

**BEFORE THE
DANE COUNTY BOARD OF ADJUSTMENT**

Appeal of the Dane County Zoning and Land Regulation
Committee’s March 14, 2023 Decision to Approve Conditional
Use Permit 2582 and Issuance of CUP 2582 on April 13, 2023

Appeal No. 3724

**OPENING BRIEF OF APPELLANTS RUTLAND CITIZENS UNITED, INC.,
PAMELA J. MARR-LAUDRIE, AND HENRY SPELTER**

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INTRODUCTION

On March 14, 2023, the Dane County Zoning and Land Regulation Committee (“ZLR” or “the Committee”) approved a conditional use permit (“CUP”) for a new non-metallic mine in the Town of Rutland. The new mine would sit on a 36.7 acre farm field, adjacent to a 9-acre non-metallic mine owned by the same applicants, K&D Stone, LLC (“Applicants” or “K&D”).¹ The new mine would be located in a primarily agricultural, rural residential neighborhood, and it has been strongly opposed by its neighbors. Two prior iterations of the CUP failed, in 2020 and 2022.

Despite this history, the strong local opposition, and the clear inability of the new mine to meet the County’s CUP standards, the ZLR approved the CUP again. None of the ZLR members explained their reasoning for finding the standards satisfied, except for one who opined that the CUP could be approved because mining would be limited to its “current state.” However, the “current state” of mining is a 9-acre historic mining pit, not a 36.7 acre parcel that is currently a farm field and that could be mined for 50 years or more. The ZLR’s decision permits a substantial change to the status quo in use of the 36.7 acre parcel, and scale and duration of mining, and ignores the noise, truck traffic, blasting, dust, and other impacts that will reduce quality of life and property values for a broader swath of neighbors than the old mine for a longer period of time.

Appellants Rutland Citizens United, U.A., Pamela J. Marr-Laundrie, and Henry Spelter (“Appellants”) ask this Board to deny the CUP. The proposed mine clearly does not

¹ The CUP would also cover the existing, 9-acre mine, but Appellants do not challenge that aspect of the ZLR’s CUP decision.

meet the County’s standards for granting a CUP, by substantial evidence or otherwise, and other substantial evidence shows it cannot meet the standards.

FINDINGS OF FACT

The Board should find the following facts, based on evidence in the record and evidence to be heard at the hearing in this matter:

1. In 2022, K&D Stone LLC (“K&D” or “applicant”) applied for a CUP to create a new mine on 36.7 acres in the Town of Rutland, and to bring an existing, 9-acre parcel which has been used for mining since 1937 under the same CUP. The application claims the stone reserves “are needed to supply South Central Wisconsin communities with construction aggregates into the future.” (R.152.)²

2. At the time of the application, mining on the existing, 9-acre mine was a legal non-conforming use, and the 36.7-acre parcel was a farm field. (R.153.) The area is currently zoned FP-35. (R.154.)

3. Kevin Hahn (now K&D) bought the existing, 9-acre mine in 2016. (R.153.) Prior to that, the site was not intensively mined, and neighbors understood that it was reaching the end of its useful life. (R.603, 608, 712, 718, 727.) But in 2017, after Mr. Hahn’s purchase, the intensity of mining on the 9-acres site increased. (*E.g.*, R.277-286; Exhibit C (Ex. 12, aerial photos showing changes over time).)

4. Applicant (by Kevin Hahn) has sought a CUP for the new, 36.7-acre mine twice before: once in 2020, when the mine was rejected by the Town of Rutland, and earlier in 2022, when the mine was approved by the ZLR but overturned by the Board of Adjustment based on inconsistencies in the application’s legal description. (R.132.)

5. The only time that the Town of Rutland has taken a position on the CUP was in 2020. (R.402-403.) Then, the Town Board found that the CUP would not meet six of the eight County standards. (R.738-743.) Since then, the Town Board has taken no position on any iteration of the CUP that has come before it (R.403), including CUP 2582 (*see* R.698).

6. Expected activities from the new mine include land clearing and stripping, blasting, crushing, processing, trucking, and other activities to extract stone reserves. (R.153-161.)

7. The CUP proposal has generated significant opposition from neighbors, based on

² R.____ denotes the page number of the official record being cited.

the new mine's expected truck traffic and associated dangers to other drivers and pedestrians, noise (from crushers, banging truck grates, back up beepers, screening, other equipment noise, and filling/emptying trucks), dust, blasting impacts, loss of use and enjoyment of property, and loss of property value. (R.133.) Many neighbors also strongly oppose operations on Saturday, when many other mines are closed and when people are at home using their properties. (R.376, 390, 393, 730.)

8. The new mine brings mining closer to several properties, including Ms. Marr-Laundrie's, and expands the radius of property value and other impacts compared to the smaller existing mine. (Exhibits A, B.)

9. The ZLR approved the CUP at a meeting on March 13, 2023, 4-0 with one abstention. It did not explain or provide any findings as to why the CUP satisfied the applicable County standards in the Zoning Ordinance. (R.73.)

10. The CUP as approved by the ZLR has 37 conditions; only 8 of them are specific to this operation. (R.91-93.) The CUP does not limit mining on Saturdays, and the CUP as approved does not include many of the neighbors' other proposed conditions. (*Compare R.373 with R.780.*)

11. Trucks traveling to and from the existing mine have already created hazards to pedestrians, bikers, and other drivers, and the new mine will exacerbate these hazards in volume and duration. Center Road in particular, the main road serving the mine, is not adequate to safely accommodate truck traffic as well as pedestrians, bikers, and other cars. Hazards include large numbers of trucks, inadequate road width to accommodate all users, blind curves and poor visibility, flying gravel and debris, speeding trucks, and truck noise. Many neighbors report not walking or biking due to safety risks presented by the trucks. *See* Argument Section I.A., below.

12. The new mine will exacerbate these already-hazardous traffic conditions and will continue them longer into the future than the existing mine. *See* Argument Section I.A., below.

13. The new mine does not adequately buffer the mine from the road or other properties. The setback from Center Road is 30 feet with eight-foot berms, and the setback from property lines is only 20 feet. (R.156, R.784.) Other mines in the area are on larger parcels, set farther back, and heavily screened. (R.421.)

14. The new mine will cause a loss of property value by an average of 14.07 percent within 1.75 miles from the mine, likely with greater impacts to properties closer to the mine and lesser impacts farther away. (Exhibit B.) This, along with the mine's physical impacts, will substantially impair or diminish the uses, values, and enjoyment of other property in the neighborhood.

15. The new mine will also make it harder to develop properties that are eligible for

splits, as purchasers will not want to construct new homes or use land so close to the mine. At least eight splits are located within 1,000 feet of the new mine. (R.327.)

16. At the time of the CUP approval, the “current state” of the 36.7 acres was a farm field, used for crop production.³ It was planted in soybeans in 2022. (Exhibit C at 1; R.712.)

