

Attorney Christa O. Westerberg
cwesterberg@pinesbach.com

February 22, 2018

BY E-MAIL

Dane County Zoning & Land Regulation Committee
c/o Roger Lane
City-County Building, Room 116
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703
lane.roger@countyofdane.com

Re: February 27, 2018, ZLR meeting; Second supplemental information for a)
Proposed CUP # 2405, Rocky Rights LLC/Wade Cattell, Eilenfeldt, application
for non-metallic mining on 35 acres zoned A1-EX; b) Request for Revocation of
CUP # 2175, Concrete Batch Plant

Dear Chair Kolar and Members of the Zoning and Land Regulation Committee:

This letter is to provide an initial response to information you have recently received from Axley Brynelson on the two items referenced above, as well as the February 21, 2018, staff report on the revocation request for CUP #2175. I ask that this correspondence be added to the record for both files due to their overlapping subject matter. I also request the opportunity to speak briefly to the committee on each item at the February 27, 2018 meeting, since we are still evaluating some of the applicant's and county's information, and because we understand the updated staff report for the CUP application has not been released.

1) Proposed CUP #2405, non-metallic mine expansion to 35 acres

The applicant provides nine points in response to concerns the Tukiendorfs and other project opponents have made. We disagree with the factual bases of these responses and that the applicant's proposed mitigation measures will avoid problems with the future or existing site. For example, even if the applicant could reduce noise associated with back-up beepers, this will not address noise from truck operations, banging truck gates, plant operations, and truck loading and unloading. The Tukiendorf

family also disputes that the applicant's unsigned dust control plan is effective, since they still receive significant dust on their property from the driveway and road. As the applicant's water application reflects, only a fraction of water has been applied to these roadways. *See* Axley Brynelson letter, 2/20/18, Section 4.

Most importantly, however, the applicant has not shown its proposed operations will not impact the Tukiendorfs' property value or comply with the County's CUP conditions 1 and 2. The applicant submitted an appraisal of the Tukiendorfs' home prepared by Mr. Scott MacWilliams, claiming the home is worth \$277,700, but this number is not reliable. Mr. MacWilliams's report suggests he inspected the Tukiendorfs' property ("We have made a personal inspection of the property that is the subject of this report"), but did not have access to the Tukiendorf property and thus could not properly appraise it. Furthermore, USPAP standards required Mr. MacWilliams to clearly state whether he inspected the property and the extent of that inspection. USPAP Advisory Opinion 2 (AO-2), Inspection of Subject Property.

Assuming Mr. MacWilliams visited the exterior of the property from public rights of way, he did not do so while the concrete batch plant and mine were in operations. As the applicant's trucking log reflects, it does not operate in January or February. *See* Axley Brynelson letter, 2/20/18, Section 3 (2018-2019 ed.). Unlike Mr. Craig Hungerford, who did visit the site during active operations (*see* Pines Bach Corresp., 1/18/18, Attachment 1 at 65), Mr. MacWilliams could not adequately assess the Tukiendorfs' home value or the operations' impact on that value.

The applicant faults Mr. Hungerford's well-documented report because he is not a certified appraiser. Mr. Hungerford's significant qualifications are explained on his resume, including a Masters of Science in Real Estate Appraisal and Investment Analysis in 1984 from the University of Wisconsin-Madison, and thirty years of assessment, appraisal, and landscape architect experience. (*See* Pines Bach Corresp., 1/18/18, Attachment 1 at 59-65.) He is a guest lecturer at the University of Wisconsin-Madison on property valuation, and has been qualified as an expert in dozens of Wisconsin court cases regarding property valuation and property value impact. He is also accredited as a Counselor of Real Estate (C.R.E.), a credential seldom achieved in his field. (*See* Attachment 1, court experience and C.R.E. documentation.)

Mr. Hungerford's qualifications are ideal for the report that was necessary: an assessment of the Cattell CUP and pit's impact on the Tukiendorfs' property value. As he concluded, the Tukiendorfs have lost significant home value as a result of the Cattell operation, a conclusion echoed by the Town's own assessor.

The applicant has not submitted substantial evidence that it can satisfy the County's CUP conditions 1 and 2, while the Tukiendorfs have shown it will not satisfy these conditions. CUP #2405 should be denied.

2) Request for revocation of CUP #2175, concrete batch plant

The zoning staff submitted a report regarding the Tukiendorfs' request for revocation of CUP #2175 that is both legally and factually defective.

