

MEMO

To: Zoning & Land Regulation (ZLR) Committee

From: Roger Lane, Dane County Zoning Administrator

Date: March 7, 2023

Subject: Findings of Fact and suggested conditions for CUP #2582, Town of Rutland

At the February 28, 2023 Zoning and Land Regulation Committee meeting, the Committee directed Staff to prepare findings of fact and possible conditions for proposed Conditional Use Permit #2582. Staff has prepared the information as requested. See below. The suggest conditions contain limitations on the proposed non-metallic mineral extraction operation to help address the concerns. The conditions are highlighted below:

- Limitations of Operation
 - Condition 15 sets a 15 year limit on the conditional use permit.
 - Condition 30 limits the operation to K&D Stone only. The condition will ensure that the operation is kept at the activity level that is currently occurring.
 - Condition 21 sets limitations on the hours of operation to establish neighborhood expectations.
 - Condition 27 sets limitations on hours for blasting.
- Limitations on noise
 - Condition 21 prohibits operations on Sundays and holidays to establish neighborhood expectations.
 - Condition 24 sets requirements for exhaust noise from equipment.
 - Condition 31 requires berms to help reduce noise.
 - Condition 32 sets a noise limitation to 75 decibels. The condition provides limitations on excessive noise.
 - Condition 36 prohibit engine braking on-site to help reduce noise.
- Dust control
 - Condition 17 requires a paved driveway surface to reduce generation of dust.
 - Condition 25 requires compliance with DNR emissions standards.
 - Condition 30 sets requirements for berming.
 - Condition 36 sets a vehicle operational speed to reduce dust.
- Safety
 - Conditions 4, 25, 27, 28, and 29 sets requirements for compliance with industry standards.
 - Condition 18 requires the site to be gated.
 - Condition 22 requires the operation to be fenced.
 - Condition 33 sets a requirement for driveway entrance.

Finding of Fact:

1. The proposal is a continuation of an existing non-metallic mineral extraction site. The quarry has been in existence since the 1930's and was registered as a legal non-conforming land use in 1969. The site has also been used to supply sand material for the Hwy 14 DOT project. The site contains a deposit of high-quality dolomite and sand.
2. The property is zoned under the FP-35 Farmland Preservation Zoning District. The zoning district lists non-metallic mineral extraction as a land use permitted through the conditional use process.
3. The Department of Agriculture, Trade, and Consumer Protection has certified the FP-35 Zoning District to be included within the Farmland Preservation Program. Non-metallic mineral extraction is an acceptable land use within the certified zoning district. The land use is considered temporary in nature.
4. The applicant has submitted a reclamation plan for the site. The plan states that the land will be returned to agricultural use (planting/aquaculture) after the deposit is depleted. All topsoil will remain on site for reclamation purposes.
5. The Town of Rutland Comprehensive Plan shows this site within the Agricultural Preservation Planning Area. Residential density is limited to one house per 35 acres. There are 6 existing residences within 1000 feet of the CUP boundaries.
6. The Dane County Zoning Ordinance assigns conditions for all conditional use permits in order to set minimum standards for potential uses. The Zoning Ordinance also assigns specific conditions for non-metallic mineral extraction operations under Dane County Zoning Ordinance Section 10.103 to provide a standard for all operations within Dane County.
7. The Mine Safety and Health Administration (MSHA) regulates safety in mining operation. MSHA mandates specific back-up alarms to be installed on all vehicles operating in a surface of sub-surface mining site.
8. The State of Wisconsin has set standards for mine blasting under SPS 307, Wisconsin Administrative Code and is monitored by Wisconsin Safety and Professional Services.
9. The Wisconsin Department of Natural Resources has set standards for air emissions and storm water discharge for mining operations and is monitored by the State DNR.
10. A public hearing was held for the proposed land use. Concerns were raised regarding aesthetics, noise, and traffic. Conditions have been proposed to mitigate the concerns.
11. The Zoning and Land Regulation has determined that the proposal will meet the 8 standards for obtaining a conditional use permit under 10.101(7)(d) and 10.220(1) given that the list of conditions below are followed.