17. The mine is a significantly different use than a cropped farm field. The mine is not agricultural or an agricultural accessory use, and is not an activity associated with the primary production and harvesting of crops, livestock, animal products, or plant materials, and is not a value-added operation for farm products. It is also not an incidental activity compatible with agricultural use that supplements farm family income and supports the agricultural community.

18. There is no indication that the applicants considered other locations for the new mine that would avoid converting farmland and causing disturbances to neighbors.

19. The application states the new site will be developed incrementally “to minimize disturbed areas and preserve farmland.” (R.157.) However, applicants began site development shortly after the ZLR approved the CUP on March 13, 2023, and over half of the site has already been disturbed.

20. The stated lifespan of the new mine is 50 years, based on market conditions (R.153) but the existing, 9-acre pit has been active for over 80 years (R.132). One condition limits the duration of the CUP to 15 years, but CUP holders may by ordinance have their permit administratively extended for five years by the zoning administrator. Zoning Ord. § 10.103(15)(b)3.a.

21. The CUP permits the conversion of farmland to industrial and recreational use, on more than a temporary basis.

SCOPE AND STANDARD OF REVIEW

The Board Reviews the CUP Application Anew

³ The northwest corner of the existing, 36.7 acre mine site was temporarily used by the Wisconsin Department of Transportation as a borrow site for a road project, but the borrow site closed in August 2022. Such sites are exempt from local zoning regulation and are instead regulated by the State. (R.133.) While the borrow site was operational, however, neighbors reported significant noise (from truck gates slamming, back up beepers, and trucks shaking empty) and loss of use and enjoyment of property. (E.g., R.344.)

On appeal of a CUP, the Board of Adjustment “may, by majority vote, affirm, reverse, reverse partly or modify the order, requirement, decision or determination that is the subject of the appeal. The board may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.” Zoning Ord. § 10.101(9)(e); *see also* Wis. Stat. § 59.694(8). The Wisconsin Supreme Court has interpreted this language to mean that the Board has the power to take evidence and decide whether to grant a conditional use permit, just as the ZLR did. *Osterhues v. Bd. of Adjustment for Washburn Cnty.*, 2005 WI 92, ¶ 30, 282 Wis. 2d 228, 698 N.W.2d 701. In other words, it may hear the CUP on a de novo basis. *Id.* ¶ 34.

The Board here has decided to conduct a de novo review of CUPs and take additional evidence in administrative appeals such as this one. The Board’s Rules and Procedures provide that “[t]he appeal of an administrative decision shall be a contested case,” including “the right of all parties to cross-examine witnesses as reasonable [sic] required for a full and true disclosures of the facts.” Rules and Procedures, § 4(f). The prescribed order of business for an administrative appeal includes each party presenting evidence and arguments, including calling witnesses. *Id.* § 5(e). In essence, the Board has decided to hear the matter anew as though it had not been heard before. *See Vill. of Williams Bay v. Metzl*, 124 Wis. 2d 356, 359, 369 N.W.2d 186, 188 (Ct. App. 1985); *Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Emps. & Helpers Loc. No. 695 v. WERC*, 121 Wis. 2d 291, 295 & n.5, 359 N.W.2d 174 (Ct. App. 1984).

The Board Must Make its Decision Based on Substantial Evidence

As the Board reviews the CUP application, “[t]he applicant must demonstrate that the application and all requirements and conditions established by the county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence.”⁴ Wis. Stat. § 59.69(5e)(b)2. In other words, the applicant has the burden to show, by substantial evidence, that every standard of the ordinance will be met. While the same standard applies to decisions to reject or condition CUPs, Wis. Stat. § 59.69(5e)(b)1., 2., there is a common misconception that testimony of neighbors is not substantial evidence. This is not true.

For example, when the Town of Cedarburg rejected a CUP for a cell tower in an A-1 district because it was not “compatible” with the surrounding area, the court found a similar statutory requirement for substantial evidence supported that rejection:

The simple undisputed facts are the Akerlund farm is surrounded by areas zoned residential, and the Town has been trying to keep this area rustic and rural. . . . [A]lthough the tower itself will not be placed in the residential areas, it will be very close by, and **it was reasonable for the Town to conclude that the tower was incompatible with many of the neighboring homeowners' residential lifestyle, and for some, the values of their homes would be diminished by the ominous, shadow-casting tower. Several people at the hearings spoke out on these terms.**

Eco-Site, LLC v. Town of Cedarburg, 2019 WI App 42, ¶ 27, 388 Wis. 2d 375, 933 N.W.2d 179 (emphasis added). While a general statement from someone that “I don’t like mines” may

⁴ “‘Substantial evidence’ means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.” Wis. Stat. § 59.69(5e)(a)2.

not be substantial evidence, testimony from those living in or familiar with the neighborhood, informed by this experience or independent research certainly is.

More recently, the Wisconsin Court of Appeals found that a village board properly interpreted “substantial evidence” in Wis. Stat. § 62.23(7)(de)2.a. to include neighbor and other testimony that a development would lower property values and would be incompatible with the neighborhood. *Scenic Ridge of Big Ben Homeowner’s Assoc., Inc. v. Village of Vernon*, 2022 WI App 55, ¶¶ 14-15, 2022 WL 4232437 (Ct. App. Sept. 14, 2022) (unpublished, per curiam opinion). It rejected the interpretation that a similar law, Wis. Stat. § 66.0404, “tied the hands” of the board and would not allow them to consider property value diminution and required approval of the CUP.

ARGUMENT

The applicants’ request to scale up from an 9-acre mine reaching the end of its useful life to a 36.7-acre, brand-new mine should not be approved, because it does not meet the County’s standards. The ZLR erred in granting the CUP.

I. The CUP Does Not Satisfy the County’s Standards and Should be Rejected.

The CUP for the mine here does not satisfy, by substantial evidence, at least three sets of standards applicable to conditional uses: the default standards applicable to all conditional uses, consistency with the Town and County comprehensive plan, and the standards applicable to mines in a farmland preservation area.