The staff report states under the new 2017 WI Act 67 that CUPs cannot be revoked unless they are violating their permit conditions. Astoundingly, it also suggests that permits cannot be revoked if they are not complying with the six conditions that apply to CUPs in Dane Co. Ord. § 10.255(2)(h).

The Tukiendorfs strongly contest this extreme position, which even the applicant did not adopt in its response to the Tukiendorfs' revocation request. *See* Axley Brynelson Memo re CUP 2175, 2/20/18, at 2 (arguing that the applicant remains in compliance with the "original six (6) conditions for the CUP"). As the applicant correctly recognizes, compliance with the six standards in Dane Co. Ord. § 10.255(2)(h) is a condition of all CUPs, which cannot be granted absent that compliance. It is absurd and wrong to say a CUP applicant who comes out of compliance with those conditions is not subject to permit revocation. *See also* Wis. Stat. § 59.69(5e).¹

Based on its flawed legal premise, the county staff report does not discuss the six standards in Dane Co. Ord. § 10.255(2)(h). The Tukiendorfs' original revocation request exhaustively explains why the concrete batch plant does not meet these conditions, particularly condition 2: "That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use." The Town property assessments and Hungerford report show that the applicant is not in compliance with this condition.

The Tukiendorfs disagree that the applicant is in compliance with the 12 additional conditions in CUP #2175, for the reasons demonstrated in their initial request for revocation, and for reasons that can be further explained in hearing. The staff report and Axley Brynelson response mostly ignore the Tukiendorfs' prior documentation. The Tukiendorfs also dispute that compliance with the interim

¹ "Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the county may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the county zoning board." Wis. Stat. § 59.69(5e)(d) (emphasis added).

deadlines for reclamation in the stormwater and erosion control plan approved by the County in its 2012 permit are inapplicable, and that reclamation is not required anywhere on the property until the final closure deadline in 2037.

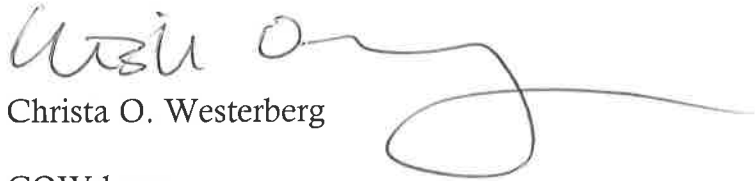
At the least, the substantial information already submitted by both sides show there are issues in dispute, that these issues cannot be resolved simply on paper, and that **a public hearing is necessary for the Committee to fully assess the CUP revocation request**. There, the Committee can hear both from citizens and experts like Mr. Hungerford and make a fully informed decision.

The Committee should hold a public hearing on the CUP revocation request.

Thank you for your consideration.

Sincerely,

PINES BACH LLP

A handwritten signature in black ink, appearing to read 'Christa O. Westerberg', with a long, sweeping horizontal line extending to the right.

Christa O. Westerberg

COW:hmm
Enclosures

cc: Alex & Jamie Tukiendorf (via e-mail)
Atty. Mitch Olson (via email)

REPRESENTATIVE PROJECTS***Selected Appraisal Litigation/Expert Witness/Litigation Support Experience***

Weihofen, Verona, Wisconsin. We provided consulting expertise to estimate the damages associated with the impact of construction issues and building defects discovered after the sale of the property.

Sands, Madison, Wisconsin. We are currently providing valuation expertise and litigation support to estimate the loss from a municipal taking of a \$3.6 million mixed used commercial development for a park.

Independent Cranberry Growers, Northern Wisconsin. We provided consulting expertise to estimate the real property damages associated with actions by third parties who through their market position artificially lowered cranberry prices.

Pan Capital, Verona, Wisconsin. We provided valuation expertise to estimate the loss from a roadway taking of a \$10 million mixed use land development.

Murphy, Dodd, Breitrack, Hortonville, Wisconsin. We provided valuation expertise to estimate the loss from a roadway taking from multiple commercial and residential properties.

Helugus, Wisconsin Dells, Wisconsin. We provided valuation expertise testimony to estimate the loss from an overhead power line taking of a \$3 million, 40 acre mixed used commercial land development.

Wilcox Property, Lake Delton, Wisconsin. We provided consulting expertise deposition, and trial testimony to estimate the loss from a dam structure that collapsed and significantly impacted a 10 acre mixed used residential development.

Kenosha Land, Kenosha, Wisconsin. We provided consulting expertise and trial testimony to estimate the loss from a roadway taking of a \$6 million mixed used commercial development.

