

**DALLAS COUNTY  
BOARD OF ADJUSTMENT  
MINUTES**

The Dallas County Board of Adjustment was called to order on **Monday October 28<sup>th</sup>, 2019** at **4:30 PM** in the Dallas County Board of Supervisors Conference Room at 902 Court St in Adel, Iowa by Chairperson Marilyn Gliem. Vice Chair Scott Pope, members Karen Smith, Randy Tennison, and John Baker were in attendance. Murray McConnell, Director of Planning & Development, Samuel T. Larson, Senior Planner; and Elizabeth Kilson, Office Manager, were also in attendance.

**Approve Agenda:**

**Motion by S. Pope to approve the agenda as presented. Seconded by K. Smith. Ayes unanimous. Motion carried.**

**Approve Minutes of the last meeting of September 23, 2019:**

**Motion by J. Baker to accept the minutes as written. Seconded by S. Pope. Ayes unanimous. Motion carried.**

**Old Business:** none

**New Business:**

**Item 1: A petition to consider approval of a Conditional Use Permit to allow a sand and gravel mining operation, Portland concrete batch plant, and a material crushing plant on parcels zoned A-2 (Agricultural/Floodplain/Conservation) located in Section 29 and 32, T78N, R27W (Boone Township), South of 360<sup>th</sup> St (F-90) and North of the Raccoon River for Legacy Materials, LLC and Wittern Realty, INC.**

M.Gliem advised the public the meeting will be conducted as follows:

1. Director's report on the conditional use permit process for mining applications and the Planning and Zoning Commission's Recommendation.
2. Petitioner's presentations.
3. Questions from board members.
4. Public Comment: Announce that to ensure everyone has opportunity to voice their comments or concerns, citizen comments must be germane and have a three minute time limit. The board may vote to extend the time limit, if they choose. Citizens wishing to speak must sign the Speakers List provided.
5. Vote to close the public comment.
6. Petitioner's Response to Public Comment
7. Board discussion

**Report from the Director of Planning & Development:**

M. McConnell summarized the process to obtain a conditional use permit to mine sand and gravel. Gave a brief description of the Mining Advisory Committee process and summarized the Planning and Zoning Commission's (P&Z) meeting, stating they recommended approval with conditions. Copies of those were provided to the board ahead of time and at the meeting.

M. McConnell advised that there have been **two changes** since the P&Z meeting:

- 1)** Letter from Legacy Materials/Hopkins & Huebner, PC, amending the petition application – Legacy Materials is withdrawing the Portland Concrete Batch plant, withdrawing the crushing of off-site materials, and they are offering to pay into a County designated fund an amount equal to \$.10 per ton of all aggregate material sold from the permitted site, paid annually, to be used for road project purposes as appropriated by the Dallas County Board of Supervisors. (Read letter verbatim)
- 2)** An evaluation of the application was performed by Leonard Rice Engineers, Inc for the Fox Creek Benefited Water District's wells. This evaluation shows concern about the water wells.

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M. McConnell then read the conditions recommended by P&Z:

1. Electric power for dredge and de-watering equipment (once feasible)
2. Hours of Operation: M-F 6:00 AM to 6:00 PM, Sat 8:00 AM to 1:00 PM
3. Downward facing lighting not to exceed 1-foot candle at the property line
4. Construction of a 12-foot high landscaped berm along North property line
5. Urethane or similar noise reducing material shall be used to line all chutes
6. Install a sprinkler system or water truck that will wet the haul road surface as needed to suppress dust on site
7. Mining shall be limited to ten (10) years from the date of the permit being issued
8. Develop a reclamation plan for the property. Upon the completion of the mining, the owner/developer shall post a reclamation bond in the amount of \$500,000.00 to secure its obligation to reclaim the property according to the reclamation plan. The reclamation shall be completed within completed no later than two (2) years following the termination of the mining operation.
9. Rock crushing activities are limited to materials mined within the site (no material trucked in from off-site) for a total of thirty (30) business days between October 1st and April 1st, M-F 8:00 AM to 6:00 PM, no Saturday rock crushing
10. No permanent batch plant allowed.

**Petitioner Presentation:**

Adam Doll, representing Legacy Materials/Wittern Realty Inc, gave a history of the process so far. He provided a history of the Wittern Family and the Wittern Corporation. They are locally owned and operated. They work in Polk and Dallas County. They are a very philanthropic company, giving back to their communities. This proposed site is approximately 200 acres and has been owned and farmed by the Wittern's since the 1970's.

