

NOTICE OF APPEAL (AMENDED) TO BOARD OF ADJUSTMENT OF THE
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.

Rutland Citizens United, U.A., Pamela J. Marr-Laundrie, and Henry Spelter ("Appellants") hereby appeal the Zoning and Land Regulation Committee's ("ZLR's") decision to approve conditional use permit ("CUP") 2582 with conditions and the issuance of the CUP. The decision permits a small existing non-metallic mine of 9 acres to vastly expand, onto an adjacent parcel of 36.7 acres. Appellants do not contest the CUP decision to the extent it covers the existing 9-acre parcel, but do contest the CUP to the extent it allows creation of a new mine on the 36.7 acre parcel. A copy of the ZLR's minutes where it approved the CUP is attached hereto.¹ A copy of the CUP itself, which was issued April 13, 2023, and which Appellants received on April 28, 2023, is also attached.

APPELLANTS

1. Rutland Citizens United ("RCU") is an unincorporated association whose registered agent is Jodi Igl, and whose address is c/o Ms. Igl at 4241 County Road A, Oregon, WI 53575. RCU is dedicated to the 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

¹ See also <https://dane.legistar.com/View.ashx?M=M&ID=1058493&GUID=D3C4AAB8-FE9E-4946-AB66-68B3912677E6>

property. RCU is composed of members residing or owning property in the Town of Rutland and in the area of the mine expansion, including Ms. Igl. Ms. Igl 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. 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.

2. Pamela J. Marr-Laundrie is an adult resident of the Town of Rutland, whose address is 4082 Old Stage Road, Brooklyn, WI 53521. Her home is approximately 1,300 feet southwest of the proposed mine expansion, but more than 2,400 feet from the existing mine. She already experiences 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. Ms. Marr-Laundrie is a member of RCU.

3. Henry Spelter is a property owner in Town of Rutland, whose residential address is 5204 Autumn Lane, McFarland, WI 53558. 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. 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. 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 Mr. Spelter uses (and safety issues related to truck traffic), dust, reduced water table, changes to stormwater flows, visual impacts, and anticipated loss of property value. Mr. Spelter is a member of RCU.

4. RCU, Ms. Marr-Laundrie, and Mr. Spelter are “aggrieved persons.” RCU is aggrieved by virtue of the fact that its members, including Ms. Igl, Ms. Marr-Laundrie and Mr. Spelter, 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 Ass'n of Greater Milwaukee v. Vill. of Germantown*, 2005 WI App 103, ¶ 14, 282 Wis. 2d 458, 698 N.W.2d 301. 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.

APPLICABLE SECTIONS OF ZONING ORDINANCE

5. Appellants contend the ZLR failed to properly apply, or apply at all, multiple provisions of the Zoning Ordinance when it approved and issued the CUP.

6. These provisions include Zoning Ord. § 10.101(7)(d).1.a.-h, the County’s standards for approving a conditional use, § 10.220(1), the Farmland Preservation standards, and related documents such as the Town of Rutland and Dane County comprehensive plans. The ZLR also failed to make an adequate determination as to whether the proposed CUP complied with the County’s standards, as required by Zoning Ord. § 10.101(7)(e).

7. The ZLR violated various aspects of common law applicable to CUP decisionmaking, such as failing to make adequate findings or explaining its decision as to why the CUP should be granted. *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.

DESCRIPTION OF CUP 2582

8. CUP 2582 is the third iteration of the proposed mine expansion. The first was rejected outright by the Town of Rutland and ZLR in 2020. The second was approved by the ZLR but overturned by this Board due to an erroneous legal description in 2022. Now the ZLR has approved CUP 2582, as applied for by K&D Stone LLC (“applicant”), in its meeting on March 14, 2023. It, through staff, issued the CUP on April 13, 2023.