Meadowlands Development, Madison, Wisconsin. We provided valuation expertise and trial testimony regarding the value and damages associated with a 25 acre commercial property development.

Hellenbrand Family LLC, Waunakee, Wisconsin. We provided valuation expertise to estimate the loss from a roadway taking of a 20,000 square foot commercial property center.

Jacobson Condominiums, Wisconsin Dells, Wisconsin. We provided consulting expertise to estimate the damages associated with the closing and sale of the properties shared amenities.

Save More Food Markets Inc., Minocqua, Wisconsin. We provided valuation expertise to estimate the loss from a roadway taking of a 75,000 square foot shopping center.

Lake Edge Shopping Center, Monona, Wisconsin. We provided valuation expertise to estimate the loss from a roadway taking of a 40,000 square foot shopping center.

Woodmans Kenosha, Kenosha, Wisconsin. We provided valuation expertise to estimate the loss from a roadway taking of a \$25 million mixed used commercial development.

Osborn, Fitchburg, Wisconsin. We provided valuation expertise, deposition, and trial testimony to estimate the loss from a roadway taking of a \$5 million, 145 acre mixed used commercial development.

Trappers Turn Golf Course, Wisconsin Dells, Wisconsin. We provided valuation expertise and testimony to contest and appeal the property assessment for 3 years.

Naber Inc., Fort Atkinson, Wisconsin. We provided valuation expertise to estimate the loss from a roadway taking of a beef processing agricultural development.

WRC/Woodmans Howard, Howard, Wisconsin. We provided valuation expertise to estimate the loss from a roadway taking of a \$20 million mixed used commercial development.

F.C. Land , Dane County, Wisconsin. We provided valuation expertise to estimate the loss from a roadway taking of a \$100 million mixed used commercial development.

Winterberry, Sauk County, Wisconsin. We provided valuation expertise and deposition trial testimony to estimate the loss from a roadway taking that forced a national tenant to break a long term lease.

Don's Mobile Manor, Dane County, Wisconsin. Provided valuation expertise, deposition, and trial testimony regarding the taking of a business resulting from a highway improvement.

Pathway Community Church, Dane County, Wisconsin. Provided valuation expertise, deposition, and trial testimony regarding the taking of commercial land resulting from a highway improvement.

Trumpeter Valley, Pierce County, Wisconsin. We provided consulting expertise to estimate the loss of net revenues to a residential development delayed by regulatory issues.

Carnes, Verona, Wisconsin. Provided court testimony regarding the impact on value of a previous waste disposal site on the adjacent industrial property.

Adams Sign's, Madison, Wisconsin. We provided valuation expertise contesting the real estate tax assessments for outdoor advertising signs. We anticipate a contested engagement requiring multiple hearings.

Union Pacific, Beloit, Wisconsin. Condemnation appraisal of an abandon right-of-way to be acquired by the City of Beloit for a trail.

Bellevue Apartments, Madison, Wisconsin. Retrospective appraisal of the impacts on value caused by a loss of view. Provided deposition on value impacts.

Eberle, Verona, Wisconsin. Appraisal of the temporary taking of two lots consisting of 42.31 acres of vacant land and consulting with council to avoid litigation.

Patio of Marshfield, Inc., Johnson Creek, Wisconsin. Estimated the fee simple interest in the taking of a high visibility commercial land at the intersection of State Highway 26 and Interstate 94. Provided deposition on the appropriate market values and avoided lengthy litigation.

Sieger, Middleton, Wisconsin. Appraisal of the fee simple interest in a single family residential land parcel along Pheasant Branch Creek.. Litigation was anticipated however the owner settled for personal reasons.

Goessling, Whitewater, Wisconsin. Appraisal of the taking of a dairy farm including two single family homes and all of the outbuildings for a new Highway 12 bypass. Litigation is anticipated.

Loeb Estate, Watertown, Wisconsin. Appraisal of a 50 property portfolio including, retail, commercial, industrial and residential properties. Provided testimony to IRS to substantiate values.

Lake Shore Burial Vault, Brookfield, Wisconsin. Appraisal of the taking of land for a public water detention area. Provided deposition in a contested hearing regarding the property.

Morrison, Mineral Point, Wisconsin. Master Appraiser of a contested divorce where the court appointed REDI to be the overall review appraiser and render opinions of value to a multi-property portfolio including residential, commercial, industrial and vacant land. Also, provided testimony to resolve final value estimates.

