

Staff Report



Zoning & Land Regulation Committee

Public Hearing: March 25, 2025

Zoning Amendment Requested:

TO CUP: Temporary Concrete Batch Plant for road project

Size: 40 Acres

Survey Required:

Reason for the request:

Temporary Concrete Batch Plant for road project

Conditional Use

02654

Town, Section:

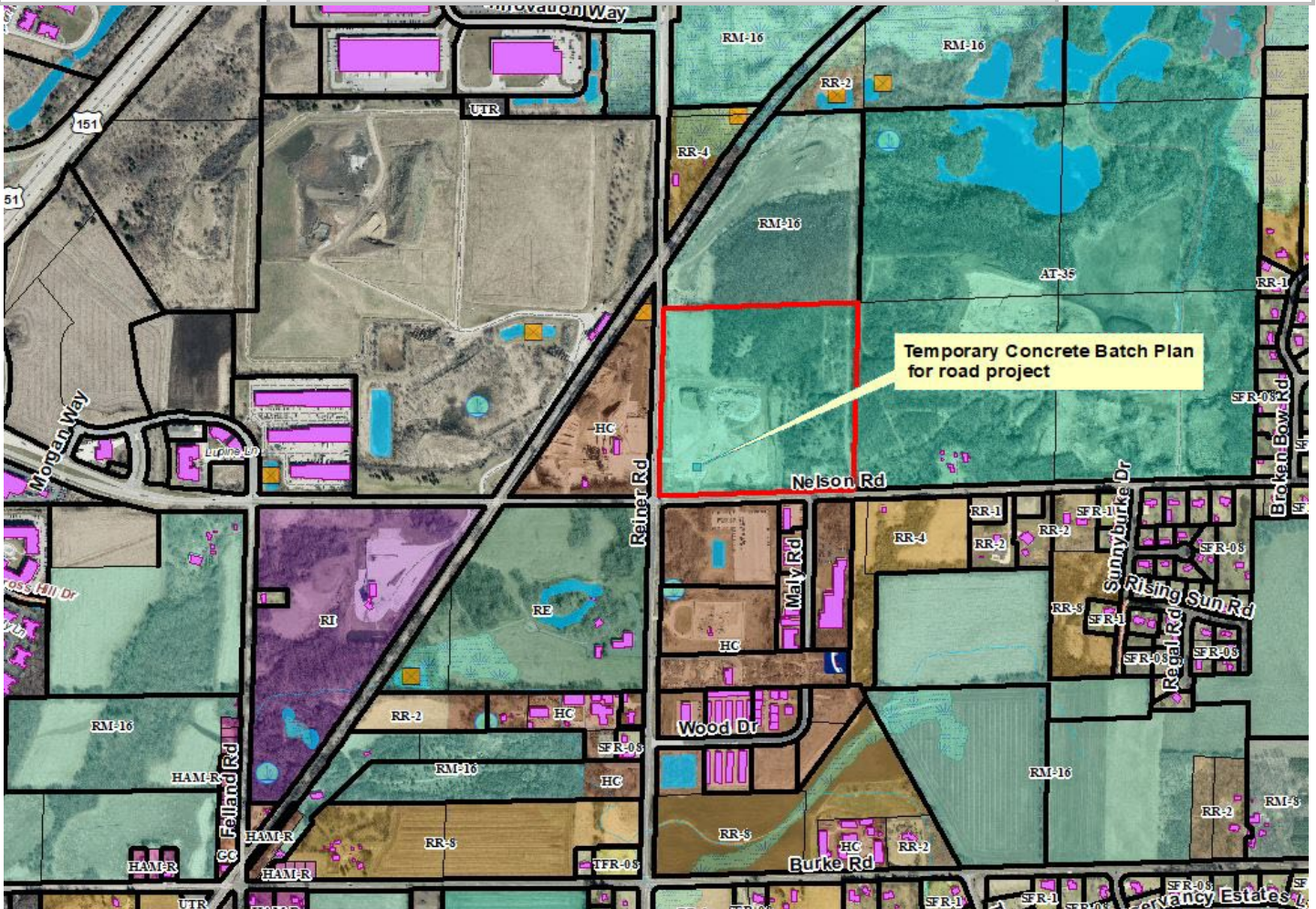
BURKE, Section 24

Applicant:

LW REAL ESTATE HOLDINGS LLC

Address:

5458 REINER ROAD



DESCRIPTION: Applicant Mike Jacobs of Rock Road Companies, with landowner LW Real Estate Holdings LLC, requests a conditional use permit (CUP) to locate a temporary concrete batch plant on a 40-acre property that is an active gravel pit site. The site is currently used as a staging area and dump site for Wolf Paving's construction activities. They request the plant for nighttime operations for four months for a Wisconsin DOT highway project. Specifics of the proposal include:

