



## **Public Hearing Item 6: Conditional Use Permit**

Planning & Zoning Committee • May 6, 2025

<b><u>Proposed Use:</u></b>	Non-Metallic Mineral Extraction and Hot Mix Asphalt Plant – CUP Renewal
<b><u>Applicable Section(s):</u></b>	12.105.02; Table 12.105.02(1); 12.125.25; 12.155.06(10)
<b><u>Zoning District(s):</u></b>	A-1 Agriculture
<b><u>Property Owner(s):</u></b>	Kelley Trust Dated 3/12/1998
<b><u>Applicant(s):</u></b>	Kelley Trust Dated 3/12/1998; Tri County Paving, Inc.
<b><u>Property Location:</u></b>	Located in the Northeast Quarter of the Southwest Quarter, the Southeast Quarter of the Southwest Quarter, the Northeast Quarter of the Southeast Quarter, the Northwest Quarter of the Southeast Quarter, the Southwest Quarter of the Southeast Quarter, and the Southeast Quarter of the Southeast Quarter of Section 23, Town 10 North, Range 9 East
<b><u>Town:</u></b>	Arlington
<b><u>Parcel(s) Affected:</u></b>	417, 420, 421, 422, 423, 424
<b><u>Site Address:</u></b>	N1423 County Highway I
<b><u>Background:</u></b>	

Kelley Trust Dated 3/12/1998 and Tri County Paving Inc., owner and applicants, request the Planning and Zoning Committee review and approve a Conditional Use Permit Renewal for Non-Metallic Mineral Extraction with a Hot Mix Asphalt Plant on the aforementioned property. The site fronts on both County Highway I and Kampen Road, with access to the site coming off of County Highway I. The site has been subject to conditional use reviews on several different occasions from 2006-2015. The latest Conditional Use Permit (CUP) expanded the non-metallic mine (gravel) from approximately 40 acres to approximately 50 acres with an approved expansion to the western 10 acres of the site. A second CUP was approved in 2015 for the hot mix asphalt plant. The property is zoned A-1 Agriculture and planned for continued Agricultural or Open Space land use. There are no mapped wetlands or floodplain on the property. In the Columbia County Zoning Ordinance, non-metallic mineral extraction is regulated under Section 12.125.25. Land use and zoning of adjacent properties is below.

### **Adjacent Land Uses and Zoning**

Direction	General Land Use	Zoning
North	Agriculture and Single-Family Residence	A-1 Agriculture
East	Agriculture and Agricultural Supply Sales	A-1 Agriculture and A-3 Agricultural Business
South	Agriculture and Single-Family Residence	A-1 Agriculture
West	Agriculture	A-1 Agriculture

### **Analysis:**

The current 2015 Conditional Use Permits will expire in July 2025; therefore, Tri County Paving is seeking a renewal of the existing CUPs. Due to duplicate conditions between the two 2015 approvals, a single CUP is being proposed at this time for clarity. No changes are proposed to the mineral extraction use or portable hot mix asphalt plant. The plant operates on a seasonal basis to meet demand and occupies approximately 10 acres of the site. The non-metallic mineral extraction and hot mix asphalt plant were originally approved in 2006, and subject to

additional review and renewals in 2011 and 2015. The hot mix asphalt plant uses aggregate from the gravel pit as well as recycled asphalt pavement and shingles that are trucked into the facility. The asphalt plant is permitted to burn waste oil, natural gas, liquid propane, and #2 diesel fuel to provide power to the facility. A temporary portable concrete batch plant is occasionally used on the premises. Condition 13 allows for the temporary concrete batch plant to operate for a total of 120 days per calendar year, between May 15 and November 1. Because there are no proposed changes to the use of the site since the most recent 2015 renewals, a copy of the 2015 reports are included to provide the additional background narrative. The recommended conditions remain unchanged. An approved Reclamation Plan is on file with the Department. A site inspection was recently done, and the site appears to comply with the existing CUP conditions. Staff is proposing another 10-year time limit on this Conditional Use Permit.

### **Town Board Action:**

The Arlington Town Board met on April 9, 2025 and recommended approval of the Conditional Use Permit with conditions.

### **Standards for Review:**

The proposed use complies with the General Criteria of Section 12.150.07(4) of the Columbia County Zoning Ordinance. See Attachment A for more details.

### **Recommendation:**

Staff recommends approval of the Conditional Use Permit for Non-Metallic Mineral Extraction and a Hot Mix Asphalt Plant, subject to the adoption of the following recommended Findings, Conclusions, and Conditions.