Oakfield Stone, Oakfield, Wisconsin. Appraisal of stone quarry land taken for highway expansion. Significant litigation support was provided to this multi-year litigation.

Woods Estate, Minocqua, Wisconsin. Appraisal of the fee simple lake front property that was significantly

damaged by inappropriate forestry practices. Provided deposition regarding the loss in value.

Pine Ridge Apartments, Madison, Wisconsin. Appraisal of apartment building to resolve conflict between the owner and the general contractor. Provided deposition of valuation issues.

Boley vs. Pope, Eau Claire, Wisconsin. Expert witness testimony regarding the impact on adjacent residential properties of ground water contamination.

Whowell, Lake Geneva, Wisconsin. Appraisal of 4 lakeshore commercial properties including a marina and restaurant. Also provided trial testimony.

P:\offifform\brochure\project lists

About

The Counselors of Real Estate (CRE) is an international organization of high profile property professionals which include principals of prominent real estate, financial, legal, and accounting firms as well as recognized leaders of government and academia. Membership is extended by Invitation and candidates may independently apply if they confirm a minimum of 10 years of real estate experience and 3 years of property advisory services. A stringent process of selection ensures that individuals awarded the “CRE” credential have attained the highest levels of expertise and achievement in their real estate specialty, particularly in the provision of sophisticated advice and high level problem solving.

The organization is characterized by its selective, powerful, highly functioning network of leading property professionals worldwide. Members who hold the CRE credential are senior real estate decision makers; they are a diverse, seasoned group encompassing a variety of backgrounds – developers, investors, appraisers, attorneys, financial experts, portfolio and pension fund managers, architects, etc.

In addition to a strong American base, The Counselors has expanded its global reach, with a vibrant, international presence reflecting 20 countries. With so many of the world’s most pressing issues rooted in real property, The Counselors takes seriously its involvement in matters relating to transportation, affordable housing, education, the environment, and more recently, economies in turmoil.

Our Consulting Corps and CRE Foundation provide meaningful vehicles through which the expertise of individual Counselors serves the common good. The organization is known for thought leadership, extraordinary professional reach, an uncompromising commitment to high ethical standards, and objective identification of the issues and trends most likely to impact Real Estate now and in the future.



When founded in 1953, The Counselors of Real Estate was originally known as The American Society of Real Estate Counselors (ASREC).

“The Counselors of Real Estate ®” owns numerous trademark registrations, including registrations of the “CRE” credential. These registrations cover both the exclusive right of our members to use the CRE credential to indicate membership in the association as well as the provision of networking, consultation, provision of business and financial information and educational services and publications, all relating to real estate.”

Why choose



a Counselor of Real Estate?

For over 50 years,
the most trusted
advisors in real estate

CRE

THE COUNSELORS OF REAL ESTATE

Commitment

A COUNSELOR PROVIDES INTELLIGENT, UNBIASED REAL ESTATE ADVICE

A Counselor of Real Estate is a unique professional in the commercial real estate industry. Experienced, smart, judicious, and thoughtful, a Counselor is committed to one objective: To provide intelligent and objective real estate advice that achieves the best results for a client or employer.



CRE

THE COUNSELORS OF REAL ESTATE

Knowledge

COUNSELING IS AN ESSENTIAL SERVICE FOR THOSE WHO MAKE THOUGHTFUL, STRATEGIC REAL ESTATE DECISIONS



Real estate counseling is not a specific discipline such as brokerage, management, or appraisal. Rather, real estate counseling is a process—one that requires extensive

knowledge, technical competency, thoughtful analysis, and critical inquiry.

Real estate decision makers call upon the Counselor's in-depth real estate knowledge for a breadth of services, ranging from mergers and acquisitions to expert witness testimony.

A Counselor of Real Estate serves as the link between defining the problem and devising a solution of measurable economic value.