RECOMMENDED CONDITIONS:

Standard conditions for all conditional use permits

- 1) The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan, phasing plan, and following conditions.
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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.
- 6) All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
- 7) Off-street parking must be provided, consistent with s. 10.102(8).
- 8) 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 born by the landowner. Costs born by the landowner shall be proportional to the incremental increase in traffic associated with the proposed conditional use.
- 9) 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.
- 10) The owner must post, in a prominent public place and in a form approved by the zoning administrator, a placard with the approved Conditional Use Permit number, the nature of the operation, name and contact information for the operator, and contact information for the Dane County Zoning Division.
- 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. The holder of a conditional use permit shall be given a reasonable opportunity to correct any violations prior to revocation.

Special conditions as listed under Dane County Zoning Ordinance Section 10.103

- 13) Topsoil, or appropriate topsoil substitute as approved in a reclamation plan under Chapter 74, Dane County Code, from the area of operation shall be saved and stored on site for reclamation of the area. Topsoil or approved topsoil substitute must be returned to the top layer of fill resulting from reclamation.
- 14) The applicant shall submit an erosion control plan under Chapter 14, Dane County Code covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
- 15) The permit period shall be fifteen (15) years from effective date.
- 16) Reclamation shall meet all requirements of Chapter 74 of the Dane County Code of Ordinances. In addition, all reclamation plans must meet the following standards:
 - a) Final land uses after reclamation must be consistent with any applicable town comprehensive plan, the Dane County Comprehensive Plan and the Dane County Farmland Preservation Plan.
 - b) Final slopes shall not be graded more than 3:1 except in a quarry operation.
 - c) The area shall be covered with topsoil and seeded to prevent erosion.

- d) The area shall be cleared of all debris and left in a workmanlike condition subject to the approval of Dane County
 - e) Highwalls shall be free from falling debris, be benched at the top, and certified by a civil engineer to be stable.
- 17) The driveway accessing the subject site shall either be paved or covered with crushed asphalt for a minimum distance of 100 feet from the public right-of-way. The operator shall maintain the driveway in a dust free manner in accordance with local, state, and federal regulations, and shall clean any dust or mud tracked onto public roads.
 - 18) The access to the driveway shall have gates securely locked when the extraction site is not in operation. The site shall be signed "no trespassing."
 - 19) All surface and subsurface operations shall be setback a minimum of 20' from property lines that do not abut a public right of way. Operations along the southern portion of the property shall adhere to the conditional use permit boundary (200-300 feet) as shown on the operation plan.
 - 20) Excavations below the grade abutting Center Road shall be setback 30 feet from the property line.
 - 21) Hours of operation shall be 7:00 a.m. to 7:00 p.m. Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday. Hours for warm-up are 6:30 a.m. to 7:00 a.m. Monday through Friday, and 7:30 a.m. to 8:00 a.m. on Saturdays. Only maintenance of equipment (no blasting, crushing, trucking, stockpiling, etc.) is allowed on Sundays. There shall be no operations of any kind on holidays. Holidays are to include: New Year's Eve, New Year's Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve, and Christmas.
 - 22) There shall be a safety fence around the entire extraction area at all times. That safety fence shall be a minimum of 4 feet in height.
 - 23) Any water pumped off-site shall be in accordance with Wisconsin DNR Stormwater Discharge Permit WI-A046515-06. There shall be no dewatering of groundwater from the site for operations below the watertable.
 - 24) The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
 - 25) The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076, Wisconsin Administrative Code.
 - 26) Dane County and the Town shall be listed as additional named insureds on the operator's liability insurance policy, which shall be for a minimum of \$1,000,000 combined single limit coverage per occurrence. The operator shall furnish a copy of a Certificate of Insurance as evidence of coverage before operations commence. The liability insurance policy shall remain in effect until reclamation is complete.
 - 27) Blasting:
 - a) Blasting shall limited to 10:00 a.m. to 4:00 p.m. Monday through Friday.
 - b) Notice of Blasting Events. Prior to any blasting event, notice shall be provided to nearby residents as described in SPS 307, Wisconsin Administrative Code. In addition, the operator shall maintain a list of residents within ½ mile of the site who wish to be notified of blasts. Residents need to communicate with operator regarding such requests.
 - c) All blasting on the site must conform to all requirements of SPS 307, Wisconsin Administrative Code, as amended from time to time, or its successor administrative code regulations.
 - d) Fly rock shall be contained within the permitted mineral extraction area.
 - 28) Any fuel storage on-site shall comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment. All excavation equipment and vehicles shall be fueled, stored, serviced, and repaired on lands at least 3 feet above the highest water table elevation to prevent against groundwater contamination from leaks or spills.
 - 29) In the event that a mineral extraction operation will destroy an existing Public Land Survey Monument, witness monuments must be established in safe locations and a new Monument Record filed by a Professional Surveyor, prior to excavation and disturbance of the existing monument.