### **Recommended Findings of Fact:**

1. Upon review of the guidelines in Section 12.150.07(4) of the Columbia County Zoning Ordinance, and with the explanation of the criteria in Attachment A of the Staff Report, the Committee finds the following:
  - a. Kelley Trust Dated 3/12/1998 is the owner of the subject property.
  - b. Kelley Trust Dated 3/12/1998 and Tri County Paving, Inc. are the applicants for a Conditional Use Permit.
  - c. Tri County Paving, Inc. is the operator of a non-metallic mine and hot mix asphalt plant on site.
  - d. Kelley Trust Dated 3/12/1998 and Tri County Paving, Inc. are requesting renewal of a Conditional Agriculture zoning district.
  - e. A hot mix asphalt plant and non-metallic mine operation are already on site.
  - f. The establishment, maintenance, or operation of the proposed use will not be detrimental to or endanger the public health, safety, or general welfare of the occupants of surrounding lands.
  - g. The use will be designed, constructed, operated, and maintained so as to be compatible, and be appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area such that the use will substantially impair or diminish the use, value, or enjoyment of existing or future permitted uses in the area.
  - h. The erosion potential of the site, based on topography, drainage, slope, soil type, and vegetative cover is minimal.
  - i. There is no existing or anticipated water pollution including sedimentation, and no impacts on floodplain and wetlands.
  - j. Access to streets and highways is suitable, and ingress and egress is designed to minimize traffic congestion and the potential effect on traffic flow.
  - k. The Conditional Use shall conform to the standards of the applicable district(s) in which it is located.

### **Recommended Conclusions of Law:**

1. The subject property is located in the Town of Arlington and is zoned A-1 Agriculture. The District uses are listed in Table 12.105.02(1).
2. Kelley Trust Dated 3/12/1998 and Tri County Paving, Inc. are the petitioners for a Conditional Use Permit. The petition followed the procedures of Section 12.150.07(3) of the Columbia County Zoning Code.
3. The petitioners are proposing to continue operation of a Non-Metallic Mine and Hot Mix Asphalt Plant on the site, which is allowed as a Conditional Use under Table 12.105.02(1).

4. The Arlington Town Board has reviewed and recommended approval of the Conditional Use Permit, with conditions, in accordance with Section 12.150.07 of the Columbia County Zoning Code.
5. The Columbia County Planning and Zoning Committee has the authority under Sections 12.150.03(2)(b) and 12.150.07 of the Columbia County Zoning Code to conduct public hearings, review, and decide on requests for Conditional Use Permits.
6. The standards of Section 12.125.25 of the Columbia County Zoning Code as noted below are applicable:
  - (1) In addition to the information normally required for conditional use permit applications, the application shall include the following information:
    - (a) A written description of the proposed operation, including the types and quantities of the materials that would be extracted; proposed dates to begin extraction, end extraction, and complete reclamation; geologic composition and depth and thickness of the mineral deposit; existing use of the land and proposed use after reclamation; existing natural and archaeological features on and adjacent to the site; where extracted materials would be hauled and over what roads; types, quantities, and frequency of use of equipment to extract, process, and haul; whether and how frequently blasting, drilling, mining, crushing, screening, washing, refueling, fuel storage, asphalt batching, or concrete mixing would be performed on site; whether excavation will occur below the water table and, if so, how ground water quality will be protected; description and elevations of all temporary or permanent structures; proposed hours and days of operation; any special measures that will be used for spill prevention and control, dust control, or environmental protection; if within the A-1 district, justification that the use meets all standards associated with such district; and assurances that the site will be developed, operated, and reclaimed in accordance with all approved plans and all county, state, and federal regulations, including a listing of all applicable regulations.
    - (b) A site or operations plan map, drawn to scale by a qualified professional, and including site boundaries; existing contour lines; existing roads, driveways, and utilities; existing natural features including lakes, streams, floodplains, wetlands, and shoreland areas; all dwellings and private and municipal wells within 1,000 feet; location of the proposed extraction, staging areas, fueling, fuel storage, and equipment storage areas; proposed location and surfacing of roads, driveways, and site access points; proposed phasing plan, if any; proposed fencing of property and gating of access points; proposed locations of stockpiles; proposed location and types of screening berms and landscaping; and proposed temporary and permanent structures, including scales and offices.
    - (c) An erosion control plan, drawn to scale by a professional engineer, meeting all applicable state and county requirements.
    - (d) A reclamation plan prepared in accordance with the Wisconsin Administrative Code and the Columbia County non-metallic mining reclamation ordinance.
  - (2) The appropriate County approval authority may require a landscaped transitional yard, in accordance with the standards in Section 12.140.06(2)(d).
  - (3) The appropriate County approval authority may place limits on the amount of time the non-metallic mineral extraction use shall remain in operation.
  - (4) The nearest edge of all buildings, structures, and surface activity areas, including pit edges, shall be located a minimum of 200 feet from all dwellings on adjacent properties, and no less than 50 feet from any lot line.
  - (5) To prevent tracking of mud onto public roads, access driveways shall be paved within one 100 feet of public roads, unless the adjacent road is unpaved.
  - (6) All public roads shall be kept free of all mud, debris, and dust by sweeping or other means as necessary, or as requested by the applicable town.
  - (7) Access to the site shall only be through points designated as entrances on the site or operations plan; such access points shall be secured when the site is not in operation.
  - (8) Provisions for the upgrade, repair, and maintenance of town and county roads shall depend on the intensity of the operation and the existing condition and capacity of such roads. A bond or other performance guarantee for such work may be required provided that a clear relationship is established between the operation and the need for road upgrades, repair, and maintenance. If any