Mark Lee, Lee Chamberlin Engineers, gave a brief professional background of himself. The projected site plans of the proposed project. Advised the facility was located in the northwest corner of the property. The entrance to the proposed project is existing, it will be upgraded. They are adding acceleration and deceleration lanes to the entrance, to help offset any traffic concerns with F-90 (360<sup>th</sup> St). M. Lee stated that the average new construction home requires about 200 tons of sand. Allowing this mining operation will decrease overall costs of construction. Wittern and Legacy Materials have a strong sense of community. They are willing to follow the same conditions as the existing mining operations in the area. They are also offering \$.10 per ton of aggregate sold from the proposed site, to be used for road projects as appropriated by the Dallas County Board of Supervisors. After the materials have been removed from the site, they have a community development in mind.

Petitioners displayed the future road plans going through the area (Grand Prairie Parkway extending south, Grand Ave extending west). They advised that these changes, once implemented, would change the traffic patterns of F-90 and Ute Ave. F-90 (360<sup>th</sup> St) will be widened to three lanes: one through lane, one left turn lane, and one right turn lane.

M. Lee advised that any material sold from the site must be certified. There will be no dumping into the lake. It will be detained and slowly released back into the lake. The plant will be "tucked" behind the grain elevator. They strategically placed it in the northwest corner to help screen.

They are choosing to move forward with this proposal now as expansion is happening, more construction causes a demand for more materials. The need for local material is there, and they hope to meet the needs of Iowa. If the materials are closer, the cost is lower. M. Lee cited all their factual findings and reports: the market area analysis, the sound studies (done with the batch plant in mind), the ground water studies, traffic study.

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M. Lee advised that once materials are mined, they will have Legacy Lake, a mixed use area, possibly condos, restaurants, boating area, single and multifamily housing, and a beach on the east side of the lake. They projected some street view areas of what the proposed site would look like from surrounding residential areas. The proposed berm will extend the length of the property. There will be trees and landscaping planted so that when mining is completed and the berm is removed, the landscaping will be mature.

**Questions from the commission members**

J. Baker asked if the outdoor storage area and the plant is in the floodplain?

S. Larson advised that some of the proposed area is in the floodplain.

M. Lee confirmed.

R. Tennison asked what the tallest structure on the proposed property would be.

M. Lee answered the sand plant

R. Tennison asked if that would be seen from street view.

M. Lee advised no.

S. Pope stated that grain bin dryer noise does not happen all year long.

Misty Wittern Lee answered: grain bins do not run all year long, but the augers and the trains/trucks that transport does.

S. Pope asked about the containment pond that will have particulates in it – what is done with that when its full?

M. Lee: disc it over the site or sold, depending what the composition is.

S. Pope stated that the water table generally flows north – south and west – east. What does “generally” mean?

M. Lee advised that when the river rises, it may change the flow of the water. They will continue to monitor the wells

R. Tennison asked if diking of particulates was a general practice

M. Lee advised that was a way to safely disperse

S. Pope asked what the projected annual tonnage was.

M. Lee advised it depended on demand, range of 300 – 700 thousand tons/year

R. Tennison asked when the other permits were granted.

M. McConnell advised the last one was granted in 2003.

R. Tennison asked about environmentally friendly practices, with the advancement of technology.

M. Lee stated they have to live with what is left over after mining. They have incentive to maintain best practices and reclamation.

A. Doll finished with that they have heard all the complaints from the community. They wish to be good neighbors and have made necessary changes to their petition to accommodate concerns. He highlighted that all their studies were performed with the batch plant and off site crushing in mind – those items are withdrawn from the petition. He stated that their petition request never mentioned a timeframe, and the timeframes talked about were from P&Z recommendations. They are requesting 20-30 years to mine the material from the site. A. Doll also referenced Model 9-D for suitability and how the site is very suitable. They are requesting to have crushing on Saturdays from 6am-1pm.

M. McConnell told the board information about how they can discuss, amend and/or add to the conditions that P&Z recommended.

**Public Comment** (3 minutes per person, unless voted to allow additional time):

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M. Gliem read the names on the Speaker's List:

Alex Johnson, attorney at Brown Winick Law Firm on behalf of Fox Creek Water, advised his clients were opposed to the operation as it is located within the well head protection area. They would like to see longer water monitoring to ensure water quality is not affected by the mining operation. They are requesting one full year of well monitoring before granting the CUP.

Marla Lacey, Attorney – did not wish to speak

Gordon L Martens, Van Meter – stated his concerns were addressed during the presentation

Susan Burgess, Waukee – supplied written comment, but also asked to please consider the well reports

Barb Sink-Krusensjerna, Waukee – very concerned with water quality. She stated that the Wittern's were about "community" but they don't live in the area. She would like to see the operation start time to be 8:00am to help lessen truck traffic during the morning commute. B. Sink-Krusensjerna asked where does the 12' berm start – at street level, at the property level? She emphasized the start time to be later. She explained that this is an established neighborhood. The lights to the east operation shine right at Napa Valley – expressed light pollution concerns with this operation. She also asked who do they call for violations to the conditions – who is responsible.