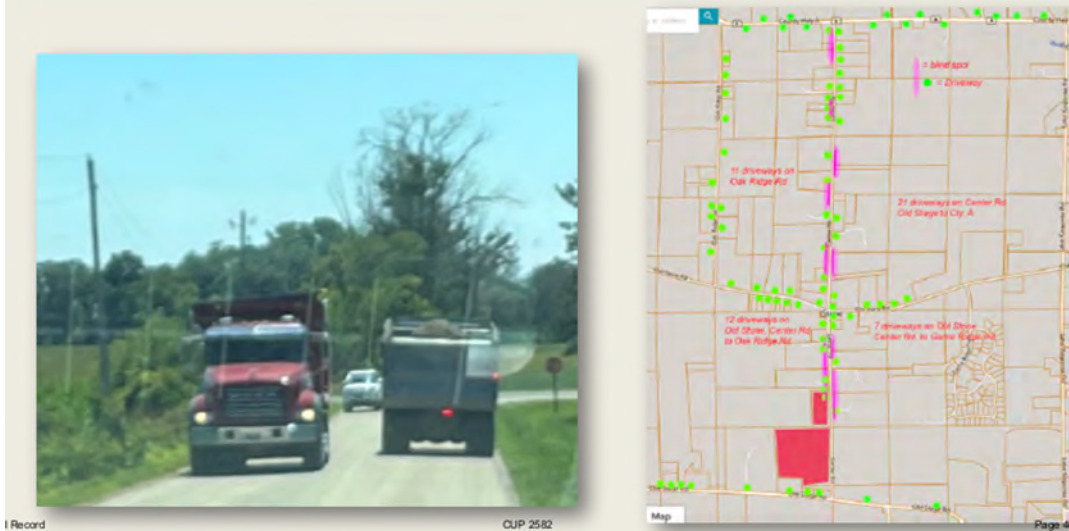
A. The CUP Does Not Satisfy the Standards Applicable to All Conditional Uses.

One or more of the standards in Zoning Ord. § 10.101(7)(d).1.a.-g., applicable to all CUPs, cannot be met here.

Under Standard One, the new mine will be detrimental to and endanger the public health, safety, comfort, and general welfare due, among other things, to heavy truck traffic on inadequate roads that create hazards for other drivers, pedestrians, bikers, and people living near the roads. These hazards are well documented from the existing, 9-acre pit (with some days seeing over 100 loads, R.121), after the current operator took over and truck traffic vastly increased (*e.g.*, R.277-286, R.408, R.418). Hazards include gravel flying off trucks, noise, emissions, but most notably, dangers from heavy truck traffic on roads not designed to accommodate their impact, particularly when trucks are speeding or cutting corners and crossing the center lines. (*Id.*; *see also id.* at R.292.)

These impacts will only worsen and last a longer time with the new pit (*e.g.*, R.724). Most trucks will be directed up Center Road to County Road A (R.101), but according to a different mine operator, “Center Road is not a safe road. It has lots of steep grades and stop signs on it-not good visibility, low hanging trees in a lot of places. So Center Road is not a very good or safe road to begin with.” (R.419; R.312 (noting traffic from other operator uses Old Stage Road).)

Trucks Passing/Driveways and Blind spots



(R.468 (blind spots noted in pink).) As one neighbor explained:

The heavy trucks to and from the quarry site create a hazard and nuisance affecting people over a much wider area in the township. The narrow width of Center Road, lack of shoulder and number of driveways create a safety hazard. This is not as great of a concern with the existing 9-acre quarry. When the existing 9-acre quarry was created the neighborhood was almost largely unoccupied agricultural lands with a few farmsteads. Today in 2023, the neighborhood has transitioned to being an established rural residential area. With the new 36.7 acre site it is a much larger safety concern with increased truck traffic.

(R.268; see similar comments at R.408.)

Many neighbors reported no longer walking, jogging, or bicycling due to gravel pit truck traffic and the lack of any room for pedestrians when two trucks pass one another.

(R.277-286; R.306 (“Walking with a stroller is no longer an option.”); R.732 (“10 years ago we could walk and ride bikes along the road while being mindful of rural traffic. Now there is no way we’d walk or bike due to the large trucks taking up a lot of the road width, flying gravel out the back, and the danger it presents.”). Those who do choose to walk experience reduced enjoyment or must dive for the ditch to avoid truck traffic. (E.g., R.275; R.299 (“It

is not safe to walk on our roads and I am concerned when I do see someone walking as they have to go way down into the ditch to stop until the dump trucks have passed”); R.306 (“The ditch is the only place to go. When dump trucks pass by on the same side of the road, the blowback is enough that pedestrians have to brace themselves, and cyclists have to hang on to avoid being blown off the road.”); R.603; R.771). Putting people at risk of accidents and forcing people to forego exercise and fresh air certainly is detrimental to the public health, safety, comfort, and welfare.

When traffic concerns were raised before the ZLR, zoning staff said they “do[] not feel that regulating an activity off-site could fall under the scope of the CUP,” and the applicants heartily agreed. (R.118-119.) While this might have been true of the 9-acre pit when it was a non-conforming use (*e.g.*, R.277-286), nothing exempts traffic impacts from being considered during the CUP process. *See* Zoning Ord. § 10.101(7)(d).1.a.-g. In fact, courts have previously upheld CUP denials that relied on impacts to traffic congestion associated with the development under review. In one such case, the court affirmed a town board’s finding that a proposed CUP to expand a truck service center would be “contrary to the public health, safety, or general welfare” because “[w]e have an area congested with trucks ... now and we do not wish to compound the problem.” *E.g.*, *Town of Hudson v. Hudson Town Bd. of Adjustment*, 158 Wis. 2d 263, 277, 461 N.W.2d 827 (Ct. App. 1990). This is exactly the case here.

This limited interpretation of zoning authority also led to ineffective conditions to address truck problems. For example, zoning staff noted that “[i]t has been a common practice for many quarry operations to use tarps on hauling vehicles to reduce impacts on other vehicles during transportation of materials off-site.” (R.99.) (As one citizen pointed

out, such a condition would also protect children and other pedestrians, and potentially save a child's eye or prevent a head injury, R.735.) Yet the applicants resisted this condition, claiming they could not control the trucks that entered and left their site (R.115), and ultimately the CUP only included a condition that a sign be placed at the mine's exit that trucks leaving the site should be tarped (R.784). Predictably, trucks leaving the mine site since the CUP was approved are regularly untarped, including trucks owned by the applicants. (*E.g.*, Exhibits D, E.)

Truck traffic is just one reason why the CUP cannot meet Standard One. There are also inadequate berms and screening to buffer visual impact and aesthetic impacts, including along Center Road, where only a 30-foot setback is specified, while other mines in the area have more. (R.421-429.) The applicant also failed to produce substantial evidence that it would not impact residential wells, despite Ms. Marr-Laundrie's well going dry when applicants took over the 9-acre pit in 2017. (R.420.)

Under Standard Two, the uses, values, and enjoyment of other property in the neighborhood for purposes already permitted will foreseeably be substantially impaired or diminished by establishment, maintenance, or operation of the conditional use. While many neighbors testified to expected impacts to their use and enjoyment of property due to noise, dust, blasting, trucks, visual impacts, and groundwater impacts, this standard is perhaps best exemplified by impact to property value. No one will want to buy, for full price, a property experiencing these impacts.

A quarry depresses home values in proximity to it. This is demonstrated by two sales near the mine, with a home 2,500 feet from the existing, 9-acre quarry selling for \$7,000 over list price after 46 days on the market, while a mine 600 feet from the quarry

never received a public offer and sold \$175,000 below list (a 23% discount) to Mr. Hahn himself. (R.430-31.) Moreover, a recent study of property value impacts of a mine in Marquette County showed that the closer one is to the mine, the more property value will be reduced. (R.423.)