9. Each time, the CUP has been strongly opposed by neighbors in the community. That is because the CUP will vastly expand the existing mining operation, both in size and in duration. The existing mine is only 9 acres and is nearing the end of its life. The new parcel is 36.7 acres and will be mined for at least 15 years, and likely longer as the site will not be exhausted and the permit will be renewed in the future.

10. Mining on the 36.7 acre site will cause significant disruptions to the local environment and to the people who live in or use the area, as further explained below.

GROUNDINGS FOR APPEAL

11. This appeal is filed pursuant to Zoning Ord. §§ 10.101(7)(c)4. and (9) (rev. 01/31/22).

12. The CUP must be reversed because it does not satisfy the standards for approving a CUP in Zoning Ord. § 10.101(7)(d).1.a.-h., based on substantial evidence presented by neighbors and other evidence in the record. The applicant also did not present substantial evidence that it would satisfy the standards. For example:

- Under Standard One, the new mine will be detrimental to and endanger the public health, safety, comfort, and general welfare due, *inter alia*, to heavy truck traffic on inadequate roads that create hazards for other drivers, pedestrians, and bikers. This is in addition to inadequate berms to buffer visual impact, dust, and noise from the site itself and the truck traffic on roads, and disturbances related to blasting.
- 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. The existing, 9-acre mine has already reduced property values, and allowing a new mine over three times that size will reduce values even further and extend the impairment much farther into the future than the existing mine, for Appellants and others. These lower values are connected to other impacts like noise, dust, blasting, and groundwater impacts. 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.

- 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. For example, the Dane County Comprehensive plan states that there should generally be a 1,000 foot buffer between mineral resources and residences, but at least 6 homes are located in this setback, and there are properties eligible to build new home sites within the 1,000 foot buffer from the 36.7 acre parcel, including Mr. Spelter's.
- Under Standard 4 and 5, there are not adequate utilities, access roads, drainage, and other necessary site improvements. 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. Similarly, no stormwater plan was provided during the CUP permitting process; stormwater may impact already flood-prone areas.
- Under Standard 6 and 7, the mine conflicts with both the Town and County comprehensive plans, in multiple respects. For example, the Town plan recognizes that quarries are not compatible with quiet use and create land use conflicts, requires adequate buffers, and states commercial uses cannot have more than de minimus impact on property values. The mine expansion conflicts with all of these principles, as well as those in the

Town plan related to traffic and pedestrian safety and safe bicycle routes, historic preservation due to proximity to Graves Cemetery. As for the County's plan, the CUP application is not consistent with its goals to "[m]inimize the amount of land converted to agricultural use to accommodate permitted non-farm development" and "[e]ncourage separation of incompatible uses in rural areas," among other things.

- Under Standard 8, the mine does not meet the additional requirements in Zoning Ord. § 10.220(1) for uses in a Farmland Preservation (FP) district. Simply because mining is allowed as a conditional use does not mean mining is compatible with a FP district. It means the mine must meet the conditions. The mine here does not do so, in part because the land cannot practicably be returned to agriculture; as the applicant states, it will include a large "freshwater lake." It is also not consistent with the purpose of the FP-35 District as stated in Zoning Ord. § 10.222(1)(a).

13. The CUP must also be reversed because the ZLR did not make any findings that the standards in Zoning Ord. § 10.101(7)(d).1.a.-h are satisfied, or explain its reasoning. At most, it approved findings of fact and conditions in a staff document that also contained "suggested reasoning for the listed standards of review." However, the ZLR did not adopt these standards or, except for one member, even discuss them. The member who did reference the standards did so briefly, stating only that because the mine was limited to its "current state" as stated in proposed staff finding for Standard 2, it met all the standards. The staff and ZLR discussion on CUP 2582 lasted

less than 15 minutes. Discussions at a prior meeting on February 25, 2022, were similarly brief, did not discuss the standards at all, and were focused on conditions.

14. 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." 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. The CUP permits mining on an entirely different 36.7 acre site for at least 15 years, and likely much longer, and closer to the properties of Ms. Marr-Laundrie, Mr. Spelter, and other members of RCU.