Heath Picken HR Green, on behalf of Fox Creek Benefitted Water District. He called out the water quantity of the Allender Butzke report, advised the monitoring time length was too short to be accurate. They would like to see longer monitoring. He voiced concerns about the sediment blocking water flow as it settles in the lake. They have concerns about using diesel operations and how that may contaminate the water supply. The water will flow quicker, causing the filters to not be as effective. The current filter system for Fox Creek is not set up to filter nitrates.

*Three minute time limit met – someone from the crowd asked if the board could approve more time for their expert to explain the report*

**Motion by R. Tennison to allow an additional three (3) minutes** for Heath Picken. **Seconded by S. Pope. Ayes unanimous.** Additional three (3) minutes granted.

Heath Picken went on to emphasize the water quality, and explained the additional treatment required for nitrate filtering.

Tom & Leslie Wimsatt, Waukee – T. Wimsatt has concerns about water quality, air and light pollution, increased truck traffic on an already deteriorating road. Brought up the road condition of Ute Ave. He has concerns with their quality of life if they allow this industrial operation to begin. L. Wimsatt wants to see consistent conditions placed on this operation. She encouraged the board to keep the comprehensive plan and the zoning map in mind when making a decision.

Rick Levi, Waukee – provided each member a report he had compiled researching the mining operation and the affects it will have on their property values. Quoted statistics from the research. He requested that the board place a condition of a surety bond to protect the wells from any quality issues resulting from the mining operation (suggested one million dollars)

Jaime Price – lives in Napa Valley. She stated that this was a community, their neighborhood. Voiced concerns about the 30 year time limit and how that would alter the area to industrial and negatively impact the residential area. She was concerned that this industrial use would discourage high income housing, voiced concerns about the type of development this operation would bring to their residential community. She echoed the concerns voiced about water quality and noise and light pollution, the increased truck traffic.

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Mark Erdman, Booneville – he remembers when the Heartland Co-Op expanded, conditions were placed. He voiced concerns about who would police those conditions placed on this operation. What happens if the conditions are not met? He voiced concerns about truck traffic and train traffic. He agrees that everyone has property rights and should be allowed to use their land – but had the same concerns for the community. He suggested they mine further away from the residential areas along the river.

Ron Robbins, Waukee, Fox Creek Acres – did not wish to speak

Scott Sandberg, Waukee, Fox Creek - voiced concerns about water quality, discrepancies in the two water study reports. He wanted to see more studies done to show that water quality will not be affected. Would prefer to see 12-18 month long study.

John Lazdins, Booneville. Voiced concerns about the community, the industrial nature of the mining operation, he believes the land would be better suited to a different type of business, that would not negatively impact the community. He brought up discrepancies about the 12' berm vs the 17' berm, and the difference between 10 yr permit and 20-30 yr permit, hours of operation, the back and forth on if the lake is public or private once the materials have been mined.

Scott Politte, Waukee, Napa Valley Estates. He stated that there are powerlines/poles that bisect the proposed mining area. He wanted to know how that would be handled. He would like to see a ten year time limit on the permit, as that would give the homeowners of the area certainty that conditions are followed. He also requests that the board not make a decision until a longer water study is completed, and a contingency plan is in place.

Amy Main, Waukee, lives in Napa Valley. Echoed concerns of neighbors of increased truck traffic, brought up the road extension plans for Grand Prairie Pkwy and how that is not set in stone yet, concerns about water quality and supply. Advised that they the homeowners have to live with what Legacy creates, not Wittern. Emphasized that this area is residential, not industrial.

Dave Coppinger, Waukee, Fox Creek – did not wish to speak

Helen Coppinger, Waukee, Fox Creek – did not wish to speak

Bret Taylor, Booneville- has safety concerns, echoed the traffic concerns, as current truck traffic is already high, and they speed.

Paul Larson, Waukee - did not wish to speak

Tim Bragg, Waukee - did not wish to speak

Stuart Ruddy, Knapp Properties, West Des Moines – did not wish to speak

Alan A Miller, Dallas County Engineer – advised he submitted his report of the project and the board had a chance to review it. Explained his request for the proposed development entrance.

Stacy Brocks, Allender Butzke Engineers – did not speak

Bruce Reese, Waukee – lives in Napa Valley. Echoed concerns of increased traffic, water quality. He advised that the infrastructure to support this proposal is just not there. The truck traffic is very dangerous.