town or county road is damaged or destroyed as a result of owners' operations, the owner shall restore or pay for the restoration of the same to an acceptable condition and value. The owner shall have the right to show and bear the burden of proof in showing that the indicated damage was not the result of its operations.

- (9) The site and driveway shall be sprayed to control dust, except when the temperature is below freezing. Spraying may also be required in and around the excavation pit to further reduce dust.
- (10) On-site bulk fuel storage areas and areas for fueling of equipment (e.g., above the water table) shall be located to minimize the potential for groundwater contamination and in accordance with the Wisconsin Administrative Code and State Statutes.
- (11) Hours or days of operation may be limited.
- (12) Hours for blasting, drilling, screening, and asphalt batching shall be established. The conditional use permit may restrict such activities from occurring if the conditional use permit standards cannot be met.
- (13) If blasting or drilling is requested, additional standards or conditions may be applied with relation to frequency, noise and vibration levels, notice to neighbors, pre-inspection of neighboring basements and wells, and claims procedures in accordance with the Wisconsin Administrative Code.
- (14) All trucks, excavation, and processing equipment shall have exhaust systems that meet or exceed current industry standards to ensure that noise levels are kept at or below allowable limits. The level of noise generated by the facility or equipment shall not exceed 65 decibels at the property line.
- (15) Unless the extraction site is inaccessible, the area of extraction shall be completely enclosed by a safety fence or maintained at a slope not to exceed 3:1.
- (16) The applicant shall furnish a certificate of insurance before operations commence.
- (17) Approval shall be subject to amendment or revocation if non-compliance with approved plans, this section, or approval conditions is identified.
- (18) Approval shall be subject to periodic review of the operation to ensure compliance with the conditional use permit, and to specific limitations over the portion of the lot or parcel where extraction may occur.
- (19) Within the A-1 district, such use shall also be subject to the following additional limitations:
  - (a) The operation complies with subchapter I of Wisconsin Statutes Chapter 295 and rules promulgated under that subchapter, with applicable provisions of the local ordinance under Section 295.13 or 295.14 and with any applicable requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mining sites.
  - (b) The operation and its location in the A-1 district are consistent with the purposes of that district in Section 12.105.01(1).
  - (c) The operation and its location in the A-1 district are reasonable and appropriate, considering alternative locations outside the A-1 district, or are specifically approved under state or federal law.
  - (d) The operation is reasonable designed to minimize the conversion of land around the extraction site from agricultural use or open space use.
  - (e) The operation does not substantially impair or limit the current or future agricultural use or surrounding parcels of land that are zoned for or legally restricted to agricultural use.
  - (f) The owner shall be required to restore the land to agricultural use, consistent with the County approved reclamation plan, when extraction is completed.

#### **Recommended Conditions for the Decision:**

1. The Conditional Use Permit shall expire 10 years from the date of issuance.
2. There shall be only one joint driveway access for the plant and other uses. This access shall be located off County Trunk Highway I in its current location and maintained as agreed. The first 200 feet of the driveway shall be paved, after which recycled asphalt may be used. The width of the driveway shall be a minimum of twenty-four (24) feet of paved or recycled asphalt. The asphalt and recycled asphalt shall be of sufficient depth to withstand typical truck loading in connection with pit operations. A gate shall remain at the entrance to the pit and plant. This gate shall be locked during all hours that the pit and

plant are not in operation.