- **Site improvements:** No buildings or structures other than the mechanical equipment (see p.7 of [application](#)).
- **Employees:** 2 to 12 (on the batch plant operations team)
- **Time frame:** March 3rd to July 3, 2025 (4 months)
- **Hours of operation:** Monday to Saturday 6:00pm to 7:00am (nighttime hours), with weekend hours as project demands necessitate.
- **Outdoor storage:** Aggregate and sand piles on site, and reinforcing steel to be stored outside, and cement materials stored in portable enclosed bins to minimize dust.
- **Applicable road projects:** WisDOT project #1001-00-66, covering 5 miles of I-39/90 from USH 12/18 to Lien Rd.

OBSERVATIONS: The property is in mineral extraction use and is 40 acres in size. The property is located near the town boundary with the City of Madison (to the NW across Reiner Road and railroad tracks) and the City of Sun Prairie (1/4 mile to the north). The land to the north is in open space use and is zoned RM-16. To the east is a 294-acre, AT-35 zoned property owned by Madison Crushing and Excavating that contains an active non-conforming quarry. To the south across Nelson Road are several properties with HC Heavy Commercial zoning that include various businesses and the Burke Town Hall. To the west across Reiner Road is the Wolf Paving asphalt plant with HC zoning (in the Town of Burke) and a landfill (in the City of Madison). The nearest residences are located 620 feet to the north and 800 feet to the SE.

The site is currently zoned AT-35. The list of allowable conditional uses in the AT-35 zoning district includes: "Asphalt plants or ready-mix concrete plants, that comply with s. 91.46(5), Wis. Stats., for production of material to be used in construction or maintenance of public roads, to be limited in time to project duration." The site also has an active conditional use permit, [CUP 2500](#) for mineral extraction accessory uses (stockpiling and processing concrete and asphalt pavements for recycling and reuse).

RESOURCE PROTECTION: There are no sensitive environmental features on or within 300 feet of the subject property.

COMPREHENSIVE PLAN: The property is within an area of the Town of Burke that will eventually become part of the City of Madison in accordance with the terms of the [town/city cooperative plan](#). Both the town and city plans designate the property for future residential development, with a portion designated in the cooperative plan for [open space](#). The Town of Burke's [future land use map](#) designates the property as "medium density residential" while the city's [Reiner Road neighborhood development plan](#) designates the property as "community mixed use". Neither the town or city plans specifically address the proposed land use. Given the limited timeframe for operation of the proposed batch plant, primarily evening/nighttime operations, and relative lack of existing incompatible surrounding land uses, the proposal is unlikely to cause significant negative impacts on neighboring properties. Pending any concerns expressed at the ZLR public hearing, the proposal appears reasonably consistent with comprehensive plan policies. For questions about the comprehensive plan, please contact Senior Planner Majid Allan at (608) 267-2536 or Allan.Majid@danecounty.gov.

CONDITIONAL USE PERMIT DECISION MAKING: "Conditional uses" are those land uses which, because of unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review.

Prior to granting or denying a conditional use, the zoning committee shall make findings of fact based on evidence presented and determine whether the proposed conditional use, with any recommended conditions, meets all of the standards required to obtain a CUP. Below is the list of the applicable standards from Section 10.101(7)(d) of the Zoning Code, and a summary of the relevant facts including the applicant's testimony with regards to meeting the standards.

1. *That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.*

The CUP application describes the proposed operations plan. Applicant states that the site will be used for a temporary batch plant for the I-39 WisDOT project, and that the site will be graded flat to set up the ready-mix concrete plant. The plant would be located in the upper western area of the site (see applicant site plan) and upon project completion the plant would be promptly removed and the site restored to its existing condition.

Applicant states that the plant would not add any additional noise, truck traffic, or nuisances since an active asphalt plant is across the street, that there will be no public health, safety, comfort or general welfare concerns that don't already exist, and the site will not affect the safety of the traveling public because similar work takes place in the area already. They state the plant will create minimal dust pollution that is mitigated by fans, filters, and bags. Water is used extensively to control dust during plant operations and from moving trucks. The roads used for access will be watered and swept to control dust.

Lighting would consist of temporary portable light plants to illuminate the batch plant at night for visibility and safety. The light plants will only be operated during night-time plant operations and will be directed away from property lines, neighboring parcels, and roads.

Staff notes that the proposed CUP site is located in an area that primarily contains heavy commercial and industrial uses, and two residences within a 1,000-foot radius.

