

June 1, 2023

Via Email

Dane County Board of Adjustment
c/o Roger Lane and Hans Hilbert
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Re: K&D Stone, Dane County CUP #2582
Our File No.: 26199.85032

Dear Board Members:

This firm represents K&D Stone, the permitted party for a nonmetallic mineral extraction site in the Town of Rutland, under Dane County CUP #2582, effective April 13, 2023. There is a pending appeal of said CUP to the Board of Adjustment. Please consider this letter as K&D Stone's response thereto.

The Board of Adjustment should reject the appeal for all of the following reasons:

A) This CUP was effectively granted twice. The exact same project went through the entire permitting process and was approved both times. For the first round, due to a technical error in the legal description of the lands under the CUP, K&D Stone was forced to re-apply. Each process involved full-blown public hearings with opportunities for all interested parties to submit evidence and speak before the Town of Rutland and Dane County ZLR. The fact that the same proposal was approved twice is compelling evidence that the project meets County standards under its ordinance.

B) This CUP is an expansion of a longstanding quarry which had legal nonconforming use status under Dane County Zoning. This site is ideal for expansion given the availability of high-quality aggregate at a location with mineral extraction infrastructure already in place. The neighborhood has been accustomed to the site for decades.

C) This CUP requires the elimination of the nonconforming use status of the original quarry, thereby bringing it all under one CUP. This affords the County greater control over operations. This involved a significant concession on the part of the quarry owner.

D) K&D Stone submitted substantial evidence in support of its CUP application, by and through its owners, its environmental consultant, Eric Christensen, P.E., LMP, CST, of Mendota Consulting Inc., and its attorneys, Axley Brynelson, LLP, through Buck V. Sweeney, Mitchell R. Olson, and Noah T. Rusch. This also included a report from Wisconsin licensed real estate appraiser, Scott MacWilliams, opining of no material property value impact from the quarry. See Record #6.

E) K&D Stone submitted documentation demonstrating compliance with Dane County Zoning Code and the applicable 8 standards of approval for this CUP. See Record #3, which responded to Staff inquiries, and documented the seasonal and intermittent nature of hauling from the subject quarry.

F) Dane County Staff issued final reports recommending approval of the CUP with conditions. Staff concluded that the application met the Dane County Zoning Code and the applicable 8 standards of approval for this CUP. See Record #4.

G) The CUP was granted with 37 Conditions - which are designed to comply with the Dane County Zoning Code and the applicable 8 standards of approval for this CUP.

H) The CUP was granted based on clear and comprehensive findings on the part of the ZLR. The Zoning and Land Regulation Committee made Findings of Fact as follows:

- i. 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.
- ii. 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.
- iii. 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.
- iv. That adequate utilities, access roads, drainage and other necessary site improvements will be made.
- v. That adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- vi. That the proposed conditional use does conform to all applicable regulations of the district in which it is proposed to be located.

- vii. The proposed conditional use is consistent with adopted Town and County Comprehensive Plans.
- viii. 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.

These conditions clearly document findings consistent with the Dane County Zoning Code and the applicable 8 standards of approval for this CUP.

I) The 788-page record in this case demonstrates the full process afforded to all parties before the ZLR and the degree of effort and consideration given by Staff and ZLR.

J) At the March 14, 2023 ZLR Meeting, the ZLR moved to approve the CUP with conditions, and with the Findings of Fact, which the members had reviewed and approved. Comments were made that Staff was thorough as to the conditions. Sup. Kiefer gave a lengthy recitation as to why the Committee can and should adopt the CUP. Sup. Kiefer made clear that the Committee makes the decision, independent of the Staff. He noted the applicable County Ordinance and State Statute, and applied the law to the facts of the case. If the standards are met, the Committee shall grant the CUP, per Wis. Stat. sec. 59.69(5e). Sup. Kiefer addressed the 8 standards, emphasizing the conditions imposed and how the status quo, going forward, would not be worse given the existing gravel pit. There was no evidence things would get “worse” in the future. The vote of the ZLR was unanimous to approve the CUP. (See Record, Page 86, Video Link)

K) The complaints raised in the subject appeal all go to the 8 standards and whether the applicant reasonably met them. The CUP opponents raised all such issues repeatedly in their submissions and presentations to the ZLR, ad nauseum. Staff and the ZLR rejected those positions. The Applicant submitted evidence to the contrary on all such points. The mere difference of opinion of these opponents, on whether a standard can be satisfied, is not a basis to overturn the ZLR.

L) The ZLR is not required to engage in a two-hour oral recitation of each voting member’s conclusions as to each of the 8 standards. The ZLR’s process, in coordination with Staff reporting, conditions, and findings of fact, is sufficient to approve this CUP.

For all of the foregoing reasons, K&D Stone respectfully requests that the Board of Adjustment dismiss the appeal relative to CUP 2582.

Sincerely,

AXLEY BRYNELSON, LLP

Handwritten signature of Mitchell R. Olson in black ink, consisting of the letters 'MRO' followed by a horizontal flourish.

Mitchell R. Olson
MRO/aks

Handwritten signature of Charles 'Buck' V. Sweeney in black ink, written in a cursive style.

Charles "Buck" V. Sweeney
CVS/aks