3. Trucks shall exclusively use County Highway I for ingress and egress to the plant and pit. The operator shall improve the Country Trunk I intersection with the driveway access through the construction of a Type "C" Access intersection as defined in Columbia County's Highway Access Control Ordinance including the construction of acceleration and deceleration lanes and a by-pass lane. All of these improvements shall be constructed pursuant to plans and specifications reviewed and approved by the Columbia County Highway Department. All road improvements shall be the sole expense of the operator. At the termination of this permit or the end of operations of the pit, whichever occurs first, the County Trunk I access intersection improvements shall be removed by operator and the intersection restored to its original condition.
4. Air emissions associated with the plant shall be limited per the Agreement between the Town and Tri-County Paving, Inc. Tri-County shall annually certify to the Town that its actual emissions are less than those that would require the asphalt plant site to obtain an air quality operating permit and that they comply with the limits stated herein. The annual certification shall comply with the certification requirements of the DNR. The annual certification shall be submitted no later than March 1 and may be submitted with the annual emission inventory information.
5. Tri-County shall cause covered trucks to be used for hauling asphalt from the plant.
6. Tri-County shall only use natural gas, liquid propane, waste oil and #2 distillate oil (diesel) to fire the hot mix asphalt dryer and the asphalt heater.
7. The diesel generators shall use the latest sound abatement technology. The level of noise or sound generated by the facility or equipment shall not exceed 65 decibels at the property line of the leased property.
8. Tri-County shall allow the County, DNR representatives or Town Engineer access to the Asphalt Plant at all reasonable times for the purpose of making inspections, surveys, collecting samples, obtaining data, auditing any monitoring equipment (CEMS – Continuous Emission Monitoring Systems), (CERMS – Continuous Emissions Rate Monitoring System) or observing any monitoring or testing, and otherwise conducting all necessary functions related to this Asphalt Plant.
9. Hours of operation for the asphalt plant operation shall include, but not be limited to, mixing and processing asphalt from 5:30 a.m. to 7:30 p.m. Monday through Friday and from 5:30 a.m. to 4:30 p.m. on Saturday. Trucking out of the asphalt plant shall be limited to 6:00 a.m. to 7:00 p.m. Monday through Friday and from 6:00 a.m. to 4:00 p.m. on Saturday. Necessary maintenance and repairs may be conducted at other times provided such activities do not constitute a nuisance.
10. Hours of operation for pit operation shall include, but not be limited to, excavating, crushing, and stockpiling, between 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. to 2:00 p.m. on Saturdays. Necessary maintenance such as welding, tire repair, or changing of engine fluids may be conducted at other times provided such activities do not constitute a nuisance.
11. In the event a State or municipal contract is awarded to the operator requiring night paving, three (3) days' advanced notice to the County, Town, Village of Arlington, and any surrounding neighbors that have requested said notice shall be provided. Said notice shall identify the job and the number of nights required for after-hours operation. Notice shall be in writing unless the individuals, County, Town, or Village consent to an email notification. Night hauling shall not exceed 120 days per calendar year.
12. The owner shall record with the Register of Deeds a Notice of Conditional Use Permit and Reclamation Plan serving to notify future owners, heirs, assignees and site operators of the existence of the CUP and Plan, that both contain restrictions and specifications as to the use and reclamation of the mine site, and that provisions of both are binding on future owners, heirs, assignees and site operators. Said document shall be approved by the Planning and Zoning Department prior to recording.
13. The operation of a temporary concrete plant on the premises shall be allowed for a total of 120 days per calendar year, with the allowed days occurring between May 15 and November 1 of the calendar year. Prior approval is also needed by Columbia County. When not operational, portable batch plants must be removed from the property.