15. The conditions approved by the ZLR will not lead to satisfaction of the Standards and were instead largely based on what the CUP applicant said it would "accept" and not what citizens or even staff recommended. For example, per the applicant's request, the CUP still permits mining on Saturdays, when people are home and wish to enjoy their properties. The 75-decibel noise limit is arbitrary and difficult to enforce, and the CUP lacks conditions to calm traffic or address safety concerns. Most conditions are generic and not site-specific.

16. Appellants are aggrieved by the ZLR's decision to approve the CUP and by issuance of the CUP, for the reasons stated previously.

WHEREFORE, Appellants seek the Board of Adjustment's review of CUP 2582 and ask that the Board's decision to approve the CUP be reversed to the extent it permits an additional mine on the new 36.7 acre parcel, and

WHEREFORE, Pursuant to Wis. Stat. § 59.694(5), the CUP must be stayed until the Board of Adjustment concludes its review of this matter.

Respectfully submitted this 1st day of May, 2023.

PINES BACH LLP

A handwritten signature in black ink, appearing to read 'Christa O. Westerberg', written over a horizontal line.

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Attorney for Appellants

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Dane County

Minutes - Final Unless Amended by Committee

Zoning & Land Regulation Committee

Consider:

Who benefits? Who is burdened?

Who does not have a voice at the table?

How can policymakers mitigate unintended consequences?

Tuesday, March 14, 2023

6:30 PM

Hybrid Meeting: Attend in person at the City County Building in Room 354; or Attend virtually via Zoom.

See below for additional instructions on how to attend the meeting and provide public testimony.

A. Call to Order

Chair Doolan called the meeting of the ZLR Committee to order at 6:30pm in Room 354 of the City-County Building.

McGinnity attended via Zoom.

Staff present: Allan, Everson, Frick, Holloway, Lane, Standing, and Violante

Present 5 - JERRY BOLLIG, MICHELE DOOLAN, TIM KIEFER, KATE MCGINNITY, and MELISSA RATCLIFF

B. Public comment for any item not listed on the agenda

No comments made by the public.

[2022
RPT-778](#)

March 14th ZLR meeting registrants

Attachments: [March 14 ZLR registrants](#)

C. Consideration of Minutes

[2022
MIN-609](#)

Minutes of the February 28, 2023 Zoning and Land Regulation Committee meeting

Attachments: [2-28-23 ZLR Public Hearing Minutes.pdf](#)

A motion was made by BOLLIG, seconded by RATCLIFF, to approve the minutes of the February 28, 2023 Zoning and Land Regulation Committee meeting. The motion carried by a voice vote.

D. Public Hearing for Zoning Map Amendments, Conditional Use Permits, and Ordinance Amendments

E. Zoning Map Amendments and Conditional Use Permits from previous meetings

[02582](#)

PETITION: CUP 02582

APPLICANT: K&D STONE LLC

LOCATION: WEST OF 430 CENTER ROAD, SECTION 28, TOWN OF
RUTLAND

CUP DESCRIPTION: expansion of an existing non-metallic mineral
extraction operation

