

Telephone: (608) 685-6218
Fax: (608) 685-6242
Email: paul.vaneijl@buffalocounty.com



Buffalo County Courthouse
407 South Second Street
P.O. Box 492
Alma, WI 54610-0492

DECISION OF ZONING BOARD OF ADJUSTMENT
3rd DAY OF NOVEMBER 2011

Case Number: 2011-14

Filing Date: November 4th, 2011

Notice Dates: October 20th and 27th, 2011 Cochrane-Fountain City Recorder

Hearing Date: November 3rd, 2011

FINDINGS OF FACT

1. The applicant/appellant is: Ryan Barth
Address: W263 Plattes Valley Rd
Fountain City, WI 54629
2. The applicant/appellant is located in PT of SE ¼ of the NW ¼ and the SW ¼ of the NE ¼ of Section 16 T. 19 N., R. 10 W., Town of Buffalo, Buffalo County, Wisconsin.
3. The property is currently used for agricultural purposes.
4. The applicant/appellant proposes to: implement a sand mine at said location.
5. The applicant requests a conditional use.
6. The features of the proposed construction that relate to the granting of a variance are: NA.

CONCLUSIONS OF LAW

INTERPRETATION: The Zoning Administrator's interpretation of Article IV, Section 41.1 of the Buffalo County Zoning Ordinance is a correct interpretation because: It states that the following uses may be permitted upon issue of a Conditional Use Permit and subject to the following conditions:

Manufacturing and processing of natural mineral resources indigenous to Buffalo County incidental to the extraction of sand and gravel and the quarrying of limestone and other rock for aggregate purposes, including the erection of buildings, and the installation of necessary machinery and equipment incidental thereto, but not the storage of cement, asphalt or road oils or the mixing of concrete or black top or related materials, provided that any county, town or municipal government or its agent may store or mix such materials when incidental to the improvement of highways or streets.

APPEAL: The order of the Zoning Administrator is not in excess of his zoning authority because: NA

CONDITIONAL USE

The application for a conditional use permit does qualify under Article IV, Section 41.1 of the Zoning Ordinance because: The intended use of the sand mine will be incidental to the improvements of highways and/or streets.

The application for a conditional use permit does qualify under Article IV, Section 41.1 of the Buffalo County Zoning Ordinance because: In applying the standards applicable to all conditional uses, the Board of Adjustment considered the following factors:

- 1) The location, nature, and size of the proposed use.
The location for the sand mine on the property is compatible with the nature of the property and the surrounding land usage. The sand mine will be located NE of the landowners house and across Plattes Valley Rd. Plattes Valley Rd is a town road. The entire mine will fit on the landowners property while maintaining 20' setbacks from adjoining property lines. If a mine would open up on the neighboring properties, the 20' setback distance would be eliminated on the adjoining fence line. Also, the mine will be no closer than 133' from the centerline of Plattes Valley Rd.
- 2) The size of the site in relation to it.
The site in question has adequate room for the sand mine. The total acreage included within the application is 50 acres in which the sand mine will be located. The entire property owned by the landowner comprises 257 acres.
- 3) The location of the site with respect to existing or future roads giving access to it.
The landowner has been working with the Buffalo County Highway Department and the Town of Buffalo in respect to any access concerns and road upgrade/maintenance. Agreements will be signed and on file prior to any construction beginning at the site. The access into the site is off of an existing driveway, of which a haul road will be implemented.
- 4) Its compatibility with existing uses on land adjacent thereto.
The site is located in the Agricultural District and is surrounded entirely by agricultural land. Article IV, Section 41.1, lists sand mines as a conditional use in the Agricultural District.
- 5) It's harmony with the future development of the district.
As of the date of the hearing, the zoning office has not been made aware of development or subdivision plans within the immediate vicinity that would be impacted by a sand mine.
- 6) Existing topography, drainage, soils types and vegetable cover.
The mine will be located towards the North East from the landowners residence, which consists primarily of ridge which includes forest and a cropfield. The drainage patterns here are rolling hills with adequate vegetative cover. Drainage issues will be dealt with via NR 135. The primary soil type in the area is FvD3, Fayette silt loam that is well-drained with 12-20% slopes.
- 7) Its relationship to the public interest, the purpose and intent of this ordinance and substantial justice to all parties involved.
The zoning department has received written opposition to the sand mine, all letters are on file at the Buffalo County Zoning office. The letters range from: the county is moving to quickly on fracture sand mines to road issues to public safety and blasting. The road issues were alleviated through contractual agreements between the operator and Buffalo County/Town of Buffalo. As far as public safety, the operator will have to follow OSHA and MSHA standards along with meeting all DNR rules and regulations placed on mines. To keep dust down, a dry plant was not allowed at this site. Paving of 200' and installing a tire bath will also aid in dust reduction. Along with that perimeter trees are to be left standing to alleviate additional dust and noise. Blasting will be regulated through the Department of Commerce. A private consultant will develop a blast plan, at that time this individual will submit plans and supervise the blasting process. The Board of Adjustments must make a decision based on siting, it was deemed in this case to be a proper site for a sand mine based on its rural nature, surplus distance to groundwater, etc. Some questions were raised in respect to the reclamation process, addressed through NR 135.