14. The pit shall be opened and progress in phases with no more than twenty (20) acres of land to be stripped and open at any time.
15. No blasting shall be conducted at the pit.
16. No process water shall be released from the pit.
17. Earthen berms of not less than 10 feet around portions of the perimeter of the pit shall be created and maintained for the purpose of mitigating noise and visual concerns for the neighbors.
18. Any construction or location of materials in compliance with the approved plan shall not require any review of the Conditional Use Permit, however, all zoning and building permits shall be obtained in accordance with applicable regulations.
19. All pit operating equipment and vehicles shall be fueled, stored, serviced and repaired on lands five (5) feet above the highest water table elevation. Additionally, the operator shall require all trucks and excavation equipment to have exhaust systems that meet or exceed current industry standards to ensure that noise levels are kept at or below allowable limits. The level of noise or sound generated by the facility or equipment shall not exceed 65 decibels at the property line of the leased property.
20. The operator shall minimize the dispersion of dust from the excavation, crushing, and hauling operations within the pit and on the joint driveway. The operator shall use water spray bars in the crushing process to reduce dust except the use of such bars is not required when the temperature is below freezing. A water truck shall apply water in and around the pit as needed and/or as requested by the Town to reduce dust, weather permitting.
21. There shall be no changes to the proposed mine operation as described in the Reclamation Plan regarding the depth, extent, proposed final grades, or phasing sequence without the prior written approval of the Planning and Zoning Department, which shall have the right to determine whether such changes require further review by the Planning and Zoning Committee or revisions to the Reclamation Plan.
22. All lighting for the facility shall be oriented so that the lighting elements (or transparent shield) are not visible from an adjacent property or right-of-way. The use of shielded luminaries and careful placement of fixtures is encouraged to facilitate compliance with this requirement.
23. No ground signs, except for directional or informational, shall be allowed unless they are reviewed by the Town and approved by the Planning and Zoning Department.
24. The provisions of Section 12.125.25 of the Columbia County Zoning Code are hereby incorporated as part of this Conditional use Permit.
25. The owner and operator shall comply with and obtain all necessary permits required by applicable federal, state, and local regulations.
26. The Planning and Zoning Department shall have the right of inspection, upon reasonable notice to the owner/operator, for the purpose of determining compliance with this permit and the approved Reclamation Plan.
27. If the Planning and Zoning Committee finds that the review criteria of Section 12.150.07(4) of the Columbia County Zoning Code, or the conditions stipulated in the Committee Decision are not being complied with, the Planning and Zoning Committee, after a public hearing, may revoke the Conditional Use Permit.
28. The agreement dated "June 2nd, 2015" between the Town of Arlington and Tri-County Paving, Inc. is hereby incorporated by reference as part of this Conditional Use Permit, however, the County is not responsible for enforcing said agreement, unless an individual point of agreement is specifically included as a condition of approval. In the event that the Town submits a finding of noncompliance with any item of the above referenced agreement for which the County has not assumed direct enforcement authority, upon written request by the Town the County reserves the right to review the Conditional Use Permit.

**Section 12.150.07(4): Criteria for review of all Conditional Uses**

**Re: Public Hearing Item 6: Kelley-Tri County Paving CUP**

*\*Staff comments are italicized after each review item.*

Review Criteria. In reviewing the conditional use permit the Planning and Zoning Committee shall use the following as guides for making a decision.

- (1) The establishment, maintenance, or operation of the proposed use will not be detrimental to or endanger the public health, safety, or general welfare of the occupants of surrounding lands. *The proposal is to renew approval for the operation of an existing non-metallic mine and hot mix asphalt plant. Continuing to operate within the confines of state and local regulations, including the conditions of the Conditional Use Permit and reclamation plan, will help ensure that the use does not endanger the public health, safety, or general welfare of the occupants of surrounding lands.*
- (2) The use will be designed, constructed, operated, and maintained so as to be compatible, and be appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area such that the use will substantially impair or diminish the use, value, or enjoyment of existing or future permitted uses in the area. *The use is consistent with agricultural uses, and abiding by an approved reclamation plan should adequately mitigate any impacts of the use on the area.*
- (3) The erosion potential of site based on topography, drainage, slope, soil type, and vegetative cover. *By abiding by all state and local requirements, including the approved reclamation plan, should adequately prevent erosion issues.*
- (4) The prevention and control of water pollution including sedimentation, and the potential impacts on floodplain and wetlands. *The site should not present problems for water pollution. There are no floodplains or wetlands in the area.*
- (5) The site has adequate utilities, including if necessary acceptable disposal systems. *There are no utilities or disposal systems required at the site.*
- (6) Access to streets and highways is suitable, and ingress and egress is designed to minimize traffic congestion and the potential effect on traffic flow. *Ingress and egress to the site is from an existing access point on County Highway I. Mining operations are existing, and continuation of said activity should not affect traffic flow beyond the current demand.*
- (7) The Conditional Use shall conform with the standards of the applicable district(s) in which it is located. *The proposed use is consistent with agricultural uses per Section 12.125.25 of the Columbia County Zoning Ordinance and will be conducted in accordance with an approved reclamation plan.*