Conclusions of Impact of an Open Pit Sand & Gravel Mine on Residential Property Values			
distance from the mine	Realtor Survey	Statistical Studies	Average
	qualitative	quantitative	(mean)
abutting	-15%	-35%	-25%
300ft - 1,000ft	-15%	-30%	-23%
2,500ft (~ 1/2 mile)	-10%	-20%	-15%
5,000ft (~ 1 mile)	0%	-14.5%	-7%

(R.539; *see also* R.324 (noting Town of Rutland appraiser stated the value of property next to a quarry will be affected and reduced by as much as 30%), R.712.) Similar reductions held true for agricultural land. (R.434-440.)

These conclusions are supported by the analysis of Real Estate Dynamics, Inc. (“REDI”), whose property valuation experts⁵ studied property values and sales in the Town of Rutland specifically. (Exhibit B.) After excluding incomparable properties and against the background of control data, and after reviewing the literature, the REDI report found an average 14.07% discount to property values for properties within 1.75 miles of a mine. (Exhibit B, REDI study, at 13.) Because this number is an average, the REDI report stated,

⁵ REDI’s analysis was led by Craig Hungerford, who has nearly forty years of experience in property valuation, appraisal, and investment. He received a Master of Science in Real Estate Appraisal and Investment Analysis from the University of Wisconsin-Madison in 1984 and, since 1989, has been President/Partner in REDI where he consults, is a feasibility analyst, appraiser, and expert witness. He is also a guest lecturer on issues related to property valuation and appraisal at the University of Wisconsin-Madison. (Exhibit B, Appendix.)

“we must recognize that a property adjacent to a mining operation will likely experience a much higher discount to value than 14%, while a property 1 mile from a mining operation could experience a discount to value that is less than 14%.” (*Id.* at 13.) A licensed real estate agent submitted comments corroborating the reductions. (R.607.)

The REDI report also addresses a 2020 report commissioned by the applicants by a consultant named Scott MacWilliams, when applicants were seeking an earlier version of the CUP. (Exhibit B at 5-10.) While the MacWilliams report predicted no impacts to property value as a result of the new mine (R.231), the REDI report identified multiple methodological flaws in that analysis, such as having no meaningful control group and incomplete or inaccurate data that skewed results. (Exhibit B at 9-10 (“REDI reluctantly discloses that we are hard pressed to recall an analysis with incorrect methodology and data of this magnitude.”).) Numerous commenters before the ZLR identified similar flaws in the MacWilliams report. (*E.g.*, R.268, R.434, 445, 711-712.)

Zoning staff stated that given the existence of they 9-acre quarry, property values should already be impacted and, thus, they “feel[] that the continuation of an existing land use (mineral extraction) will not have a significant effect on property values.” (R.101.) Respectfully, these “feel[ings]” cannot substitute for the data that show the closer one gets to a mine, the more their property value will be impacted. For example, Ms. Marr-Laundrie’s property will be much closer (1,300 feet) to the new mine than the old (2,400 feet), putting her in a zone of greater impacts (about 10% more impact based on the Marquette County study) than she was before. (Exhibit A.) Another property owner, Tom Eugster, resides just east of Ms. Marr-Laundrie; nearly all of the eastern line of his property will border the new mine, which will significantly exacerbate the impacts he already experiences from the

existing mine. (Exhibit A; R.724.) Additionally, the new mine is 36.7 acres, with its 1.75 radius of property value impact much larger than the existing, 9-acre site.

The idea that the CUP is “continuing” or keeping impacts to the “current state” is absurd. The current state of the 36.7 acre parcel is a farm field:



The photo on the left is taken at the southern end of the 36.7 acre parcel, and also shows the parcel’s close proximity to Center road. The photo on the left faces south.

(Exhibit C at 1 & Ex. 9⁶; R.712.)

The fact that neighbors have consistently, vociferously, and almost uniformly opposed the mine expansion is also a strong indication that Standard Two is not met. The REMI report and other data confirm that. The CUP should be denied.

Under Standard 3, the establishment of mining on the new, 36.7 acre parcel will impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. There are 8 properties eligible for splits, i.e. creation of new lots for homes or other uses, within 1,000 feet of the new mine. (R.327.)

⁶ These photos are taken from a wetland delineation report the DNR required to be prepared for the property. (Exhibit C.)

Three of these are held by Mr. Eugster, and two by Mr. Spelter. As Mr. Eugster stated, “If I [choose] to subdivide my property it will be difficult to sell the lots due to these issues with the new quarry.” (R.724.) The CUP will impede the normal and orderly development and improvement of the surrounding property for the predominant use in the area: rural residential and agricultural use under Farmland Preservation standards.

Under Standard 4 and 5, there are not adequate utilities, access roads, drainage, and other necessary site improvements, or ingress and egress that will minimize traffic congestion. As explained in detail above, there are not adequate access roads to support the large volumes of truck traffic that will visit the new mine. Furthermore, the application was supported by insufficient data about groundwater to ensure groundwater levels and groundwater quality will be protected, and neighbors have experienced well impacts from pumping at the existing pit. There are no conditions to ensure compensation for anyone whose well is affected.

B. The CUP is Not Consistent with the County or Town Comprehensive Plans.

The mine conflicts with both the Town and County comprehensive plans, in multiple respects, contrary to Standard 7 contained in Zoning Ord. § 10.101(7)(d).1.h.

The Rutland plan places its “vision for Rutland” front and center, stating that it “is a rural community that is home to active agricultural lands, natural open spaces, and low density residential development. Residents value the quiet and the sense of community this rural character offers.” Rutland Comp. Plan at 2-1.⁷ To implement this vision, the Town

⁷ Available at <https://town.rutland.wi.us/wp-content/uploads/2020/06/Rutland-Plan.pdf>

prioritizes preserving farmland through Agricultural Preservation Districts, minimizing conflicts between incompatible uses, and employing buffers around incompatible uses. *Id.* at 2-5. The mine expansion conflicts with all of these objectives, by destroying farmland, permitting conflicts between the mine and residents, reducing property value, and having insufficient buffers. (R.461-465.) It also conflicts with objectives in the Town plan intended to reduce non-local traffic and foster pedestrian safety and safe bicycle routes, as well as historic preservation due to proximity to Graves Cemetery. *See, e.g.*, Rutland Comp. Plan at 2-4, 2-11; R.466-475.

As for the County’s plan, the CUP application is not consistent with its objectives to “[m]inimize the amount of land converted from agricultural use to accommodate permitted non-farm development” and to “[e]ncourage separation of incompatible uses in rural areas,” among other things. Dane County Comp. Plan, Ch. 5, page 37-38.⁸ The CUP application admits that there are “6 residential homes within 1000’ of the proposed site” (R.173, 218), but the County’s comprehensive plan specifically states nonfarm development should not be allowed within 1000 feet of significant mineral resources in most cases. Dane County Comp. Plan, Ch. 5, page 40. While the nominal objective of this provision is to preserve mineral resources, it implicitly recognizes that residential uses within 1,000 of a mine are incompatible.

