

*VIA E-Mail Only*

December 10, 2024

Village of Kronenwetter Plan Commission  
C/O Peter Wegner, Planning & Zoning Director  
[pwegner@kronenwetter.org](mailto:pwegner@kronenwetter.org)

Village of Kronenwetter  
Jennifer Poyer, Village Clerk  
[Jpoyer@kronenwetter.org](mailto:Jpoyer@kronenwetter.org)

RE: **CUP APPLICATION FOR NONMETALLIC MINING (2070 and 2071 Queenland Drive)**

Dear Plan Commission Members:

This firm represents Milestone Materials with respect to its pending application for a conditional use permit in the Village of Kronenwetter. It is our legal opinion that the Village has engaged in an inappropriate review of the CUP application. Moreover, it is our legal opinion that Milestone Materials' application fully satisfies the Village Ordinances, such that the CUP must be granted under Wisconsin Act 67.

## **BRIEF CHRONOLOGICAL HISTORY**

- 1) Milestone Materials submitted its complete application to the Village in October 2024.
- 2) The Village Planning & Zoning Director issued a report to the Plan Commission.
- 3) A Public Hearing was held before the Village Plan Commission on November 18, 2024.
- 4) At the conclusion of the Public Hearing, the Plan Commission announced its intent to meet with the Redevelopment Authority to discuss the merits of the CUP application. That meeting is currently scheduled for December 12, 2024.

## **THE STAFF REPORT**

The Report notes the following:

- 1) The subject property (for the CUP) has been for sale for some time and is difficult to develop due to the vast majority thereof being low lying and within mapped floodway.
- 2) The subject property is zoned General Industrial (M2).
- 3) The subject property is bordered by Interstate 39 and surrounded primarily by commercial and industrial properties.
- 4) The subject property is demonstrated to contain desirable and large quantities of sand and gravel aggregate.

The Report highlights for the Commission that Wisconsin Act 67 prohibits decisions based on personal preferences and speculation. **It further advised that where an applicant “meets or agrees to meet the requirements and conditions specified” in the ordinance or imposed by the decision-maker, the conditional use permit must be granted.** The Report then addresses the five factors to consider under the Ordinance. The Report concludes that all five factors/standards have been met by Milestone Materials.

## THE PUBLIC HEARING

At the Public Hearing, there was no “substantial evidence” under Act 67 to refute the Staff Report or otherwise challenge this CUP Application. Rather than act on the application, the Plan Commission arbitrarily announced an intent to seek guidance from a third party, the Redevelopment Authority, which was not present and made no submissions to the Plan Commission at the time of the Public Hearing.

## FINAL OPINIONS

- I. The Plan Commission is exceeding its authority and in violation of law by seeking outside consultation beyond the scope of the Public Hearing.

Wisconsin Statutes are clear as to the process for reviewing a conditional use permit. Per Wis. Stat. sec. 59.69(5e)(c): “Upon receipt of a conditional use permit application, and following publication in the county of a class 2 notice under ch. 985, the county shall hold a public hearing on the application.” There is no right granted to hold meetings or public hearings before *ex parte* governmental agencies. If such an agency had any substantial evidence to offer, they were obliged to submit public comment at the November 18, 2024 meeting. As such, the proposed December 12<sup>th</sup> meeting, if it occurs, will be clear evidence that the Village is in violation of sec. 59.69(5e), Stats.

- II. The CUP Application must be granted based on the Application, Staff Report, and “substantial evidence” submitted at the Public Hearing.

It bears noting that the subject property, in the M2 zoning district, allows nonmetallic mining as a conditional use. No rezoning is required here. Moreover, there are plentiful permitted uses allowed, such as a Freight Terminal, Distribution Center, Livestock or Farm Commodity Trucking, and all “heavy industrial” (e.g. slaughterhouses, tanneries, meat processing plants, paper plants, chemical production plants, commercial sewage treatment facilities, etc.) uses. A landowner can establish any of these permitted uses as a matter of right. The treatment of the proposed conditional use should be considered in this light. The application is not seeking approval in a residential or agricultural area, where some level of scrutiny is often applied.