- 2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.***

The applicant states that the uses, values, and enjoyment of the surrounding properties will continue to be maintained and not substantially impaired or diminished by the batch plant. There is existing noise and truck traffic since the property is across from an asphalt plant. Rock Road Companies, Inc. will adhere to the Erosion Control Implementation Plan standards that address air and water quality as well as erosion control measures.

See comments above under CUP standard #1. As noted above, the plant would only operate for four months in 2025 during the I-39 road construction project.

- 3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.***

The applicant states that the proposed use does not establish any permanent structures or improvements. Once the batch plant is no longer needed the site will be returned to agricultural purposes (staff notes the site is in extractive and open space use). A temporary concrete batch plant would not add any additional noise, truck traffic, or nuisances.

This standard pertains to whether the proposed conditional use would affect *how the surrounding properties could be developed and improved, considering what they are currently zoned for*. This property and most of the surrounding properties are already in mineral extraction, heavy commercial or industrial use, although there are also two residences within 1,000 feet of the property. Staff expects a temporary increase in truck traffic to/from this site, based on the proposal (35 to 45 truck trips per day on average, see below). The applicant operates under a DNR general permit for stormwater runoff, and the site has an erosion control permit through their approved reclamation permit.

See comments related to future land use plans under standard #7 below.

- 4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.***

The applicant states that the plant has no public utility requirements. The existing driveways onto Reiner and Nelson Roads will be maintained by Rock Road Companies, Inc. On-site drainage will be managed through Best Management Practices outlined in the Erosion Control Implementation Plan and approved by WisDOT, Dane County Planning, and the Department of Natural Resources. There will be minimal excavation in preparation for the batch plant and the entire area will be internally drained.

Staff concurs that the utilities, access roads, drainage, and other improvements needed for the proposed use are already in place.

- 5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.***

Applicant states that the existing driveways from Reiner Road and Nelson Road (each approximately 30' wide) will be maintained by Rock Road Companies, Inc. The existing safety and congestion of the nearby streets will not be affected by the temporary batch plant. They estimate the maximum daily traffic would be 45 quad axle dump trucks loaded to a maximum of 50,000 lbs/load. An average day will be closer to 35 dump trucks loaded to 40,000 lbs/load. No modifications to existing intersections or roads are needed to accommodate the plant.

The parking requirement for temporary asphalt and concrete production operations is 1 per 1.3 employees at peak shift, plus 1 for every truck, or vehicle on site at peak. There appears to be adequate parking on site.

- 6. That the conditional use shall conform to all applicable regulations of the district in which it is located.***

Applicant states the physical improvements and grading necessary for preparation of the temporary concrete batch plant have been designed to comply with the standards of the AT-35 zoning district.

The proposal conforms to the applicable land use and layout requirements of the AT-35 district.

- 7. That the conditional use is consistent with the adopted town and county comprehensive plans.***

As noted above, the proposal appears consistent with the Town and County Comprehensive Plans. County staff also contacted staff at the City of Madison for comment on the proposal. City staff provided comments (see letter dated March 14, 2025) indicating concerns with the truck routing and time frame approved by the town.

8. If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the findings described in s. 10.220(1).

Not applicable.

POTENTIAL NUISANCES ASSOCIATED WITH THE CONDITIONAL USE: The potential nuisances that pertain to temporary batch plant operations most often involve dust, noise, and truck traffic. The CUP application addresses how these potential nuisances are handled, as noted above.

Potential conditions of approval specific to this CUP can be developed after public input and deliberation by the Zoning and Land Regulation (ZLR) Committee. Dane County Zoning Ordinance section 10.103(20) specifies the following special requirements for Temporary batch concrete and asphalt production:

(a) The zoning committee and town board shall set daily limits on hours for concrete and asphalt production, as necessary to minimize impact on neighboring properties. Schedules for concrete or asphalt production need not conform to hours of operation for the overall mineral extraction project.

(b) Operators of concrete or asphalt plants shall be responsible for any conditions placed on such operations.

(c) Asphalt production facilities must comply with all requirements, including spill containment, of Chapter ATCP 93, Wisconsin Administrative Code.

As noted above, the proposed hours for the batch plant are between 6:00pm and 7:00am on weekdays, with operations on weekends as needed or mandated by WisDOT.

TOWN ACTION: The Town Board approved the CUP with conditions, including a time frame that runs through the month of August 2025 (see recommended conditions #13-26, below).

STAFF RECOMMENDATION: Staff believes that the applicant has provided sufficient evidence to address the CUP standards and mitigate the potential concerns. This includes the hours of operation, a limited duration of (5 months, as approved by the Town of Burke), a direct tie to a specific WisDOT road project, and the location in an area with other industrial/commercial properties. This is also reflected in the town's approval and conditions.