The CUP application claims to be consistent with the County and Town comprehensive plans, but it provides no basis for this claim, other than stating the plans are

⁸ Available at <https://www.danecountyplanning.com/documents/DCCP/comp-plan-Voll-Final2016opt.pdf>

intended to “limit the density of residential development.” (R.219.) The density of residential development is already limited based on the area’s Farmland Preservation designation, and the applicants ignore that the plans are *also* intended to avoid conflicting uses and preserve rural character—none of which is accomplished with the mine expansion. Zoning staff’s rationale on this point was all of one line, claiming that “[a] mineral extraction operation is identified as a land use that will occur in rural areas of the County.” (R.93.) This is a tautology and not a rationale, much less substantial evidence. Both the Town and County plans have much to say about *where* in the County a mine will be located, but the staff report disregards these aspects of the plan.

There is no substantial evidence to support this factor, and significant substantial evidence shows it cannot be met.

C. The CUP Does Not Satisfy the Criteria for a CUP in the Farmland Preservation District.

Under Standard 8, the mine must meet the additional requirements in Zoning Ord. § 10.220(1)(a) for uses in the Farmland Preservation-35 zoning district. Wis. Stat. § 91.46(1), (6); Zoning Ord. § 10.222(1)(a) (“the zoning committee **must find** that the following standards are met before approving any conditional use in any Farmland Preservation zoning district”) (emphasis added).⁹ The mine here does not present substantial evidence that it meets these standards, and other substantial evidence contradicts them.

⁹ Similarly, Standard 6 requires that the proposed conditional use conform to the regulations of the zoning district in which it is located. Zoning Ord. § 10.101(7)(d)f.

Farmland Preservation Standard 1. The mine does not satisfy the purposes of the Farmland Preservation-35 (“FP-35”) district, as required by Zoning Ord. § 10.220(1)(a).

These purposes are specifically enumerated as:

- (a) Provide for a wide range of agriculture and agricultural accessory uses, at various scales. The FP-35 district accommodates as permitted uses all activities typically associated with the primary production and harvesting of crops, livestock, animal products or plant materials. Such uses may involve noise, dust, odors, heavy equipment, use of chemicals and long hours of operation.
- (b) Allow for incidental processing, packaging, storage, transportation, distribution or other activities intended to add value to agricultural products produced on the premises or to ready such products for market. Such uses are conditional as they may have the potential to pose conflicts with agricultural use due to: volumes or speed of vehicular traffic; residential density; proximity to incompatible uses; environmental impacts; or consumption of agriculturally productive lands.
- (c) Allow for other incidental activities, compatible with agricultural use, to supplement farm family income and support the agricultural community.
- (d) Preserve productive agricultural land for food and fiber production.
- (e) Preserve productive farms by preventing land use conflicts between incompatible uses.
- (f) Maintain a viable agricultural base to support agricultural processing and service industries.
- (g) Reduce costs for providing services to scattered non-farm uses.
- (h) Pace and shape urban growth.
- (i) Meet the criteria for certification as a Farmland Preservation Zoning District under s. 91.38, Wis. Stats.

Zoning Ord. § 10.222(1).

The applicants and zoning staff suggest that the mine is consistent with the purposes of the FP-35 district because mining is a conditional use in the district. (*E.g.*, R.120; *see also* R. 90.) The Wisconsin court of appeals has described this argument as “an overreach.” *Eco-Site, LLC v. Town of Cedarburg*, 2019 WI App 42, ¶ 19, 388 Wis. 2d 375, 933 N.W.2d 179 (affirming denial of CUP for cell tower in rural area). Simply because mining is allowed as

a conditional use does not mean mining is compatible with a FP district: “there is no presumption that a conditional use is ipso facto consistent with the public interest or that a conditional use is a use as of right at a particular site within an area zoned to permit that conditional use.’ **The ordinance permits [the uses], if the conditions are met, but it does not rubber stamp them.**” *Id.* (bold emphasis added). The applicants’ remaining arguments that the mine is consistent with the purposes of the FP-35 district are simply opinions that the mine satisfies the County’s standards and rely on the fallacy that the mine use is “temporary.” (R.219.)

County zoning staff’s arguments are even more thin, discussing farmland preservation standards in one short line that said, “[c]onditions have been proposed requiring a reclamation plan being in place to return the property to agricultural production once the deposit is depleted.” (R.93.) Not only did no such conditions ever come to fruition—no condition requires returning the property to agricultural production (*see* R.781-784)—but it does not address all of the Farmland Preservation standards.

In fact, mining is not an “agricultural use” or an “agricultural accessory use” as defined by the ordinance. Zoning Ord. § 10.004(11), (13). The mine thus does not satisfy Farmland Preservation purpose (a). The mine here is also not an “incidental” activity under purposes (b) or (c) because it is not incidental to agricultural and does not create value-added agricultural products, as a food processing or similar facility would. Rather, it is to “fulfill local demand for construction aggregate products” (R.219), with “local” encompassing construction sites across “South Central Wisconsin.” (R.153.)

The mine also does not “preserve productive agricultural lands” under (d) because mining, obviously, destroys agricultural use of the land. The applicants claim the use is

“temporary” (R.219) but it also acknowledges the site will be active for at least 50 years—likely a low estimate considering that the existing, 9-acre site has been mined for 86 years so far (R.218). A use that is measured in human lifetimes, and which will remove farmland from production for several decades, is not “temporary” under any reasonable use of that term. Moreover, once mining is done, 19 acres of the site will become a “freshwater lake” (R.218) which again is not an “agricultural use,” as even the Applicants admit (R.219). The County similarly concedes that this is a “recreational use.” (R.133.)

Other farmers nearby have testified that the mine will create land use conflicts, contrary to subsection (e). (*E.g.*, R.724.) One neighbor who has planted a vegetable garden for 44 years straight no longer intends to plant, “to decrease the time I spend outside ... in my own yard ... on my own property ... because my neighbor may get a CUP to build a ghastly 30 acre quarry on farmland that was set up to be preserved as farmland.” (R.344.) There is also no evidence that the CUP will meet purposes (f)-(i), as the applicant did not supply any. (*See* R.220.)

Farmland Preservation Standard 2. The mine is not “reasonable and appropriate with alternative locations considered.” Zoning Ord. § 10.220(1)(a)2. There is no indication in the application that any alternative sites were ever considered; rather, applicant bought the property and *then* applied for a CUP. (R.153.) The Applicant claims it is limited by where aggregate occurs naturally (R.219), but aggregate is available throughout Dane County. The Applicants do not explain why they did not purchase a different site that would have less impact on neighbors, farmland, and the surrounding community and have not satisfied this standard.