Attachments: [CUP 2582 Finding of fact and suggested condtions.pdf](#)
[CUP 2582 Memo to ZLR.pdf](#)
[CUP 2582 Applicant's response to letter.pdf](#)
[CUP 2582 Staff Report.pdf](#)
[CUP 2582 Map](#)
[CUP 2582 App](#)
[CUP 2582 Nuetral - Johnson.pdf](#)
[CUP 2582 Opposed - Proctor.pdf](#)
[CUP 2582 Opposed - Puttney.pdf](#)
[CUP 2582 Opposed - S Foltz.pdf](#)
[CUP 2582 Opposed - Simpson 2.pdf](#)
[CUP 2582 Opposed - Simpson.pdf](#)
[CUP 2582 Opposed - Umhoefer.pdf](#)
[CUP 2582 Opposed - Vanderveer.pdf](#)
[CUP 2582 Opposed - Weber.pdf](#)
[CUP 2582 Opposed - Wethal.pdf](#)
[CUP 2582 Opposed - Williams.pdf](#)
[CUP 2582 Opposed - Wood.pdf](#)
[CUP 2582 Opposed - Bertz.pdf](#)
[CUP 2582 Opposed - Celley.pdf](#)
[CUP 2582 Opposed - Dilocker.pdf](#)
[CUP 2582 Opposed - Georgiades.pdf](#)
[CUP 2582 Opposed - K Knutson .pdf](#)
[CUP 2582 Opposed - Knutson.pdf](#)
[CUP 2582 Opposed - P Foltz.pdf](#)
[CUP 2582 Opposed - Peterson.pdf](#)
[CUP 2582 Petition in opposition.pdf](#)
[CUP 2582 Presentation - Seffrood.pdf](#)
[CUP 2582 Suggested Conditions - Porter.pdf](#)
[CUP 2582 Suggested Conditions - Seffrood.pdf](#)
[CUP 2582 Support - Angeles.pdf](#)
[CUP 2582 Town newsletter.pdf](#)
[CUP 2582 Opposed - Thiel.pdf](#)
[CUP 2582 Opposed - Wood.pdf](#)
[CUP 2582 Presentation - Citizen Group.pdf](#)
[CUP 2582 Presentation - Larson.pdf](#)
[CUP 2582 Presentation - Laundrie.pdf](#)
[CUP 2582 Presentation - Spelter.pdf](#)

[Marquette County Appraisal submitted by Boerigter.pdf](#)
[Spelter - Homberg Deed Restriction.pdf](#)
[CUP 2582 Opposed - Anderson.pdf](#)
[CUP 2582 Opposed - Bachhuber.pdf](#)
[CUP 2582 Opposed - Berning.pdf](#)
[CUP 2582 Opposed - Igl.pdf](#)
[CUP 2582 Opposed - Seibel.pdf](#)
[CUP 2582 Opposed - Spelter.pdf](#)
[CUP 2582 Opposed - Stanek.pdf](#)
[CUP 2582 Support - Kellerman.pdf](#)
[CUP 2582 Support - Uecker.pdf](#)
[CUP 2582 - Westerberg Letter to Town.pdf](#)
[CUP 2582 Support - Gunby.pdf](#)
[CUP 2582 Petition in opposition 2.pdf](#)
[CUP 2582 Petition in support.pdf](#)
[CUP 2582 Support - Arendt.pdf](#)
[Town land use grievance - Sprague.pdf](#)
[CUP 2582 Igl submittal.pdf](#)
[CUP 2582 Marcusser photos.pdf](#)
[CUP 2582 Additional testimony Feb 28.pdf](#)

A motion was made by BOLLIG, seconded by RATCLIFF, to approve Conditional Use Permit #2582 with conditions in accordance with the findings of fact and being found to meet the 8 standards of obtaining a conditional use permit. The motion carried by the following vote: 4-0-1 (McGinnity)

- 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.

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.

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.

Ayes: 4 - BOLLIG, DOOLAN, KIEFER and RATCLIFF

Abstain: 1 - MCGINNITY

[02583](#)

PETITION: CUP 02583
APPLICANT: ARIF M KHAN & SADIA ARIF
LOCATION: 3486 COUNTY ROAD MN, SECTION 2, TOWN OF DUNN
CUP DESCRIPTION: 174' monopole communication tower

Attachments:

