLR rules and procedures indicated a motion to approve a CUP meant the committee made affirmative findings of fact for applicable standards under Chapter 10 of Dane County Code of Ordinances. Additionally, potential secondary impacts of CUP 2509 would be ameliorated by the 20 town and county conditions uniquely placed on the CUP along with all the standard conditions applied by ordinance. Those conditions, written into the record, show how the standards are met by keeping the operation of the site within reasonable and enforceable measures to protect the public interest. Finally, the approval and written findings are memorialized in meeting minutes.

8. **Regarding Appellant's Claim 3.** "The ZLR Committee erred by approving the CUP without substantial evidence that uses, values, and enjoyment of properties in the neighborhood would not be substantially impaired or diminished by the conditional use."

Dane County Planning and Development Department Director Todd Violante's Memo of September 2, 2021, he cites *AlEnergy Corporation v. Trempealeau County Environment & Land Use Committee* 2017 WI 52, 375 Wis.2d 329, 895 N.W.2d 368 (2017) which states: "Substantial evidence is evidence of such convincing power that reasonable persons could reach the same decision as the local governmental entity, even if there is also substantial evidence to support the opposite decision." (From paragraph 75.) And then: "Quantitatively, substantial evidence is less than a preponderance of the evidence," *Smith v. City of Milwaukee*, 2014 WI App 95, ¶122, 356 Wis. 2d 779, 854 N.W.2d 857, "but 'more than "a mere scintilla" of evidence and more than "conjecture and speculation."'" *Gehin v. Wis. Group Ins. Bed.*, 2005 WI 16, ¶148, 278 Wis. 2d 111, 692 N.W.2d 572 (quoted sources omitted). (From paragraph 76.) The evidence and testimony forming the record for this case includes testimony and evidence presented by both sides including experts, interested parties, as well as concerned citizens. The record supports a finding that the evidence on each side was substantial.

9. **Regarding Appellant's Claim 4.** "The ZLR Committee erred by not imposing standard conditions as required by the Zoning Ordinance."

Dane County Planning and Development Department Director Todd Violante's Memo of September 2, 2021, on page six responds: "This claim may be refuted by simple reference to the official approval document, included in the Legistar record as 'CUP #2509 w revised boundary.' Note the introductory language that reads, 'GRANT Conditional Use Permit #2509 for non-

metallic mineral extraction operation conditioned upon Dane County Code of Ordinances Section 10.101(7)(d)2. And 10.103(15) [emphasis added] and subject to the additional conditions listed below.’ The underlined clause here in the permit itself cites the standard conditions for all CUPs, s. 10.101(7)(d)2, and the standard conditions for all mineral extraction CUPs, s. 10.103(15), as conditions of approval. These standard conditions are further included and cited on page 4 of the staff report in the preface to the conditions, and they are simply already required and imposed outright by ordinance. These Standard conditions were clearly imposed on CUP 2509, and there was no error or omission of them.” Appellant’s claim was unproven.

On the basis of the above findings of fact, conclusions of law and the record in this matter the Board sustains the May 11, 2021 final decision of the Zoning and Land Regulations committee regarding CUP 2509.

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: _____