Pete James, Waukee – extremely concerned about water quality. Also brought up if the business sells-what then? Are the conditions the same, will residents be notified? He echoed the concerns of rock crushing, and truck traffic. He would like to see a ten year time limit as well, he would also like a longer

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water study done. He brought up that the current engineer is a part of the family. He advised that the road should be improved before the operation takes place.

Peter Bratney, Booneville. Emphasized that the noise of the grain bin is not all year long. He was concerned about the health and safety of dust pollution. He stated that while traffic flow itself will not change, the make-up of the traffic will – more trucks. He asks for denial. The road plan to help alleviate the traffic is just speculative.

Jason Alexander, Napa Valley Waukee. Echoed water quality concerns, stated there are already three other mining operations in the area, another one is not needed. He stated that the current entrances are just farm entrances, not business entrances. He is strongly opposed. Even with the tonnage fee – its only \$50,000 a year – not enough for road maintenance. He did not like the proposed ten year time limit going up to 20-30 years. Did not like rock crushing on Saturdays. He posed the question: if this was near Adel – would they even have the same consideration?

Tercio Lopes, Napa Valley Waukee – echoed the concerns his neighbors shared and is strongly opposed to the mining operation.

M. Gliem advised there were no more names on the speakers list. No one asked to speak

**Motion by S. Pope to close public comment. Seconded by K. Smith. Ayes unanimous. Motion carried.**

**Petitioner's Response to public comment:**

M. Lee responded to public concerns about the Fox Creek Water System. He stated that during their review process, the water quality was important to them and it would remain safe. They will continue to monitor the observation wells they installed. The evaluation submitted by the other party is not based on findings of fact. The evaluation by Lee Chamberlin is based on facts and scientific information. M. Lee projected a site plan that showed the location of the Fox Creek Wells. He advised state code requires well sites must control the 200' (two hundred feet) surrounding the site. A variance as granted to Fox Creek for their south well, as the north well was not enough to supply Napa Valley expansion.

M. Lee advised that in addition to any conditions placed by the board of adjustment, sand and gravel operations have MSHA regulations to follow (Mine Safety and Health Administration). If fuel is ever onsite, there are requirements to have it inside a secondary containment, and emergency plans must be in place. All material from the site must be certified, there are state and federal government requirements that must be met.

M. Lee advised that there are many public wells (radial wells) along the Raccoon River that are near sand/gravel operations. The Des Moines Water Works places them near the old sand and gravel pits. The Lounsberry mining site is within 700' (seven hundred feet) of the Des Moines Water Works and it's his understanding there is no contamination issues. Those wells pump 14 million gallons a day since 1999.

S. Pope asked if the Fox Creek wells were straight well water or if they were treated.  
S. Sandberg advised there were some filters in place, but there isn't a need to filter out much.  
M. Lee asked if it was chlorinated as well, S. Sandberg agreed.

M. Lee went on to advice that the berm height is from street level, 12' (twelve feet high), undulated to follow current topography, so it does not appear to be a wall or levee.

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M. Lee speaking to the industrial nature: The comp plan and current zoning map show this area as a Planned Industrial Park (PIP). The property the Wittern's own to the south of F-90/360<sup>th</sup> St is zoned A-2 which allows for mining operations, the property to the north of F-90/360<sup>th</sup> St and south of Booneville Rd is zoned PIP. Booneville has some C-1 General Commercial zoning, R-2 One and Two Family Residential, and the co-op is zoned I-1 Light Industrial.

S. Larson and M. McConnell confirmed current zoning is as stated by M. Lee.

A. Doll advised that any dust concerns are mitigated by water trucks on site. Any complaints about the operation will be taken care of by his client. As for the time limits (10 yr permit vs 30 yr permit), the application never mentioned a time limit, the ten year time limit was a condition that P&Z adopted from the previous CUP granted to mine sand and gravel. He went on to address property value concerns: they performed a market value analysis and the data shows that property values do not decrease near operations such as this. Martin Marrietta and Hallett mining sites are at the bottom of the river – the residential development, River Oaks, overlooks those sites and they did not experience a decrease in value or hinder development. This is a key element in their Appraiser's report.

**Board Discussion and Deliberation:**

K. Smith asked about the power lines crossing the property.

M. Lee stated that they have to maintain the 100' (one hundred foot) easement and access to the poles. He showed the site plan.

S. Pope: Who controls the speed limit and other restrictions in unincorporated area?

A. Miller, county engineer, advised that the State of Iowa code gives the Board of Supervisors that authority. An ordinance would need to be passed to make permanent changes. He advised they could assign truck routes, but they would need to consider the ramifications – residential construction trucks could not use those routes, it would affect garbage routes. A permanent ordinance like that should be taken lightly.