- [CUP 2583 Staff Update](#)
- [CUP 2583 - CityScape Supplemental Memo \(analysis of lower tower height\)](#)
- [CUP 2583 CityScape RF Engineering Report](#)
- [CUP 2583 - Tower Photosimulations](#)
- [CUP 2583 - DISH RF Engineer Affidavit](#)
- [CUP 2583 - Site Plan](#)
- [CUP 2583 - Fall Zone Letter](#)
- [CUP 2583 - FCC Statement of Compliance for RF Emissions](#)
- [CUP 2583 Applicant response to CUP Standards](#)
- [CUP 2583 Map](#)
- [CUP 2583 - Applicant Property Value Study - McFarland Waukesha \(recvd 021723\)](#)
- [CUP 2583 - Applicant Property Value Study - McFarland - Greendale \(recvd 021723\)](#)
- [CUP 2583 - Applicant McFarland Property Map & List \(recvd 021723\)](#)
- [CUP 2583 DISH Site Plan Ground \(recvd 022123\)](#)
- [CUP 2583 - CTH MN Access Permit](#)
- [CUP 2583 - Applicant Town of Dunn CUP Response 020623](#)
- [CUP 2583 Full Application](#)
- [CUP 2583 Public Comment - Priscilla Riecks](#)
- [CUP 2583 Public Comment - Steve Riecks](#)
- [CUP 2583 Village of McFarland Opposition Ltr \(recvd 022123\)](#)
- [CUP 2583 Riecks photo.pdf](#)
- [CUP 2583 - McFarland Adopted Comp Plan Transportation Map](#)
- [CUP 2583 - McFarland-East-Side-Plan Proposed Street Network](#)
- [CUP 2583 - Additional neighborhood photos](#)

A motion was made by MCGINNITY, seconded by RATCLIFF, to postpone action on the Conditional Use Permit until March 28th due to no Town Action. The motion carried by the following vote: 5-0.

Ayes: 5 - BOLLIG,DOOLAN,KIEFER,MCGINNITYandRATCLIFF

F. Plats and Certified Survey Maps

[2022 LD-017](#) Final Plat - Glacier's Trail
Town of Middleton
Staff recommends conditional approval

Attachments: [conditional approval](#)
[Glaciers Trail Final Plat 2023.02.08](#)
[IAT map](#)
[GlaciersTrailMiddletonSection32](#)

A motion was made by RATCLIFF, seconded by BOLLIG, to approve the final plat for Glacier's Trail Subdivision Plan with conditions. The motion carried by the following vote: 5-0.

- 1) The document is to be completed in accordance with S.236.34, Wisconsin State Statutes.
- 2) Compliance with the Dane County Comprehensive Plan is to be established.
- 3) All public land dedications are to be clearly designated "dedicated to the public."
 - a) All roads are shown as being dedicated.
 - b) Outlots 1, 2, and 5 are reserved for private open space.
 - 4) Utility easements are to be provided.
 - a) Easements across lots or along rear or side lot lines shall be provided for utilities where necessary, shall be at least 6 feet wide on each side of lot lines.
 - b) Outlots 3 and 4 are reserved for private open space and are subject to Public Stormwater Management/Drainage Easements over their entirety. The Glacier's Trail Homeowners Association is responsible for maintaining the Stormwater Management Facilities.
 - c) Outlots 1, 2, 3, 4, and 5 are to be owned by the Glacier's Trail Homeowners Association.
 - d) Lots 8, 9, 10, 14, 17, and Outlots 3, 4, and 5 are subject to a Public Recreational Trail Easement to the Town of Middleton. The Town of Middleton, as owner of the Public Recreational Trail, shall generally have the right to improve, repair, maintain and allow public use of the Public Recreational Trail Easement as the Town from time to time determines. The Public Recreational Trail on Lots 8, 9, 10, 14 and Outlots 3 and 4 shall be of bituminous construction.
- 5) All street names shall be consistent with chapter 76 of the Dane County Ordinances.
 - a) County Surveyor Dan Frick has approved the submitted road names for this plat.
 - 6) All owners of record are to be included in the owner's certificate. Spouse's signature and middle initials are required. A certificate of consent by all mortgagees/vendors shall be included and satisfied if relevant.
County records indicate the following owners:
 - a) ERIC E LARSON & NANCY M LARSON and ANDERSEN TR, JOHN R & JACQUELINE L
 - 7) East of proposed Lot 17 - Please update the reference to the adjacent platted lot as Lot 2 CSM 10312, not Lot 1.
 - 8). The location of the existing driveway shall be shown on proposed lot 1.
 - 9) The required approval certificates are to be executed.
 - a) Town of Middleton
 - b) Dane County Treasurer
 - c) Dane County Zoning and Land Regulation Committee
 - 10) An approved erosion control permit and stormwater management permit

shall be issued by the Dane County Land and Water Resources department prior to any land disturbance.