Farmland Preservation Standard 3: The mine is not reasonably designed to minimize the use of agricultural lands, Zoning Ord. § 10.220(1)(a)3. The CUP Application states that the “site will be developed incrementally” to preserve farmland (R.220), but it provides no detail as to what that means. In any case, developing the mine incrementally does not mean farmland will be preserved—it only affects the rate at which it is consumed by mining operations. Most of the land will never be returned to agriculture because it will be converted to a “freshwater lake.” (R.218.) It also does not discuss whether reclamation to agriculture is even possible given the level of ground disturbance that mining will cause, but defers the details to a “to be approved reclamation plan for the site.” (*Id.*)

Farmland Preservation Standard 4: The Zoning Ordinance requires a finding that “the proposed use does not substantially impair the current or future agricultural use of surrounding parcels.” Zoning Ord. § 10.220(1)(a)4. The application completely fails to discuss current or future agricultural use of surrounding parcels; it only discusses uses of land within the mine site itself. (R.220.) There is no substantial evidence to support this standard, and as noted above, other evidence contradicts it.

Farmland Preservation Standard 5: The Zoning Ordinance requires a finding that “construction damage to remaining lands in agricultural use is minimized and/or repaired.” The application completely fails to discuss repair of damaged agricultural lands, whether it is possible, and what repair methods are available. (R.220.) Its only discussion regarding “minimization” of damage is that trucks will use dedicated haul routes within the site. (*Id.*) It does not satisfy this standard.

The CUP does not satisfy the standards for Farmland Preservation districts as set forth in Zoning Ord. § 10.222(1)(a) and Wis. Stat. § 91.46(1) and (6), and it should be rejected. Zoning Ord. § 10.220(1)(a).

II. The ZLR Made Significant Errors When it Approved the CUP.

A. *The ZLR Failed to Make Adequate Findings that the CUP Standards are Satisfied.*

The ZLR failed to make adequate findings—or any findings—that Dane County’s standards for issuing a CUP were satisfied. The ZLR was obligated to do so by both the Zoning Ordinance and common law.

Section § 10.101(7)(c)2.e. of the Zoning Ordinance requires that,

Prior to granting or denying a conditional use, the zoning committee shall make written findings of fact based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the following standards:

- i. General standards for approval of a conditional use under s. 10.101(7)(d).
- ii. Any prescribed standards specific to the applicable zoning district.
- iii. Any prescribed standards specific to the particular use under s. 10.103.

Zoning Ord. § 10.101(7)(c)2.e. Because the Ordinance uses the term “shall,” it was mandatory that the ZLR find each of these standards was met. *See Hayen v. Hayen*, 2000 WI App 29, ¶ 18, 232 Wis. 2d 447, 606 N.W.2d 606; *Schroeder v. Dane Cnty. Bd. of Adjustment*, 228 Wis. 2d 324, 333, 596 N.W.2d 472 (Ct. App. 1999).

Additionally, case law requires that a zoning committee explain its reasoning as to why a matter does or does not satisfy applicable standards and make adequate findings. *See, e.g., Lamar Cent. Outdoor, Inc. v. Bd. of Zoning Appeals of the City of Milwaukee*, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87. This means not simply stating that the criteria are met in “conclusory fashion,” but also the reasons why the facts did not fit the criteria. *Id.* ¶ 27

(discussing variance decision). Courts have applied these principles to CUP decisions. *E.g.*, *Fugiel v. McLaughlin*, 2010 WI App 19, ¶ 17, 323 Wis. 2d 277, 779 N.W.2d 724. In fact, the ZLR has been admonished for failing, *inter alia*, to make findings that applicable standards were satisfied when it granted a CUP for a quarry. *Johnson v. Dane County Bd. of Supervisors et al.*, Dane County Circuit Court No. 14-CV-2917, Slip Op. at 11-12 (Aug. 30, 2016) (“the Town’s and County’s failure to refer to these standards throughout the record evidences a lack of consideration for the Town of Albion’s particular zoning plan and the neighboring residents’, including petitioners’, interest in preserving the agricultural use and character of their property.”).

The ZLR made similar blunders here. It did not go through the County’s eight standards for CUP approval in its March 14, 2023, meeting where it approved the CUP. The minutes state only that it approved the CUP “with conditions in accordance with the findings of fact and being found to meet the 8 standards of obtaining a conditional use permit.” (R-77.) The meeting video confirms the ZLR did not make findings on the eight standards or explain why the Committee thought they were or were not met. (R.86, video from 3/14/23, agenda item starts at 00:03:50, motion made at 00:08:48.)

At most, the ZLR approved findings of fact and conditions in a staff document that also contained “suggested reasoning for the listed standards of review.” (R.88-93.) However, the ZLR did not adopt the reasoning related to these standards or, except for one member, even discuss them. (*See generally* R.86, video from 3/14/23, discussion starting at 00:08:48.) The member who did reference the standards did so briefly, stating only that because the mine was limited to its “current state” as assumed in the proposed staff finding

for Standard 2, it met all the standards. (R.86, 3/13/23 mtg at 00:13:42.) The staff and ZLR discussion on CUP 2582 lasted less than 15 minutes.¹⁰

Even if the ZLR had adopted the staff document's reasoning as to the County's general *CUP standards*, however, this would still not be sufficient. The ZLR was required to make findings that all the County's *farmland preservation standards* were satisfied. Wis. Stat. § 91.46(6); Zoning Ord. § 10.220(1)(a). The staff document does not make findings as to each of these standards. At most, it contains one line as to the Farmland Preservation standards stating that “[c]onditions have been proposed requiring a reclamation plan being in place to return the property to agricultural production once the deposit is depleted.” (R.93.) However, no such condition made it into the final CUP (*see* R.781-784), and even if it had, this one condition would not address all five Farmland Preservation standards in Zoning Ord. § 10.220(1)(a) or the nine enumerated purposes of the Farmland Preservation District in Zoning Ord. § 10.222(1).

B. *The ZLR's Decision was Based on Errors of Fact.*

Even if the findings in the staff's proposed document had been approved by the ZLR, they were based on errors of fact. For example, the CUP does not limit mining activity to its “current state,” as the staff findings suggest under Standard 2. (R.93.) The current state of the mine is a 9-acre site that has been mined for nearly 100 years and is approaching the end of its life. (R.132.) The CUP permits mining on an entirely different 36.7 acre farm field for at least 15 years, and likely much longer, and closer to the properties of Ms. Marr-

¹⁰ Discussions at a prior meeting on February 25, 2022, were similarly brief, did not discuss the standards at all, and were focused on conditions. (R.86.)

Laundrie, Mr. Spelter, and other members of RCU. As one exasperated citizen stated, “I can not highlight enough the difference in impact between an old nearly exhausted pit that would soon close and be reclaimed and a new 37 acre quarry that will go on for decades.” (R.712.)