CRE

THE COUNSELORS OF REAL ESTATE



- Economic and fiscal impact studies
- Feasibility studies
- Financing
- Asset management
- Site location, relocation, and lease/purchase evaluation
- Corporate real estate strategy
- Commercial mortgage-backed securities (CMBS)



- Expert witness testimony and litigation support and strategy
- Investment analysis and strategy
- Market research and demand/supply analysis
- Highest and best use studies
- Portfolio due diligence



- Property management and performance evaluation
- Eminent domain
- Land use/master planning
- Non-profit consulting
- Tenant representation
- Mortgage lending



- Pension fund consulting
- Public/private partnerships
- Workouts
- Environmental consulting
- Facilities planning
- Capital formation/syndication
- Tax consulting
- Teaching



- Valuation and appraisal
- Acquisitions/dispositions
- Brokerage
- Development
- Ownership
- Joint ventures



- Educational consulting
- Arbitration and mediation
- International consulting
- Exchanges
- REITs
- Mergers
- Systems consulting
- Registered investment advisory services

CRE

THE COUNSELORS OF REAL ESTATE

Experience

THE BEST ADVISOR LEVERAGES THE LESSONS OF EXPERIENCE TO ACHIEVE RESULTS

As the most respected real estate specialists in their markets, Counselors are the door openers who work with billions of dollars in real estate assets every year. Their real estate acumen has an impact on properties just across town and those on the other side of the world. No matter the size or scope of an assignment, Counselors leverage their experience to assess the past, present, and future and provide sound solutions on the entire spectrum of land and real property.



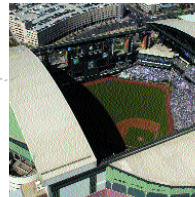
Housing and planned unit development
Agricultural and ranches
Parks and recreation



Multi-family
Urban redevelopment
Business parks
Build-to-suits
Affordable housing
Contaminated and stigmatized



Office
Retail
Industrial, warehouse, storage
Leisure and hospitality
Government
Mixed use
Acreage and raw land



Stadiums and convention facilities
Senior and assisted living
Educational facilities
Golf courses
Marinas and waterfront
Casinos



Historic properties
Research facilities
Transportation facilities
Military
Cultural and religious institutions
Health care facilities
Utilities



CRE

THE COUNSELORS OF REAL ESTATE

Wisdom

ONLY A SELECT FEW UNDERSTAND ALL OF REAL ESTATE'S COMPLEXITIES

Land and real property are vital to every business, every institution, every individual, and every human endeavor. As a result, the issues connected to real estate are complex, the available information is vast, and the choices are many. A Counselor of Real Estate possesses the knowledge, experience, and judgment—in a word, the wisdom—to confront the intricacies and problems that arise in such a broad field. An array of clients, from government to small business, relies on the wisdom of the Counselor to map the way to informed and wise decision making.

Architectural, planning and engineering firms
Appraisers
Investment bankers
Rating agencies
International political agencies



Developers
Privately held corporations
Individuals
Attorneys



Fortune 500 companies
Publicly held corporations
Lenders/mortgage bankers



REITs
Consulting firms
Advisory and investment
management firms
Accountants
Brokerage firms



International corporations and partnerships
Pension endowments
Private equity/opportunity funds

Government agencies
Not-for-profits



CRE

THE COUNSELORS OF REAL ESTATE

Integrity

TRUST IS ALWAYS IMPLICIT IN YOUR RELATIONSHIP WITH A COUNSELOR

Because laws do not govern the validity of opinions and advice, it is imperative that your real estate advisor be committed to integrity and honesty.

One of the Counselor's most valuable assets is a solid reputation. A Counselor of Real Estate adheres to the highest ethical standards and a code of confidentiality while serving as an advocate for a client. A Counselor may have to deliver unfavorable news...and will. But the client knows the Counselor's opinion is objective, candid, insightful, and informed. The client-Counselor relationship is grounded in trust.



CRE

THE COUNSELORS OF REAL ESTATE

Distinction

A COUNSELOR IS UNIQUE IN THE MARKETPLACE

In a commercial real estate world with more than 150,000 practitioners, only 1,100 advisors worldwide have been invited to call themselves Counselors of Real Estate.

As part of a selective membership process, Counselors demonstrate that they provide meaningful real estate counsel and that they are recognized for the highest levels of knowledge and trust in their business

relationships. The CRE membership process also requires evidence of outstanding accomplishment, impeccable judgment, and commitment to integrity in real estate.

Once a member, the Counselor acquires the “CRE” designation as a distinguishing credential. A Counselor—or CRE—is one of the most experienced and trusted advisors in real estate.



CRE

THE COUNSELORS OF REAL ESTATE

CRE

THE COUNSELORS OF REAL ESTATE

For over 50 years, the most trusted advisors in real estate

Commitment

Knowledge

Experience

Wisdom

Integrity

Distinction

Fees for Services:
Compensation for counseling is usually invoiced on an hourly or fixed fee basis. However, other fee arrangements may also be appropriate for particular assignments. Fees and fee structures are agreed upon on an individual basis.