11) The recordable document is to be submitted for review and approval once the conditions have been satisfied. The Dane County

Ayes: 5 - BOLLIG,DOOLAN,KIEFER,MCGINNITYandRATCLIFF

G. Resolutions

H. Ordinance Amendment

I. Items Requiring Committee Action

[2022](#)
[DISC-035](#)

DISCUSSION OF THE APPROVAL OF CONDITIONAL USE PERMIT #2578 FOR A 195' SELF-SUPPORT COMMUNICATION TOWER LOCATED ON THE PROPERTY AT 1576 SPRING ROAD, SECTION 3, TOWN OF DUNKIRK WITH POSSIBLE MOTION TO RECONSIDER AT A FUTURE MEETING

Attachments: [CUP #2578 Iron Mountain Letter.pdf](#)
[CUP 2578 Corporation Counsel.pdf](#)
[CUP 2578 Applicant's response to reconsideration.pdf](#)
[Cothren WisDOT email.pdf](#)
[WISDOT - Questions re Matson Airport](#)
[Location map.pdf](#)
[CUP #2578](#)

A motion was made by MCGINNITY, seconded by BOLLIG, to reconsider the approval of Conditional Use Permit #2578 at the April 25, 2023 Zoning and Land Regulation Committee meeting with just cause. The applicant failed to inform neighboring airports within 5 miles of the proposed communication tower installation as required under application requirements. The motion carried by the following vote: 5-0.

Ayes: 5 - BOLLIG,DOOLAN,KIEFER,MCGINNITYandRATCLIFF

[2022](#)
[PRES-229](#)

PRESENTATION ON RURAL CULTURAL RESOURCE PLANNING GUIDE PROJECT

Attachments: [Cultural and Historic Preservation Toolkit.pdf](#)

Senior Planner Brian Standing and Planning Assistant Aaron Levine informed the Committee about the proposed Cultural Planning Guide Project.

[2022](#)
[ACT-338](#) CREATION OF CULTURAL RESOURCE PLANNING GUIDE
SUBCOMMITTEE

Attachments: [Background and suggested motion for 2022 ACT-338.pdf](#)

A motion was made by KIEFER, seconded by BOLLIG, to suspend the committee rules to allow the Planning and Development Director to speak during the role call vote. The motion carried by the following vote: 5-0.

Ayes: 5 - BOLLIG, DOOLAN, KIEFER, MCGINNITY and RATCLIFF

A motion was made by RATCLIFF, seconded by BOLLIG, to approve the creation of a ZLR Cultural Resource Planning Guide Subcommittee. The motion carried by the following vote: 5-0

1) The Subcommittee shall consist of the following members:

- A representative from the Ho-Chunk Nation
- A representative with expertise in the cultural demographics of Dane County
- A representative from the UW-Madison, Division of the Arts
- A representative from the Dane County Historical Society
- A representative from a town Plan Commission
- A representative from Dane Arts

2) Alternates may also be designated if primary members cannot attend all meetings. Subcommittee members will serve from March 15, 2023 through December 31, 2023.

3) The Planning & Development Department will provide staff support to the committee.

Ayes: 5 - BOLLIG, DOOLAN, KIEFER, MCGINNITY and RATCLIFF

J. Reports to Committee

[2022](#)
[RPT-761](#) Road naming process in proposed subdivisions

Attachments: [Chapter 76 Road Names](#)
[Road names](#)

County Surveyor Dan Frick explained the road naming procedures to the Committee.