S. Pope: would they consider a bond to mitigate damages they potentially could cause?

M. Lee advised he is not sure what that would look like.

S. Pope: the wells near Lounsberry are they higher filtered? The Fox Creek wells are a simpler sand filtered system. What West Des Moines Water Works ("WDM WW") has is a higher filtration system.

M. Lee advised that the wells have to meet all the same requirements. He could not speak to what particulates the WDM WW system needs to filter out or what their systems are.

R. Tennison stated that the discussions were honing in on what the main concerns were: water quality and concerns with the well. Maybe a longer study make sense.

M. McConnell stated to the board that there are two water studies that show conflicting information. He is not sure a longer study would change the result. Ground water is unpredictable. Legacy Materials would be legally responsible for any water damages they cause to the well. WDM Water Works has actually negotiated to get the water rights from a previous mining operation.

M. McConnell brought up Kenyon Quarry next to I-80 and how it never affected Van Meter Wells – and the developments Kenyon Hill Cove and Kenyon Hill Ridge are high end residential developments that currently are next to a mining operation on the South side of I-80, and our office has not received any complaints.

R. Tennison stated that all the concerns voiced are legitimate concerns.

J. Baker stated that water contamination may not ever happen.

The board members discussed the recommendations that P&Z provided.

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J. Baker stated maybe a ten year time limit with a surety bond in place to protect the water quality if it is contaminated by the mining operation.

R. Tennison asked for clarification on the P&Z Recommendations. Condition #9 was read aloud.

R. Tennison asked where the berm height came from – 12’?

M. McConnell advised it came from the original conditions from the previous mining operations that Dallas County has approved.

R. Tennison asked if this was closer to a residential area than previous mining permits.

M. McConnell and S. Larson advised yes, but the zoning of the property and next to Napa Valley is Planned Industrial Park, and has been that way since the 1970s. Booneville has mixed zoning – commercial, residential and industrial zoning.

S. Pope advised that he drives Ute often, so he understood some of the concerns voiced. He agreed with a 10 year time limit with the option to renew. He advised the public that they try to find common ground for all parties involved. There are property rights and they are important to uphold. They are trying to find a solution acceptable to the majority.

M. McConnell stated that both Hallett and Martin Marietta CUP’s had ten year time limits. Before theirs ran out, they annexed into the city limits and the city granted additional time.

M. McConnell went on to state that Dallas County Planning and Development has to ensure that all conditions are met. The office reached out to the city and they have not received any recent complaints about the mining operations. Both applicants are compliant during investigation when complaints are received. River Oaks residential development overlooks those mining operations and it is essentially built out. The mining operations did not hinder or harm their development or property values.

R. Tennison stated that it seems no one but the applicant seems to be in favor of this conditional use permit.

M. McConnell answered that the applicants have met all the requirements laid out in the ordinance to obtain a conditional use permit to mine sand and gravel. If they choose to annex into the city limits, the conditions run with the land.

**Motion by J. Baker to approve a Conditional Use Permit to allow a sand and gravel mining operation, and crushing of virgin materials from the site, with the recommendation as approved by P&Z, plus a surety bond of one million dollars to mitigate any adverse impacts on the Fox Creek water wells proved to be caused by the mining operation, on parcels zoned A-2 (Agricultural/Floodplain/Conservation) located in Section 29 and 32, T78N, R27W (Boone Township), South of 360<sup>th</sup> St (F-90) and North of the Raccoon River for Legacy Materials, LLC and Wittern Realty, INC. Seconded by S. Pope.**

M. McConnell read the proposed findings (attached to the end of the minutes under “Findings Regarding Merits of the Application)

The board discussed and chose to add condition number 14 to reflect the motion – “the owner-operator shall obtain a surety bond in the amount of \$1,000,000 to mitigate any adverse impacts on the Fox Creek water wells proved to be caused by the mining operation.”

**Vote: Ayes Unanimous. Motion Carried.**

**Any other matters not on the Agenda to come before the Board? – none spoke**

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**Adjourn Meeting:**

**Motion** by S. Pope to **adjourn**. **Seconded** by R. Tennison. **Ayes unanimous. Motion carried.**

Elizabeth Kilson  
Office Manager

*An audio recording of this meeting is available in the office of Planning and Development*

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**FINDINGS REGARDING MERITS OF THE APPLICATION**

Pursuant to the Zoning Ordinance, Chapter 45, Dallas County Code of Ordinances, this Board hereby finds that the following facts have been established by a preponderance of the evidence:

1. **Procedural Requirements.** Legacy Materials, LLC and Wittern Realty, Inc. filed a Petition for Conditional Use on April 5, 2019, and it procedurally complies with the requirements of Chapter 45, Dallas County Code of Ordinances for applications seeking a conditional use permit.