Conditions specific to the K&D Stone Site

- 30) This CUP is limited to K&D Stone only. CUP#2582 is non-transferrable to a different operator.
- 31) Berms and landscaping shall be established and maintained. A permanent 8-foot minimum berm shall be located along Center Road. The berm shall be planted with an EVERGREEN Tree (min 4' B&B) every 50 feet. Other operational berms shall be 8 feet tall as needed with 3:1 SIDE SLOPES.
- 32) Noise Limitation shall not exceed 75 decibels at a point 100 feet away from the property line. The decibel level shall be measured in DbA for average over a 15-minute period.
- 33) The maximum number of driveways shall be limited to one. The northerly driveway shall be removed within 2 years of the date of the conditional use permit and the site will utilize the southerly driveway as shown in the operations plan.
- 34) Back-up alarms - The on-site traffic flow shall be designated to establish minimal backing up of vehicular traffic during normal work operations Whenever possible, the operator shall utilize alternatives to standard back-up beeps, for instance, those making a sweeping sound if approved by MSHA.
- 35) A 2'x4' sign shall be placed at the exiting point of the site stating, "All loads are required to be tarped prior to leaving the site."
- 36) A 2'x4' sign shall be placed at the entrance point of the site stating, "Speed limit 15 mph."
- 37) Engine breaking is prohibited for all vehicles either entering, leaving or driving on-site.

Standards for obtaining a Conditional Use Permit

As part of the conditional use process, the Zoning and Land Regulation Committee shall make a determination whether the proposed land use meets the standards of obtaining a conditional use permit. County Staff has prepared suggested reasoning for the listed standards for review.

1. The proposal is not detrimental to public health, safety, comfort and welfare

Conditions have been proposed for the operation to place limits on the activity level, noise, dust, and safety to mitigate concerns to an acceptable level.

2. Uses, values and enjoyment of other property in neighborhood shall not be substantially impaired or diminished

The proposal is for the continuation of an existing land use. Conditions have been proposed for the operation to limit the activity to the current state.

3. Will not impede normal and orderly development of surrounding property

The proposal is in an Agricultural Preservation Development Area as designated on the Town Comprehensive Plan. Future residential is limited in the area per the Town Plan policies. After the deposit is depleted, the lands will return to agricultural production.

4. Utilities and roads

The town roads servicing this site are adequate in design and construction.

5. Ingress and egress

Conditions have been proposed to require the driveway to be relocated to a safer location.

6. Use shall conform to all applicable regulations in the zoning district

The standard conditions for conditional use permits and special conditions for non-metallic mineral extraction operations have been proposed as a requirement by ordinance.

7. The use is consistent with the Town and County Comprehensive Plans

A mineral extraction operation is identified as a land use that will occur in rural areas of the County.

8. Farmland Preservation District

Conditions have been proposed requiring a reclamation plan being in place to return the property to agricultural production once the deposit is depleted.