It is also not true that the conditions placed on the CUP will “mitigate concerns to an acceptable level,” as the staff report suggests for Standard 1. (R.93.) There is no evidence (substantial or otherwise) to support this conclusion. Instead, the conditions were largely based on what the CUP applicant said it would “accept” (R.110-119) and not what citizens or even staff recommended in a memo to Hahn (R.96-102.).

For example, per the applicant’s request (R.110), the ZLR permitted mining on Saturdays (R.79), when people are home and wish to enjoy their properties or plan events like graduation parties or family reunions. Yet citizens pleaded with the ZLR to not allow mining on Saturday, making this the centerpiece of the conditions requested if the CUP was going to be granted. (*E.g.*, R.490 (“Hours of operation limited to 7am-4pm weekdays only. No operations on weekends. No exceptions!”); *see also* citizen comments at R.283-284, 302, 393, 747, 748.) Even the County’s ordinance supports the citizens’ request, noting that for non-metallic mines generally,

The Town and Committee will assign hours of operation appropriate to the particular application. No operations of any kind shall take place on Sundays or legal holidays. The committee and town board may approve limited exceptions to normal hours of operations for projects associated with Wisconsin Department of Transportation or municipal road projects requiring night work. [Note: Typical hours of operation are from 6:00 a.m. to 6:00 p.m., Monday through Friday, and 8 a.m. to early afternoon on Saturday. **If there are residences nearby, hours may be more limited (e.g., start at 7:00 a.m. with no Saturday hours).**]

Zoning Ord. § 10.103(15)(b)9 (emphasis added). As noted above, there are 6 residences within 1,000 feet of the facility (R.173), but no justification was given by the ZLR for allowing Saturday hours. The Town did not provide any recommendation as to hours of operation at all, as required.

Similarly, the CUP includes a condition with a decibel limit, providing “[n]oise limitation shall not exceed 75 decibels at a point 100 feet away from the property line,” measured in DbA over a 15-minute average. (R.80.) However, as zoning staff pointed out in evaluating a different CUP application for a proposed dog kennel, “Decibel level limits could be set by the CUP conditions; however **enforcement of decibel-based noise restrictions can be difficult in real time** and involve the Sherriff [sic] taking measurements on site to investigate a complaint.” (Exhibit F, Staff Report on CUP 2591 at 6, Public Hearing 4/25/23 (emphasis added).)¹¹ The CUP application in that case was eventually withdrawn. There is no reason to believe the decibel-based limit in CUP 2582 will be any more effective or enforceable; in fact, it will likely be less, as the 15-minute averaging will allow short bursts of very loud noise, and private property would need to be accessed to measure noise levels. The 75-decibel limit is also arbitrary; no basis was provided for it beyond that it had been used by unspecified towns in the past. (R.97.)

Moreover, the CUP lacks any conditions to calm traffic (*see* R.77). When questioned on this point by one ZLR member, zoning staff said that this would be addressed by the condition that the CUP is limited to K&D Stone and is non-transferrable to a different

¹¹ Available at <https://dane.legistar.com/View.ashx?M=F&ID=11976891&GUID=DF97534B-D264-44A1-B777-F08EAB3A25DD>

owner. (R.86, 3/14/23 meeting at 00:05:50.) Obviously, those two things are not directly related. Limiting ownership to K&D Stone is also based on the unsupported assumption that “the operation is kept at the activity level that is currently occurring,” since nothing compels K&D Stone to keep operations at their current level—particularly when it now has four times the amount of land to operate with. (R.89.) Most conditions are generic, literally the boilerplate conditions from the Zoning Ordinance, *e.g.*, R.91-93, and not tailored to the anticipated impacts of this site.

C. The Rutland Town Board Failed to Find that the CUP Standards were Satisfied.

In addition to the ZLR, the Zoning Ordinance imposes on the Town of Rutland a non-discretionary duty to make a determination whether CUP 2582 complied with the County’s standards. Zoning Ord. §§ 10.101(7)(c)3.c. and 10.101(7)(d)1. The only time that the Town of Rutland has taken a position on the CUP was in 2020. (R.402-403.) Then, the Town Board found that the CUP would not meet 6 of the County’s 8 standards. (R.738-743.) Since then, the Town Board has taken no position on any iteration of the CUP that has come before it (R.403), including CUP 2582 (*see* R.698). There is no document in the record indicating that the Town Board took any action at all on CUP 2582. (*See* R.137. The ZLR should not have approved CUP 2582 without the Town’s findings and suggested conditions.

III. Appellants are “Aggrieved”

Any “person aggrieved” may bring an appeal to the Board or to this Court. Wis. Stat. § 59.694(4), (10); *State ex rel. Brookside Poultry Farms, Inc. v. Jefferson Cnty. Bd. of Adjustment*, 131 Wis. 2d 101, 110, 388 N.W.2d 593, 596 (1986). Ms. Marr-Laundrie and Mr. Spelter, as well as RCU, are “aggrieved persons” for purposes of this appeal.

No case has interpreted the phrase “person aggrieved” under Wis. Stat. § 59.694(4) and (10), though one case applied standing under Wis. Stat. ch. 227 (which permits challenges to a state agency decision) to a local government matter. *Metro. Builders Assoc. of Greater Milwaukee v. Vill. of Germantown*, 2005 WI App 103, ¶ 15, 282 Wis. 2d 458, 698 N.W.2d 301. Assuming this body of case law applies, “standing in Wisconsin should not be construed narrowly or restrictively.” *Wisconsin's Envtl. Decade, Inc. v. PSC*, 69 Wis. 2d 1, 13, 230 N.W.2d 243, 249 (1975). Standing is a two-pronged inquiry; “typically our courts ask first whether the decision of the agency directly causes injury to the interest of the petitioner and second whether the interest asserted is recognized by law.” *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶ 18, 402 Wis. 2d 587, 977 N.W.2d 342 (internal quotation marks and citation omitted), *reconsideration denied sub nom.*, 2022 WI 104.

As to the first prong, also known as injury-in-fact, it is a “low bar.” *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, ¶ 20, 403 Wis. 2d 607, 625, 976 N.W.2d 519, 529, *reconsidered*, 2022 WI 104, ¶ 20. Even a “trifling interest” may be sufficient to confer standing.” *Fox v. Dep't of Health & Social Servs.*, 112 Wis. 2d 514, 524, 334 N.W.2d 532 (1983). The injury need only give the plaintiff a “personal stake in the outcome of the controversy” and “need not be pecuniary.” *Chenequa Land Conservancy, Inc. v. Village of Heartland*, 2004 WI App 144, ¶ 17, 275 Wis. 2d 533, 685 N.W.2d 573. “An allegation of injury in fact to aesthetic, conservational and recreational interests has been readily accepted as sufficient to confer standing.” *WED I*, 69 Wis. 2d at 10 (citing cases). Moreover, as stated by a leading authority on zoning and planning, “[w]hen a zoning action affects an adjoining or nearby property owner, that property owner is generally considered to have an interest sufficient to

confer standing to challenge zoning decisions relating to another's property.” See Rathkopf, Arden H. and Rathkopf, Daren A., Rathkopf's The Law of Zoning and Planning §§ 43.03[2] and 43.04[1] (cited in *Ingebritson v. Zoning Bd. of Appeals of City of Madison*, 209 Wis. 2d 599, 568 N.W.2d 37 (Ct. App. 1997) (unpublished)) (emphasis added)..

