

**Town of Burke Board Meeting Minutes
February 15, 2017 – 6:00 p.m.**

Board members in attendance: Chairman Viney, Supervisor Berg, Supervisor Nimmow, Supervisor Stieren and Supervisor Truitt. Also in attendance Teri Saxon, Deputy Clerk/Treasurer and Chris Hughes, Town Attorney. See attached list for other interested parties in attendance.

1) ADMINISTRATIVE

- a) It was determined that a quorum was present and the meeting was properly posted.
- b) The meeting was called to order at 6:00 p.m. by Chairman Viney.
- c) The Pledge of Allegiance was recited.
- d) Public hearing regarding proposed Conditional Use Permit (CUP) 2362 for mineral extraction submitted by Belken Engineering on behalf of Madison Crushing and Excavation for renewal of CUP 1993 and 1672 and the addition of the legal non-conforming area (northern expansion area). Properties located off Reiner Rd, Madison. (parcel numbers 0810-261-8041-0, 0810-261-9501-4, 0810-261-9830-6, 0810-261-9840-4 and 0810-264-8001-8). Paul Johnson, attorney for applicant Madison Crushing, stated that he along with John Belken, engineer, and Bill Ziegler are here in favor of the CUP. He stated that Madison Crushing is located at 5185 Reiner Road. Madison Crushing is a mineral extraction and crushing operation that has been in business continually since 1969. Attorney Johnson supplied the Board with the Dane County Zoning and Land Regulation Committee Staff Report showing the land Madison Crushing currently operates. He pointed out the four sections of the quarry. The middle section of the highlighted area is the original plant which has about 8 acres of office space with the remainder being the original quarry. This section of the quarry was put in use before any zoning permits were required and grandfathered in under Dane County rules. The quarry expanded to the north and south and was in existence and operational until 2016 when through a communication error the CUPs expired. We are here tonight asking for renewal of the two CUPs and seeking an expansion of 9.5 acres in the northern section. Madison Crushing originally applied for two CUPs and Dane County lumped it together as one. If the CUP is renewed, this will allow Madison Crushing the ability to grow as the market determines and at the same rate we have been operating for the last 50 years. The Dane County ZLR Staff Report contains 21 conditions to be met to obtain the CUP. These conditions have been proposed by Dane County ZLR and Town of Burke Plan Commission and we have no objection to these conditions.

It was further stated that when the CUPs expired extraction stopped immediately and did not resume until permits were established. The middle “grandfathered” section of the quarry does not require a CUP so it has continued to operate.

Emma Godfrey, 3410 Sandy Lee Lane, introduced herself and mentioned that she is also representing Gayle and Denny Zimmerman. They could not make the meeting because they were home sick. We are opposed to the CUP and the expansion of the 9.5 acres. She stated that she has replaced her windows twice. When she receives a blasting notice she “unsnaps” her windows to prevent breakage. Ms. Godfrey stated that in April of 1986,

Judge Pekowsky stood in her driveway and made a ruling that there would never be an expansion of the quarry north of Sandy Lee Lane. She further stated that Dane County put it in the CUP and then it was taken out of the CUP without anyone knowing about it.

Steve Berg asked the Town Attorney Hughes, what form would Judge Pekowsky's statement have to be an order for that to be binding. Town attorney replied that he is unfamiliar with what that is but if it is his opinion he would not like to see it go beyond that. I guess legally stating a fact or condition in a previous CUP does not mean in a new application you have to impose the exact same condition to the extent it was a condition. Pat Nimmow asked Ms. Godfrey if the blasting stopped when the permits expired? Ms. Godfrey replied that the blasting stopped but they probably continued to blast after the CUPs expired because no one notified the neighbors they had expired.

Julie Backenkeller, 3400 Sandy Lee Lane. She began by stating that she was quite surprised more neighbors are not here at the public hearing. She further questioned if there would be more in attendance if the notice area was more than 600 feet of the quarry. She is concerned about the cemetery. The new application has them blasting right up to the cemetery. The cemetery is protected under Wisconsin statutes. She has talked to residents in Burke Estates. They told her they can feel the blasts up and down Burke and Reiner roads. She did not find one neighbor who was in favor of the quarry expansion. At the county meeting, Madison Crushing stated this expansion was to make money. She understands the mine has been in existence since 1969 but it is now 2017 and the Town and city of Madison have allowed a lot of development in this area. She further stated that when she bought her house all she could see was farm fields and did not know there was a quarry until she received a blasting notice and her house started shaking. She stated that the neighbors paid thousands of dollars in a lawsuit against the quarry. When they made the decision not to go north of Sandy Lee Lane, she doesn't think that judge was assuming that would only last for 5 years with that CUP. In her opinion, the decision was made and the land north of Sandy Lee Lane should remain ag land and not be blasted. Further stating that out of respect for the three homes right up under the nose hair of where they want to blast – not very neighborly. She stated further that the CUP that expired on February 14, 2016, has been issued a reclamation order from the county to begin reclamation. The quarry states in their letter to the county that they have 10 years of material to be extracted from the original quarry area. Ms. Backenkeller questioned what the Town is Burke is going to look like 10 years from now with expansion? Why should the rest of us lose property values and be inconvenienced with the dust, blasting and noise that goes along with the quarry. The quarry has the grandfathered area that they can blast away for the next 10 years and then in 10 years see what is going on out here.