2. **Mining Advisory Committee.** The Mining Advisory Committee established under 45.09.3.B.iii.(1) has reviewed the Application. The members of the Committee have issued their recommendation. The Mining Advisory Committee has applied “Model 9d” to this site in accordance with Section 45.09.3.B.iii.(2). Application of that model to this site establishes that this site is “highly suitable” for aggregate extraction purposes.

3. **Planning & Zoning Commission.** The Dallas County Planning & Zoning Commission has reviewed the Application. On September 17, 2019, the Planning & Zoning Commission recommended that this Board approve the Application, subject to conditions recommended by Mining Advisory Committee Members.

4. **Conditions to Authorization.** Pursuant to 45.09.3.C. the Board has considered the following and finds all of the following conditions exist:

i. **Effect on Surrounding Area.** A preponderance of the evidence established that issuing a conditional use permit to Legacy Materials, LLC and Wittern Realty, Inc. for extraction of aggregate at this location will not have an adverse effect upon the value or qualities of the area surrounding the conditional use site. The subject property is currently used agriculturally and is zoned A-2 Agricultural/Floodplain/Conservation. The property to the east is within the city limits of West Des Moines and is presently used agriculturally with some timbered area. The property to the northeast is used agriculturally and is zoned PIP Planned Industrial Park, the area to the northeast is the unincorporated community of Booneville with a mix Commercial, Industrial and Residential zoning districts. The property to the north is separated from the subject property by County Road F-90 (360<sup>th</sup> Street) and an east-west railroad line. The property to the west is currently timbered and zoned A-2 Agricultural/Floodplain/Conservation. The property to the south is within the city limits of West Des Moines and is undeveloped mature woodlands.

Area property values will not be adversely affected as indicated by Market Area Analysis: Value Effect of Quarries prepared by Nelson Appraisal Associates dated April 5, 2019. Normal and orderly development will not be impeded as evidenced by the historic development or property surrounding numerous other sand and gravel extraction facilities throughout the Raccoon River corridor and the greater Des Moines metropolitan area.

The subject property is not located in close proximity to any public parks, schools or licensed day care facilities. All dwellings and residential districts are separated from the subject property by a county highway, railroad line and existing grain bins. There are no areas targeted by the Compressive Plan for residential or commercial development. The undeveloped property to the north is targeted for industrial development; however, industrial development is compatible with the proposed use.

ii. **Infrastructure.** Adequate utilities, access roads, drainage, and other necessary facilities have been provided. The owner-developer proposes to utilize an onsite septic system. The proposed access

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to the site is via Ute Court a Level 'C' county road. The owner-developer proposes upgrading Ute Court south of 360<sup>th</sup> Street to a Level 'B' road; however, the Board finds a letter from the County Engineer in his capacity as a Mining Advisory Committee member recommending that access to the site shall be limited to a Level 'A' roadway.

A Traffic Analysis prepared by Lee Chamberlin Consultant Engineers concluded that the intersection of F-90 (360<sup>th</sup> Street) and Ute Avenue will operate efficiently and safely. Additionally the Traffic Analysis proposes construction of acceleration and deceleration lanes to provide safe movement into and out of the site.

iii. Intent of Ordinance. Mining of sand and gravel is a use that is considered by the Zoning Ordinance to be an appropriate land use in the A-2 District if the Board of Adjustment determines under a conditional use permit that the public interest can be protected by appropriate restriction and conditions. It is the determination of the Board, in this case, that Legacy Materials, LLC and Wittern Realty, Inc. have satisfied all of the criteria for granting of a condition use permit for mining sand and gravel and that the public interest will be reasonably protected by the imposition of the particular restrictions and conditions imposed hereunder as part of the conditional use permit. Accordingly, granting of the conditional use permit for the proposed conditional use is consistent with the intent and purposed of the Zoning Ordinance.

iv. Nuisance Factors. The petition includes adequate measures to prevent or control offensive odor, fumes, dust, noise, and vibration, so that none of these will constitute a nuisance and to control lights in such a manner that no disturbance to neighboring properties will result.

Mitigating measures include: the use of an electric operated dredge and electric pimp equipment once feasible and backup alarms for equipment owned/operated by the applicant shall be set to the lowest (quietest) setting while still maintain Federal safety standards; limiting hours of operation (see vi. Time); downward facing lighting to reduce glare to surrounding properties and the site lighting shall exceed one foot candle at the property lines; Construction of a seventeen foot high landscaped undulating berm along the north property line (see vii. Landscaping); Use of urethane or similar noise reducing material shall be used to all material conveyance devices; and, Use of water truck or other dust suppressing measures to mitigate any dust.