Appellants have met the low bar for showing injury-in-fact. Ms. Marr-Laundrie resides at 4082 Old Stage Road. (Amended Notice of Appeal, ¶ 2.) Her home is approximately 1,300 feet southwest of the proposed mine expansion, but more than 2,400 feet from the existing mine. (*Id.*) She already experiences some disturbance from the existing quarry, which will only be exacerbated or in some cases created by the expansion to a new site even closer to the direction of her property. These disturbances include noise (from crushing, truck beds slamming, and back-up beepers), truck traffic on roads Ms. Marr-Laundrie uses (and safety issues related to truck traffic), dust, reduced water table and impacts to Ms. Marr-Laundrie's drinking water well, changes to stormwater flows, visual impacts, and anticipated loss of property value. (*Id.*) Indeed, Ms. Marr-Laundrie's well went dry in 2007, when the existing mine apparently expanded. (R.515-522.) The applicants have not demonstrated that they can safely expand their mine even closer to her property, despite their plans to dewater the aquifer, sometimes at a rate of 400 gallons per minute. (*Id.*) The CUP and the decision of the ZLR will cause her “direct injury.”

Henry Spelter is a property owner in Town of Rutland, whose residential address is 5204 Autumn Lane, McFarland, WI 53558. (Amended Notice of Appeal ¶ 3.) He owns a 46.4-acre field which abuts the north side of the proposed mine expansion, and which he uses for recreation and a cherry orchard. (*Id.*) There is no residence on the property, but Mr. Spelter would be entitled to construct a residence under current zoning, and a potential

split would allow a second residence. (*Id.*) Mr. Spelter anticipates he will experience disturbances from the quarry expansion onto the 36.7 acre parcel, such as noise (from crushing, truck beds slamming, and back-up beepers), truck traffic on roads he uses (and safety issues related to truck traffic), dust, reduced water table, changes to stormwater flows, visual impacts, and anticipated loss of property value. (*Id.*) The CUP and the decision of the ZLR will cause him “direct injury.”

RCU is an “aggrieved person” by virtue of the fact that its members, including Ms. Marr-Laundrie and Mr. Spelter, as well as Jodi Igl,¹² are or will be harmed by the CUP decision, and the interests of its members are germane to the organization’s purpose. *See Metro. Builders* 282 Wis. 2d 458, ¶ 14. That purpose is “preservation of rural neighborhoods, ensuring that the Town of Rutland remains a peaceful, quiet, safe community, and retaining the values expressed in the Town of Rutland’s Comprehensive Plan, all to ensure it remains a place where people want to live and can enjoy their homes and property.” (Amended Notice of Appeal ¶ 1.) As noted above, Ms. Marr-Laundrie and Mr. Spelter are aggrieved because of the new and increased disturbances they will experience as a result of the CUP and ZLR decision.

Appellants next satisfy the second prong of the standing analysis because they have a legally protected interest in this matter. This prong requires the allegedly adversely affected interest to be one protected, recognized, or regulated *by an identified law.*” *Friends of the*

¹² Ms. Igl is the registered agent for RCU. (Amended Notice of Appeal ¶ 1.) She lives five miles from the proposed mine expansion, but the road on which she resides is and will be used by trucks for the mine. (*Id.*) Ms. Igl has suffered significant disturbance from the noise and traffic caused by these trucks, which she expects to increase in volume and duration as a result of the CUP and CUP approval. (*Id.*)

Black River Forest, 402 Wis. 2d 587, ¶ 31. The laws discussed throughout this brief protect Appellants' interests, first by permitting persons whose interests are "aggrieved" to file suit. Wis. Stat. §§ 59.694(4), (10). The County's ordinances, in turn, contain numerous provisions that are intended to protect neighbors, lessen impacts of high-intensity developments, and preserve farmland. *E.g.*, Zoning Ord. §§ 10.101(7)(d), 10.222(1). Moreover, these ordinances were enacted pursuant to a statute devoted to "encourage[ing] planned and orderly land use development" and "to protect property values and the property tax base." Wis. Stat. § 59.69(1). It is precisely these values that are endangered by this mine.

Appellants are "persons aggrieved" by the CUP and ZLR decision to grant the CUP.

CONCLUSIONS OF LAW

Based on the above, the Board should make the following conclusions of law:

- 1) Appellants are "persons aggrieved" by the ZLR's Decision and the issuance of CUP 2582, Zoning Ord. § 10.101(9)(a).
- 2) Appellants' appeal is timely filed, Zoning Ord. § 10.101(9)(b).
- 3) The CUP does not comply with the standards for issuing a CUP in Zoning Ord. § 10.101(7)(d)1.a.-f. Specifically,
 - a. The establishment, maintenance, and/or operation of the new mine will be detrimental to or endanger the public health, safety, comfort or general welfare due, among other things, to truck traffic and hazards created by the mine, the lack of adequate screening, and other factors.
 - b. The uses, values and enjoyment of other property in the neighborhood for purposes already permitted, such as rural residential use, will be substantially impaired or diminished by the conditional use, due to property value impacts and physical impacts caused by the mine, i.e. noise, blasting, dust, truck traffic, visual impacts, and water table impacts.

- c. The establishment of the conditional use will impede the normal and orderly development and improvement of the neighborhood for uses permitted in the district, including rural residential and agriculture.
 - d. That adequate access roads, traffic controls, and other features are not accounted for.
- 4) The CUP is not consistent with Dane County and Town of Rutland comprehensive plans, as required by Zoning Ord. § 10.101(7)(d)1.g.
 - 5) The CUP is not consistent with the standards for a non-metallic mine in a farmland preservation district as required by Zoning Ord. §§ 10.101(7)(d)1.h. and 10.220(1) and Wis. Stat. § 91.46(6).
 - 6) The ZLR did not make an adequate determination as to whether CUP 2582 complied with the County's standards, as required by Zoning Ord. §§ 10.101(7)(c)2.e., 10.101(7)(d) 1., 10.220(1)(a), and Wis. Stat. § 91.46(6).
 - 7) The Town Board did not make any determination that CUP 2582 complied with the County's standards, as required by Zoning Ord. §§ 10.101(7)(c)3.c. and 10.101(7)(d)1.
 - 8) The ZLR's Decision to approve the CUP, and CUP 2582, must be REVERSED. CUP 2582 is DENIED.

Respectfully submitted this 1st day of June, 2023.

PINES BACH LLP

Electronically signed by Christa O. Westerberg

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