Brigit Parlow, 3397 Sandy Lee Lane. She built her home in 2008 and was never told there was a quarry across the road. She has continued to make improvements to her home. She recalled the first blast she experienced and it knocked pictures off the wall, cracked the basement foundation, and scared the dogs – all causing general upset. Last fall she learned about the expired CUP and heard about the renewal and expansion. She stated that she personally went to Madison Crushing and asked to be added to the blast

notice list and still does not receive notices. The constant beeping of trucks, the dust and gravel on the road, and general destruction of the road are concerning. Expansion of the northern area will cause additional traffic noise. She further stated that she is against the 20 year permit because there is too much residential change going on and there will be a big hole in the ground when annexation happens – that is very concerning. She asked the Board to consider the six standards. She feels they are unable to meet five of them. They let their CUP expire not once but twice and they did blast last summer. Carefully consider what we have put forward.

Ms. Godfrey stated that she had blasting notices from last summer for the Board to review. (copies of the notices were made and included in the record)

Vivian Lehman, 3382 Sandy Lee Lane. She stated that she is new to the Town in the last couple years and is opposed for the same reasons as previous speakers. She agrees with everything previously stated.

Paul Johnson, attorney for Madison Crushing, requested a few minutes to respond and clarify. He explained the three areas of the quarry. The northern area the CUP is expired. The southern area the CUP is expired and the middle area, the grandfathered section, has no rules. When the permits expired the blasting stopped. They did continue to operate in the grandfathered area which they are allowed to do. He stated that if a violation occurs, one needs to call the zoning and land regulation department. They are available to residents to report illegal goings on in the quarry. There have been no phone calls to this department. As far as the reclamation project, the county is granting an extension of time for a renewal of the CUP. Reclamation is not a requirement at this time. He further stated that the quarry has been in existence continually since 1969. Every planning decision has been made by the county, Town Board and the State of Wisconsin with full knowledge of the existence of Madison Crushing.

As far as the ruling or comment of Judge Pekowsky in 1989, if the residents of Sandy Lee Lane thought they had something that is actionable, they have had 25 years to do something about it. They have done nothing to remedy it and we are not here to re-litigate.

Ms. Backenkeller read Roger Lane's letter of January 31 referencing eight public concerns expressed at the ZLR committee meeting on January 24 and that all eight have not been addressed. (letter attached in Board packet).

Attorney Johnson responded that in his letter of February 10, he responded to the eight concerns referenced. He noted that number 6 in regards to willing to come out and survey residences stated the quarry is not in a position to go and inspect a person's home.

Ms. Backenkeller stated that, no one has the right to use their land in a way that is going to harm a neighboring property owner. Further stating this property is zoned ag and allowing the expansion will be a nuisance to a growing number of neighbors. Why should we pay property damage for one company to profit.

2) NEW BUSINESS

- a) Action on the request of Madison Crushing and Excavation for CUP #2362 for mineral extraction renewing CUP 1993 and 1672 and the addition of the legal non-conforming area and northern expansion area. Attorney Hughes instructed the Board of “Attachment A, Recommended Town Procedures for Acting on Conditional Use Permit Applications.” Reminding them to address the six standards in statute 10.255(2)(h) of the Dane County Code of Ordinances. Discussion began with Dane County Recommendations and Berg pointed out that the motion relates to Plan Commission Resolution 01112017. He would recommend that the four points the town engineer recommends be added to the recommendations. Berg read into record town engineer’s letter of February 10, 2017 (attached). Viney read into record the Plan Commission Resolution conditions. Berg requested that the meaning of DCCO and NR as referred to in number 5 be added to the record. Attorney Johnson replied that DCCO refers to Dane County Code Ordinance and NR refers to Natural Resources.

Motion Berg/Nimmow: After considering the application for CUP 2362, the Plan Commission Resolution 01112017, the meeting packet for the February 15, 2017 Town Board Meeting, and the documents and public comments provided and made at the public hearing on February 15, 2017. Move that the conditions contained in the Plan Commission Resolution 01112017 include the recommendations in the Town Engineer’s email dated February 10, 2017 to the Town of Burke Clerk/Treasurer, and to modify the conditions as follows:

Condition 5. Reclamation shall be completed as required by Chapter 74 of the Dane County Code Ordinance (DCCO) and Natural Resource (NR)135.

Condition 10. The operator shall comply with Subchapter VII, Blasting Resultants, of the State of Wisconsin Department of Safety and Professional Services. In particular, blasting levels shall be kept below 0.5 inch second peak particle velocity at frequencies below 40 Hz., as per the State of Wisconsin Department of Safety and Professional Services, SPS 307.