A Noise Study conducted by Michael Clark of Electronic Sound Company projects noise levels will be similar to the noise of the existing grain elevators across F-90 from the proposed site.

v. Comprehensive Plan. The proposed conditional use is found to be consistent with the Goals, Objectives, and Land Use Map of the Dallas County Comprehensive Plan, and the land use policies of Dallas County.

The proposed conditional use site is adjacent to the city limits of West Des Moines and within their planning area of the West Des Moines Comprehensive Plan. The proposed conditional use is found to be consistent with the West Des Moines Comprehensive Plan. The application materials for the proposed conditional use was provided to West Des Moines Planning staff on 7/2/2019, and the City did not provide comment regarding the application.

vi. Time. The Board determines that the mining permit shall be valid for a period of 10 years and that and the end of the time limit the Board may consider an extension of the mining permit. Further the Board determines that the mining operation shall be limited to the hours of 6:00 AM to 6:00 PM Monday through Friday and 8:00 AM to 1:00 PM on Saturdays with no activities on Sundays. Additionally crushing

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of materials mined onsite (no materials trucked in from offsite) shall be limited to the hours of 8:00 AM to 6:00 PM Monday through Friday with no crushing on Saturdays or Sundays. Further, the rock crushing activities shall be limited annually to a total of 30 days between October 1<sup>st</sup> and March 30<sup>th</sup>. These conditions are consistent with those required by the City of West Des Moines on the existing operations to the east.

vii. Environmental Review. The Board finds a letter of review submitted by the Dallas County Conservation Director Mike Wallace in his capacity as a Mining Advisory Committee member recommending the advancement of the conditional use, but limiting the material crushing plant to same conditions as the existing mining operations to the east in West Des Moines. His letter did not cite any adverse environmental concerns.

Allender Butzke Engineers Inc. installed three observation wells to monitor groundwater levels relative to the Fox Creek Water well north of the subject property. Their report, dated August 22, 2019 concluded that the groundwater flow is to the south-southeast towards the Raccoon River, thus limiting the chance of adverse impacts on the Fox Creek Water District well north of the proposed development.

viii. Landscaping. Substantial berms and landscaping have been proposed to minimize the impact of the conditional use on adjacent property.

ix. Financial Guarantees. The applicant has developed a reclamation plan for the property and the Board finds that the applicant shall post a \$500,000 bond to secure its obligation to reclaim the property. This bond is in addition to the reclamation bond required for a mining permit under Iowa law.

x. Cumulative Impact. Legacy Materials LLC and Wittern Realty Inc. have submitted substantial evidence in the form of Real Estate Analysis, Noise Study, and Traffic Analysis demonstrating that the proposed use will not cause a significant adverse cumulative impact when considered together with other uses previously permitted by conditional use permit.

Market Area Analysis: Value Effect on Quarries by Nelson Appraisal Associates establishes that there has been no negative effect upon property values in the in the area attributable to the mining facilities to the east, and thus no adverse “cumulative” effect caused by the operation of the proposed facility.

Noise Study by Electronic Sound Co., established that the predicted sounds levels from the proposed use are similar to those from the current grain elevators. Therefore, the Board concludes that the proposed operation when considered together with the existing operations will not result in an adverse “cumulative” effect upon sound levels in the area.

Traffic Analysis by Lee Chamberlain Consultant Engineers established that the existing county roads are capable of handling additional traffic. Moreover, the volume of truck traffic upon the county roads will be determined by demand for aggregate, not the number of facilities; therefore the Board concludes that when considered together with the existing operations, the proposed operation will not result in an adverse “cumulative” impact upon the county roads.

xi. Report by County Engineer. Al Miller, Dallas County Engineer reviewed the application and submitted a report in his capacity as a member of the Mining Advisory Committee. Mr. Miller was present at the hearing and provided testimony. While Mr. Miller concurs with the conclusions of the traffic analysis and states that the estimated truck volume generated by the proposed use is minimal relative to the current traffic, he disagrees with the applicant’s access proposal. Therefore he recommends a condition requiring an access permit granted

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by the County Engineer, that said access shall be limited to a Level 'A' roadway, and no access or portion thereof shall be allowed on a Level 'B' or Level 'C' roadway.

THEREFORE, based on the forgoing findings of fact, the Board concludes that Legacy Materials, LLC and Wittern Realty, Inc. has carried its burden to prove a preponderance of the evidence that the proposed aggregate extraction and limited rock crushing facility at this location satisfies all of the conditions of the Dallas County Zoning Ordinance, and that the Application for Conditional Use Permit should be granted by the Board, subject to all of the conditions hereinafter set forth.