ORDER AND INTERPRETATION

On the basis of the above findings of fact, conclusions of law and the record in this matter, the Board orders:

INTERPRETATION: The Zoning Administrator's interpretation of the zoning code is affirmed and the Zoning Administrator is hereby ordered to: Issue a Conditional Use permit to Ryan Barth.

- 1) VARIANCE/CONDITIONAL USE: The requested conditional use is granted subject to the following conditions:
 - 1) Permit and site activities shall be conducted in compliance with all provisions of the Buffalo County Non-Metallic Mining Ordinance and WI Administrative Code NR135.
 - 2) Tracking pad must be paved at a minimum of 200' from Plattes Valley RD. Also, install a tire bath or an equivalent method to clean the tires of trucks before entering Plattes Valley RD. Paving/tire bath must be complete prior to any product leaving the site.
 - 3) Access road into quarry must be secured prior to any product leaving the site.
 - 4) Method of extraction is limited to surface mining only.
 - 5) A 24-hour notice will be given to landowners located within 2500' of the blasting area. Operator will comply with the WI Department of Commerce in regards to the proper permitting procedure and ensuring blasting protocol is followed.
 - 6) No excavation shall take place within 100 feet from the right-of-way line of Plattes Valley RD (133').
 - 7) No excavation shall take place, nor shall the slope of the natural land surface be altered as such excavation, nor shall the storage of materials take place nearer than 20 feet to any property boundary. This setback shall not apply where the adjoining property is used for mineral extraction.
 - 8) Mining operations shall maintain a minimum of 5' separation from groundwater
 - 9) No topsoil or subsoil will be allowed to leave the site during the entirety of the site operations..
 - 10) Existing perimeter tree canopy (at highest points of elevation) must remain to keep the visual appearance, aesthetics and reduce dust/noise from leaving the proposed mining area
 - 11) In the event that on-site fuel storage is planned, a fuel storage area that complies with WI Administrative Code COMM 10 shall be established at a fueling station located outside the mine excavation area. A fueling pad constructed of concrete or compacted base material shall be implemented as part of the fueling station. Fueling of highly mobile vehicles such as rubber tire loaders shall occur on the constructed fueling pad.
 - 12) No solid waste materials shall be used in site reclamation or shall be deposited/stored/ or disposed of at the site before receiving all necessary solid waste permits or approvals as required by town, county, state, or federal laws or ordinances.
 - 13) A plan review will be conducted every (3) years to evaluate the effectiveness of reclamation related activities, and to identify plan modifications that may be warranted to meet reclamation standards as established in WI Administrative Code NR135.
 - 14) Non-Metallic Mining activities must always comply with the most recent Wisconsin Department of Natural Resources standards. These include but are not limited to air emission permitting and storm water permits.
 - 15) Obtain any and all required WI DOT permits and adhere to WI DOT regulations.
 - 16) Operator must enter into maintenance and upgrade agreement with Buffalo County Highway Department for the life of the mine prior to excavation.
 - 17) Operator must enter into maintenance and upgrade agreement with the Town of Buffalo for the life of the mine prior to excavation.
 - 18) Operator will be responsible for compliance with any federal, state, or local HAZMAT requirements and any other rules, regulations, laws, and/or guidelines; approval of conditional use permit does not constitute approval of reclamation plan or any other federal, state, or local requirements.
 - 19) Financial assurance amount will be established and secured after final reclamation plan approval and prior to any excavation activity
 - 20) The operator must notify the non-metallic mining department in advance of any changes in ownership, operator, lease terms, or haul route.
 - 21) The operator is responsible to obtain a cultural resource site review performed by the DNR and the report must be forwarded on to the Buffalo County Zoning office. Results of such site review may require review of this conditional use permit.
 - 22) Annual permit applications must be filed and annual fees must be submitted by the given deadline.
 - 23) A County Sanitary Permit is required when applicable.
 - 24) A Zoning Permit must be issued for any applicable building development in regards to the issuance of this Conditional Use Permit.
 - 25) Address number will be applied for and issued for site.
 - 26) Access/Driveway permit must be received if required from the Town of Buffalo.

- 27) Hours of operation are 7:00 a.m. – 6:00 p.m. Monday through Friday.
- 28) No hauling of product on weekends.
- 29) Saturday hours of operation are 7:00 a.m. – 5:00 p.m. for the mine only.
- 30) Wet processing facility only throughout the life of the mine.

The Zoning Administrator is directed to issue a copy of the Findings and Conclusions to the applicant, which shall constitute Conditional Use # 2011-13.