[2022](#)
[RPT-762](#) Annual reclamation report for non-metallic mineral extraction operations

Attachments: [Spreadsheet](#)
[Dane County #128](#)
[DaneCountyMineralExtraction](#)

Assistant Zoning Administrator Daniel Everson informed the Committee of the annual DNR reclamation report.

[2022](#) ZLR Rules and Procedures review
[RPT-771](#)

Attachments: [ZLR-Rules-and-Procedures](#)

No discussion to place.

K. Other Business Authorized by Law

L. Adjourn

A motion was made by RATCLIFF, seconded by BOLLIG, to adjourn the March 14, 2023 Zoning and Land Regulation Committee at 8:08pm. The motion carried unanimously.

Questions? Contact Planning and Development Staff, 266-4266, or plandev@countyofdane.com.



Dane County Zoning Division

City-County Building
210 Martin Luther King, Jr., Blvd., Room 116
Madison Wisconsin 53703
(608) 266-4266/266-9083
Fax (608) 267-1540

DANE COUNTY CONDITIONAL USE PERMIT #2582

THE ZONING AND LAND REGULATION COMMITTEE OF THE DANE COUNTY BOARD PURSUANT TO SECTION 10.101(7) OF THE DANE COUNTY CODE OF ORDINANCES DOES HEREBY:

GRANTS Conditional Use Permit #2582 for a non-metallic mineral extraction operation conditioned upon Dane County Code of Ordinances Section 10.101(7)(d) and subject to the additional conditions listed below:

EFFECTIVE DATE OF PERMIT: April 13, 2023

EXPIRATION DATE: April 13, 2038

THE CONDITIONAL USE SHALL BE LOCATED ON THE PROPERTY DESCRIBED AS FOLLOWS:

LOCATION: West of 430 Center Road, Town of Rutland

LEGAL DESCRIPTION:

Located in the Northeast 1/4 of the Southeast 1/4, and the Southeast 1/4 of the Northeast 1/4 all in Section 28, T5N, R10E, Town of Rutland, Dane County, Wisconsin more fully described as follows: Beginning at the East 1/4 corner of said Section 28, thence S00°53'16"E, 1000.00 feet along the East line of the Southeast 1/4; thence S89°25'31"W, 1233.10 feet; thence N06°38'24"W, 1005.62 feet; thence N89°25'31"E, 893.65 feet along the North line of the Southeast 1/4; thence N01°29'28"W, 832.87 feet; thence N89°23'45"E, 440.26 feet to the East line of the Northeast 1/4 of Section 28; thence S01°29'23"E, 832.54 feet to the point of beginning. Containing 1,649,851 square feet or 37.8 acres.

CONDITIONS:

- 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.
- 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.
 - 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.

THE ZONING AND LAND REGULATION COMMITTEE AFTER PUBLIC HEARING AND IN THEIR CONSIDERATION OF THE CONDITIONAL USE PERMIT MADE THE FOLLOWING FINDINGS OF FACT:

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

2. That the uses, values, and enjoyment of other property in the neighborhood for purposes already permitted will not be substantially impaired or diminished by the establishment, maintenance, and operation of the proposed conditional use.
3. That the establishment of the proposed conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. That adequate utilities, access roads, drainage and other necessary site improvements will be made.
5. That adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the proposed conditional use does conform to all applicable regulations of the district in which it is proposed to be located.
7. The proposed conditional use is consistent with adopted Town and County Comprehensive Plans.
8. If located in the Farmland Preservation (FP) area, the conditional use meets the necessary findings to be located in the district as per Dane County Code of Ordinances Section 10.220.

EXPIRATION OF PERMIT

Upon the allowed land use's cessation or abandonment for a period of one year, this conditional use permit will be deemed to have been terminated and any future use shall be in conformity with the ordinance.