Condition 14. The two existing bulk fuel tanks may remain on site if they meet all State and Federal codes and a spill pollution prevention plan that meets federal regulations is filed and approved by the Dane County Land Conservation Department. The tanks shall be double wall or contain adequate secondary containment. (The code that covers this is federal not state, 40 CFR, Part 112).

Condition 23. Berms shall be graded as shown on the plans around the perimeter and vegetated with coniferous trees to aid in the collection of dust. At least one tree per 30 feet shall be planted.

Condition 24. If dewatering water is released from the site it shall be treated prior to release. Dewatering permits shall be obtained from the DNR and county, as applicable.

Condition 25. Operator shall install squawk boxes as allowed by applicable state and federal law.

Motion carried.

Motion Stieren/Berg: After considering the application for CUP 2362, the Plan Commission Resolution 01112017, the meeting packet for the February 15, 2017 Town Board Meeting, and the documents and public comments provided and made at the public hearing on February 15, 2017, and the conditions of approval. Move that the following standard contained in section 10.255(2)(h) of the Dane County Zoning Code, namely: “That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort, or general welfare.” **IS MET**. Motion carried. Viney - nay, Truitt - nay

Motion Truitt/Nimmow: After considering the application for CUP 2362, the Plan Commission Resolution 01112017, the meeting packet for the February 15, 2017 Town Board Meeting, and the documents and public comments provided and made at the public hearing on February 15, 2017, and the conditions of approval. Move that the following standard contained in section 10.255(2)(h) of the Dane County Zoning Code, namely: “That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.” **IS NOT MET** for the following reasons: would decrease the property values and use of at least three existing homes. Motion carried.

Motion Truitt/Nimmow: After considering the application for CUP 2362, the Plan Commission Resolution 01112017, the meeting packet for the February 15, 2017 Town Board Meeting, and the documents and public comments provided and made at the public hearing on February 15, 2017, and the conditions of approval. Move that the following standard contained in section 10.255(2)(h) of the Dane County Zoning Code, namely: “That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.” **IS NOT MET** for the following reasons: increasing the size of the quarry will increase the number of properties affected by the quarry and that could impede the normal and orderly development and improvement of the surrounding properties. If there are additional areas where blasting is being done it could impede the normal and orderly development and improvement of the surrounding properties currently zoned agricultural may not be able to go to residential or commercial because of the blasting nearby. They would not have enough value to be sold which would affect the normal orderly development and improvement. Motion carried. Berg – nay, Stieren – nay.

Motion Berg/Stieren: After considering the application for CUP 2362, the Plan Commission Resolution 01112017, the meeting packet for the February 15, 2017 Town Board Meeting, and the documents and public comments provided and made at the public hearing on February 15, 2017, and the conditions of approval. Move that the following

standard contained in section 10.255(2)(h) of the Dane County Zoning Code, namely: “That the adequate utilities, access roads, drainage and other necessary site improvements have been or are being made” **IS MET** for the following reasons: Utilities for the site are adequate. That access roads onto the site proposed by Madison Crushing were adequate. Drainage and other necessary site improvements have been effective. Motion carried.

Motion Stieren/Berg: After considering the application for CUP 2362, the Plan Commission Resolution 01112017, the meeting packet for the February 15, 2017 Town Board Meeting, and the documents and public comments provided and made at the public hearing on February 15, 2017, and the conditions of approval. Move that the following standard contained in section 10.255(2)(h) of the Dane County Zoning Code, namely: “That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.” **IS MET** for the following reasons: Traffic on Reiner Road and Burke Road is increasing at a rate that is proportionately related to the effective traffic related to Madison Crushing’s operation. Motion carried.

Motion Nimmow/Truitt: After considering the application for CUP 2362, the Plan Commission Resolution 01112017, the meeting packet for the February 15, 2017 Town Board Meeting, and the documents and public comments provided and made at the public hearing on February 15, 2017, and the conditions of approval. Move that the following standard contained in section 10.255(2)(h) of the Dane County Zoning Code, namely: “That the conditional use shall conform to all applicable regulations of the district in which it is located.” **IS MET**. Motion carried.

Motion Truitt/Nimmow: After considering the application for CUP 2362, the Plan Commission Resolution 01112017, the meeting packet for the February 15, 2017 Town Board Meeting, and the documents and public comments provided and made at the public hearing on February 15, 2017, and the conditions of approval, and the previous motions adopted at this Town Board Meeting. Move that the Town Board **DENY** CUP 2362 because all six standards specified in section 10.255(2) of the Dane County Zoning Code **HAVE NOT BEEN MET**. Motion carried.

3) NEXT MEETING DATE. Wednesday, March 15, 2017

4) ADJOURNMENT. Meeting adjourned at 9:05 p.m.

Teri Saxon
Deputy Clerk/Treasurer
Town of Burke
3/14/2017