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August 21, 2024

Jamie Aulik  
City Administrator  
City of Verona  
111 Lincoln Street  
Verona, WI 53593

Re: Proposed Conditional Use Permit 2629 Wildcat Pit Gravel Operation

Dear Mr. Aulik,

This letter is in response to the letter received by the Town of Verona dated July 23, 2024 in regard to the proposed Wildcat Quarry Sand and Gravel Operation Conditional Use Permit.

The City's letter focuses on the supposed conflict of the proposed Conditional Use Permit with the Boundary Agreement and the City's Comprehensive and Southwest Neighborhood Plans. In short, the Boundary Agreement does not apply to Conditional Use Permits in any planning area, and the City's own Comprehensive Plan references a quarry being an acceptable land use for the parcels in discussion.

On page 49 of 53 of the City of Verona 2009 Comprehensive Plan, under Opportunities for the "southwest" the following is written:

*Also—this area is characterized by naturally-occurring non-metallic mineral deposits which present an opportunity for mining and quarry operations. While the City considers quarries to be a 'rural' land-use appropriate for un-incorporated areas, **the City will consider allowing quarry operations within this Southwest area (after annexation) as industrial land-uses subject to city review and approvals.***

On page 14 of the City of Verona Southwest Neighborhood Plan, adopted in July of 2009, the following is written:

***The proposed land-uses—as described in detail in 'Part Two' of this plan below—are completely consistent with the comprehensive plan's recommendations for both the 'Southwest' and the 'South' 'Future Urban Areas' as provided in Chapter 8—Land Use of the City's Comprehensive Plan.***

Comprehensive Plan:

Further, on page 32, the following language can be found:

*As noted above—all aspects of this 'Southwest Neighborhood Plan' **are consistent with** the City's soon-to-be adopted Comprehensive Plan. The Plan Commission will review any development proposals within the 'Southwest Neighborhood' and make recommendations to the Common Council. The Plan*

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*Commission is an appointed body of volunteer Verona citizens, while the Common Council members are elected representatives for the citizens of Verona. If for any reason a development proposal for the Southwest Neighborhood is not consistent with this Neighborhood Plan or with the Comprehensive Plan—the City will either deny the proposal or will reevaluate our comprehensive plan to see if factors have changed such that the comprehensive plan should be modified.*

The City's own Comprehensive Plan and Southwest Neighborhood Plan both recognize the presence of naturally occurring mineral deposits in this specific area and indeed, support the development of a quarry as an industrial land use.

With regard to specific points of the City's letter, the Town also disagrees with the assertion that a failure by the Town to deny the quarry application without regard to its merits would violate the Boundary Agreement entered into between the City and Town for a number of reasons including the following:

1. Section 8.02 of the Agreement. The City's reference to section 8.02 of the Agreement is inapt. That section says the Town "shall not approve, and shall oppose any application before Dane County for, any lot splits, land divisions, or rezones in land located within area A ..." The application pending before the ZLR Committee is for a conditional use permit, not a lot split, land division or rezone. Nor does the Town agree that the proposed quarry would conflict with "future urban growth."
  2. Section 8.03 of the Agreement. The language in this section is essentially identical to that in section 8.02, except it relates to development in Area B. For the same reasons the Town sees section 8.02 as inapplicable, section 8.03 does not apply.
  3. SSM Health Proposal. The letter also asserts that the presence of a quarry would "significantly reduce SSM Health Care's ability to proceed with its project and recapture its investment in water and sewer improvements." The ability of a private business to recoup an investment in public infrastructure is not a factor mentioned anywhere in the Boundary Agreement. Nor is there any indication that the SSM Health proposal could not, or would not move forward if the quarry were approved. To the contrary, the SSM Health St. Mary's Hospital in Janesville is located directly adjacent to a mineral extraction site. While the Town appreciates the City's desire for the SSM development, it is nothing but speculation that the current CUP request would have any impact on the project's ability to move forward.
  4. Section 4.05 of the Agreement. The City's letter quotes from this section provide that the Town agreed to limit urban development in Area A, to allow Area to be annexed to the City, and developed to City standards. It also provides that the Town will restrict rural development in Area B if that development would make it difficult to extend City services. The Town does not believe that any reasonable definition of "urban development" or "rural development" would encompass a gravel pit. The definitions in the Boundary Agreement certainly do not. Rather, section 6(a) of the agreement defines "develop or development" as "division of land, or construction of more than one principal structure on a parcel of land, or rezoning of a parcel to a more intense zoning classification." As noted above, the current CUP application does not involve a land division or rezone. Put simply, CUP's are not development as defined by the
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Boundary Agreement. The CUP proposal does not include the construction of any principal structures. Therefore, section 4.05 has no bearing on the application as submitted. Further, the Town also notes that *approval* of the quarry application would actually limit urban or rural development on the 150-acre quarry parcel, which would be consistent with the purpose of section 4.05.

5. Section 4.06 of the Agreement. Section 4.06 of the Agreement provides that upon annexation, the City will provide a full range of municipal services to the annexed property. The Town does not understand this argument. There is no proposal for annexation of the proposed quarry property and the City is not being asked to provide any services.
6. Conditional use permit standards. As the City is aware, the Town's and County's review of a conditional use permit application requires a decision based on substantial evidence, rather than personal preferences, speculation or unsupported concerns. The Town has not yet held a public hearing, and therefore has no position on whether substantial evidence supports the granting or denial of the requested permit based on the standards that must be applied. The City is welcome to present its evidence and arguments at the time the public hearing is held.

For the reasons outlined above, the Town respectfully disagrees that the Boundary Agreement requires the Town to reject the application without considering its merits. Even if it did, a rejection of a conditional use permit based solely on an agreement not to consider it would violate both the letter and spirit of §59.69(5e)(b) of the Wisconsin Statutes. Even before enactment of that statute, it was clear that both the applicant for a CUP and those opposed to it have the legal right to a fair determination that is not based on prejudice. See, *Keen v. Dane Cnty. Bd. of Supervisors*, 2004 WI App 26, 269 Wis. 2d 488, 676 N.W.2d 154.

In conclusion, the Town does not believe the Boundary Agreement dictates the outcome of the present application and could not legally do so. Further, the City's own planning documents support a non-metallic mineral extraction operation as a land-use in the area as presented in the CUP application.

Respectfully,

Sarah Gaskell, Planner/Administrator  
Town of Verona

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