However, a recent site inspection by Zoning Staff revealed that the current CUP for mineral extraction (CUP #2500) is out compliance with the conditions of approval (items related to fencing, gate, and signage). Staff suggests that the petition be postponed until the violations are corrected.

If the Committee requires additional information on which to base a decision, they could request specific information of the applicant or staff at the public hearing. Pending any comments at the public hearing, Staff recommends that the ZLR Committee makes a finding of fact as to whether the proposal meets the CUP standards above. The Committee may opt to postpone action on the CUP in light of the concerns expressed by the City of Madison, and the current CUP violations.

If the violations are corrected, potential permit conditions are listed below for consideration. These include the conditions in Zoning Ordinance s. 10.101(7), the Town of Burke's conditions, and two other provisions reflecting the proposal's intended project and time frame.

CUP #2654 Potential Conditions of Approval:

Standard Conditions for all Conditional Use Permits from 10.101(7):

1. Any conditions required for specific uses listed under s. 10.103 (see below).
2. The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and phasing plan.

3. New and existing buildings proposed to house a conditional use must be constructed and maintained to meet the current requirements of the applicable sections of the Wisconsin Commercial Building Code or Uniform Dwelling Code.
4. The applicant shall apply for, receive and maintain all other legally required and applicable local, county, state and federal permits. Copies of approved permits or other evidence of compliance will be provided to the zoning administrator upon request.
5. Any ongoing business operation must obtain and continue to meet all legally required and applicable local, county, state and federal licensing requirements. Copies of approved licenses or other evidence of compliance will be provided to the zoning administrator upon request.
6. Existing onsite wastewater sewage disposal systems, if any, serving the conditional use must be inspected by a licensed plumber to determine its suitability for the proposed or expanded use. Deficient systems must be brought, at the owner's expense, into full compliance with the current requirements for new development of the state plumbing code and Chapter 46, Dane County Code.
7. All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
8. Off-street parking must be provided, consistent with s. 10.102(8).
9. If the Dane County Highway, Transportation and Public Works Department or the town engineer determine that road intersection improvements are necessary to safely accommodate the conditional use, the cost of such improvements shall be borne by the landowner. Costs borne by the landowner shall be proportional to the incremental increase in traffic associated with the proposed conditional use.
10. The Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation. Zoning staff conducting inspections or investigations will comply with any applicable workplace safety rules or standards for the site.
11. The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site, available for inspection to the public during business hours.
12. Failure to comply with any imposed conditions, or to pay reasonable county costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit.

Conditions specific to CUP # 2654:

13. This conditional use is strictly for Rock Road Companies, Inc, doing business as LW Real Estate Holdings, LLC, LLC located 5458 Reiner Road in the Town of Burke.
14. The batch plant hours of operation shall be as follows:
 - a. Work will consist between the months of April and August
 - b. 6:00 p.m. to 7:00 a.m., Monday through Friday
 - c. Saturday pm to Sunday am only if necessary.
 - d. No outdoor operations shall take place during daytime hours on Sundays.
 - e. No outdoor operations shall take place during the hours of legal holidays.
15. The owner must provide sanitary facilities.
16. There shall be no more than 50 trucks running cement with no more than 2 in the pit staging.
17. Trucks shall use Reiner Road to Nelson Road to High Crossing to get to the interstate. There shall be no truck running on Felland Road.
18. Trucks shall exit the site on Reiner Road or Nelson Road (if necessary).
19. Pit lighting shall be set to face down so that light will not shine over the berms. All outdoor lighting shall be directed downward and away from adjacent properties and public rights-of-way, and shall be designed to minimize ambient light spill.
20. Water shall be brought in by tanks (planned daily).
21. Sand piles cannot be visible over the berms.

22. No hazardous materials or fuel may be stored on site.
23. Stormwater runoff is to be monitored and planned for with each event.
24. In the event of traffic issues, flaggers must be brought in for safety reasons (Town of Burke discretion).
25. If noise complaints are received, backup alarms shall be silent, flashing lights shall be used.
26. The Conditional Use Permit (CUP) shall become void should these conditions not be followed or should Rock Road Companies, Inc. be sold or leave parcel 0810-242-9000-3 for any reason.
27. The batch plant shall only be used for contracted WisDOT road construction project for Interstate 39/90 (DOT Project #1001-00-66).
28. The conditional use permit shall expire on August 31, 2025.

Please contact Rachel Holloway at (608) 266-9084 or holloway.rachel@danecounty.gov if you have questions about this petition or staff report.