The Village Ordinance, at sec. 520-121(G), provides the five criteria for granting a Conditional Use Permit.

- 1) Harmony with Comprehensive Plan.

First, Wisconsin law establishing the Comprehensive Plan process explicitly provides that a Conditional Use Permit does not need to be consistent with the Comprehensive Plan. Wis. Stat. sec. 66.1001(2m)(b). To the extent the Village seeks to compel such a standard, it would be in violation of state law.

Second, as set forth by the Staff Report, the proposed nonmetallic mine is in harmony with the Village's Plan. The future land use map for the subject parcel calls for "industrial" land use. There is nothing in the plan that would reject a nonmetallic mine.

2) Impact on Others.

As set forth in the Staff Report, the proposed land use will not cause substantial or undue adverse effects on nearby property. This is a highly industrialized area surrounded by an interstate, a rail corridor, and large industrial facilities. The few remaining residential properties are already heavily impacted, and there is nothing in the record, in terms of substantial evidence, to prove any impacts that would violate condition 2.

Moreover, there is an apparent concern about the Village's hope for a future highway interchange at Kowalski Road. The Kowalski Road Interchange Feasibility Study, by TADI, on November 6, 2023, eliminates any basis to reject this CUP on such grounds. The Report concludes the current road infrastructure is "sufficiently served" for the "current ( ) and foreseeable future (within next 20 years)." The Study concludes: "Due to current traffic volume (being lower than previously projected traffic volumes), expected future development plans, and assessment of the adjacent interchanges and roadways operation and safety, a new I-39 interchange at Kowalski Road is currently not justified based on current State and Federal requirements."

Finally, while the interchange is not currently viable, it bears importance to consider the clear desire of such an interchange in the future. The proposed land use, a nonmetallic mine, is temporary in nature, and will be reclaimed. Therefore, this use is likely the best interim use, that will still allow a future interchange.

If any other permitted use were allowed to be built on the subject property, the ability to construct an interchange in 20-40 years would be greatly compromised. Construction of a Distribution Center or Meat Processing Plant would fundamentally interfere with future road improvements. A non-metallic mine, on the other hand, allows for reclamation of raw land to support such future highway infrastructure, if then appropriate.

A rejection of this CUP application would be a rejection of private property rights and arguably a taking under the United States and Wisconsin Constitutions, as the Village appears to be seeking to preserve this land without any economic use until such time as an interchange project is deemed viable.

The granting of this CUP, under any rational approach, is the correct legal decision and sound land use decision for the reasonable future.

3) Consistency of Land Uses

Per the Staff Report, the M2 Zoning of the subject, the surrounding land uses, are in harmony. All other parcels in the vicinity can be developed without any negative impact from the proposed nonmetallic mine.

4) Adequate Service of Utilities

Per the Staff Report, the application meets this standard. There are no concerns as to access to local roads. The proposed plan addresses reasonable standards to deal with road maintenance and floodway compliance.

5) Public Benefits outweigh Adverse Impacts

Per the Staff Report, the application meets this standard. Sand and gravel are a critical resource needed for the growth of Kronenwetter and Marathon County. Local sources are the most economically viable-saving taxpayers from extra expenses associated with trucking logistics. These materials are not located everywhere, and not all locations are suitable for new mine development. The subject is an ideal site with minimal impacts to an already industrialized, high traffic, and noisy neighborhood. There is no record of "substantial evidence" showing "potential adverse impacts" that could justify denial of this permit.

## CONCLUSION

Based on the foregoing, the Village of Kronenwetter is on notice of its perceived due process violations from seeking consultations outside the Public Hearing. Moreover, the Village is on notice that the record before the Planning Commission indisputably supports the approval of the CUP application.

If there are any questions, please contact the undersigned.

Sincerely,

**AXLEY BRYNELSON, LLP**



Mitchell R. Olson

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