**DECISION**

**NOW THEREFORE, IT IS HEREBY RESOLVED** by the Board of Adjustment of Dallas County, based on all of the foregoing findings of fact and conclusions of law, the April 2019 Application by Legacy Materials, LLC and Wittern Realty, Inc. for a conditional use permit to operate a sand and gravel extraction use and crushing of virgin materials from the site, on land located in Section 29 and 32, T78N, R27W (Boone Township) South of 360<sup>th</sup> Street (F-90) and North of the Raccoon River in Dallas County, meets all requirements of Chapter 45 and Chapter 40 of the Dallas County Code of Ordinances, and should now be finally **APPROVED, SUBJECT TO ALL OF THE FOLLOWING CONDITIONS**, all of which are hereby incorporated as a part of the conditional use permit granted hereunder:

1. Once feasible, the operation shall use an electric operated dredge and electric pump equipment in order to reduce noise levels produced from the site. The backup alarms for equipment owned/operated by applicant shall be set to the lowest (quietest) setting while still maintaining Federal safety standards.
2. The sand and gravel extraction activities shall be limited to operations between the hours of 6:00 a.m. to 6:00 p.m. Monday-Friday and 8:00 a.m. and 1:00 p.m. on Saturdays.
3. All site lighting shall be downward facing to reduce glare to surrounding properties and the site lighting shall not be allowed to exceed one (1) foot candle at the property line.
4. The construction of a twelve (12) foot high berm along the north property line. The berm shall undulate (horizontally and vertically) in places to provide visual interest and the majority of the landscaping shall be planted in front of the berm (360th Street side) to allow the berm to be removed after the operation ceases, without eliminating the established landscape. Some of the landscaping shall be planted on the berm in locations where it would look natural to remain after the mining operations cease. The side slopes of the berm shall not exceed 3:1 and shall be decreased in some areas to approach 8:1 to eliminate the levee appearance. Additional landscaping material shall be clustered in the lower undulation to offset the lost berm height.
5. Urethane or similar noise reducing material shall be used to line all chutes and material handling devices.
6. Install a sprinkler system or implement the use of a water truck that will wet the haul route road surface as needed to suppress dust, or use other dust suppressing measure on site to mitigate any dust problems, as necessary.
7. Mining shall be limited to ten (10) years from the date of the permit and reclamation shall be completed no later than two (2) years following the termination of the mining operation.

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8. A reclamation plan is detailed out in the Conditional Use Permit Petition. The reclamation shall be performed consistent with the plans shown in the Petition.
9. Upon commencement of mining, owner-developer will post a 500,000.00 bond to secure its obligation to reclaim the property according to the reclamation plan. The Reclamation Bond is in addition to any reclamation bond required for a mining permit under Iowa Law.
10. Rock crushing activities of materials mined within the site (no material trucked in from off site) shall be allowed annually for a total of thirty (30) business days between October 1 and April 1. The thirty (30) day period for rock crushing activities may occur concurrently or be divided into separate crushing periods. Rock crushing activities shall be limited to between eight o'clock (8:00) a.m. to six o'clock (6:00) p.m. on weekdays; no crushing activities shall be allowed on either Saturday or Sunday. Placement of crushing equipment shall be placed in accordance with the site plan. All feasible noise and dust minimizing measures should be implemented to help mitigate potential impacts of crushing activities on neighboring properties.
11. No permanent batch plant shall be allowed under this conditional use permit.
12. Access to the site shall require an entrance permit approved by the County Engineer. Said access shall be limited to a Level 'A' roadway. No access or portion thereof shall be allowed on a Level 'B' or Level 'C' roadway.
13. The operator offers to pay into a County designated fund an amount equal to \$.10 per ton of all aggregate sold from the permitted site, paid annually. Said fund should be used for road project purposes as appropriated by the Dallas County Board of Supervisors.
14. The owner-operator shall obtain a surety bond in the amount of \$1,000,000 to mitigate any adverse impacts on the Fox Creek water wells proved to be caused by the mining operation.

This conditional use permit is subject to the Owner-Operator obtaining all necessary permits for operation and road access prior to any material being removed from the subject real estate, and obtaining approval of the Iowa Department of Natural Resources or other appropriate entity for any use located in the flood plain of any river or stream. The Operator will construct access roads and maintain this operation in such a manner as to mitigate the tracking of mud or debris upon public highways. The use will be maintained in compliance with applicable County, State and Federal laws and any hereinafter-enacted Dallas County noise or air pollution ordinances. This Conditional Use Permit shall also be dependent upon the Owner-Operator and proposed development complying with all requirements of the Dallas County Zoning Ordinance. Any violation of any condition contained in this Conditional Use Permit shall be a violation of the Dallas County Zoning Ordinance.

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