



## REDWOOD COUNTY ENVIRONMENTAL OFFICE

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Drainage Inspector • Agricultural Inspector*

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### REDWOOD COUNTY PLANNING COMMISSION

#### *MINUTES*

**Meeting Date: November 27, 2017**

A meeting of the Redwood County Planning Commission convened on Monday, the 27<sup>th</sup> day of November, 2017, at the Redwood County Government Center.

The following members of the Redwood County Planning Commission were present: John Rohlik, Jr., Mike Scheffler, Mike Kaufenberg, Dave Mattison, and Commissioner Lon Walling. Mark Madsen was not present. Also present were the following individuals: Mike Rasmussen, Gary Bitker, J. V. Christensen, Environmental Director Scott Wold, and Land Use & Zoning Supervisor Nick Brozek.

At 1:00 p.m. the regularly scheduled November 27<sup>th</sup>, 2017 Redwood County Planning Commission meeting was called to order by Chair Rohlik.

At 1:01 p.m. Chair Rohlik called to order a public hearing on application for Conditional Use Permit #16-17 submitted by John Labat o/b/o landowner Gary Bitker. At the direction of Chair Rohlik, Brozek read aloud the rules of the meeting.

Prior to the Planning Commission meeting, the Planning Commission members were provided an informational packet, which included the following information regarding the application:

1. In August of this year, the Environmental Office discovered an unpermitted excavation site on an agricultural property owned by Gary and Cheryl Bitker. The Bitkers were contacted and asked to apply for and obtain either a Temporary Grading and Filling Permit, or a Conditional Use Permit. John Labat, a neighbor and friend of the Bitkers, is doing the excavating and he has also been handling the permitting process on their behalf. Mr. Labat decided to apply for a Conditional Use Permit in order to have the excavation site open for longer than one year.
2. The site is located in the West Half of the Southwest Quarter (W1/2 SW1/4) of Section 18, Westline Township. The property is also the location of the Bitkers' residence. The site is located in the Agriculture District. Mining is a Conditional Use in the Agriculture District.
3. The applicant plans to mine 0.73 acres of the property. The location of the excavation site is a hill ¼ of a mile north of the Bitkers' farm building site. According to Redwood County elevation contour maps, the hill currently rises about 25 feet above the surrounding low ground. The proposed project will lower the peak of the hill an estimated five feet. Historically, the 0.73 acre site has been grass-covered and not farmed.
4. The topsoil will be scraped off and reserved for reclamation. Gravel and fill material will be removed as needed for local projects. The secondary goal of the excavation is to lower the existing hill for ease of

farming. The hill will be sloped and graded so that it tapers down from the southwest to the northeast. The site will be reclaimed to farm land or re-seeded. The applicant estimates that 5000 to 7500 yards will be removed over the course of 3 to 5 years. However, the requested permit term is 10 years.

5. A 30 inch county tile main (part of the Judicial Ditch 15 system) enters the northwest corner of the Bitker property and runs to the southeast. At the closest point, the 30 inch main is about 150 feet east of the excavation site. 500 feet southeast of the excavation site, the 30 inch main becomes an open ditch (a branch of JD 15) and continues to the southeast. The 30 inch main drains a watershed stretching two miles to the northwest and one mile to the west.
6. Another county tile main – 24 inch – enters the Bitker property from the west and runs east to the open ditch, passing 400 feet to the south of the excavation site. This 24 inch main formerly drained a watershed stretching well over two miles to the southeast. However, it was intercepted by a new branch of the open ditch in the 1990s, which shortened the watershed to one mile.
7. According to the soil maps for the site, the soil type present is Amiret-Swanlake loams, 2 to 6 percent slopes.
8. The three closest residences to the site, aside from the Bitkers, are as follows: Henry & Sharla Smith – 1150’ east of the site; Lawrence Schmidt – 3400’ southwest of the site; and Derek & Kathleen Kesteloot – 4200’ southeast. A farm building site owned by Bernice Christiansen – 2400’ southwest, appears uninhabited.
9. Pursuant to Sec. 16, Subd. 5, Subp. H of Redwood County Zoning Ordinance, the applicant is required to post a bond, cash deposit, irrevocable letter of credit, or other security to Redwood County in the amount of \$2,000.00 per acre, a minimum of \$10,000.00, or 125% of the estimated/bid value to reclaim the property, whichever is greater. The Redwood County Board of Commissioners may require a higher surety amount, if in the reasonable discretion of the County, the unique characteristics of the proposed project require more substantial restoration or reclamation. Further, pursuant to Sec. 16, Subd. 5, Subp. I of Redwood County Zoning Ordinance, “[s]ureties shall be for a minimum of one year beyond the ending date of Conditional Use Permit.” This site requires a \$10,000.00 surety. Mr. Labat is in the process of obtaining the required security.
10. Pursuant to Sec. 16, Subd. 5, Subp. G of Redwood County Zoning Ordinance, the applicant is required to provide proof of bodily injury, property damage, and public liability insurance in the amount of at least \$1,000,000.00 per occurrence. Mr. Labat has provided a Certificate of Liability Insurance that meets the standard.
11. A copy of the Conditional Use Permit application, maps, plans, and proposed permit conditions are enclosed.

Gary Bitker was present to explain the project. Bitker made the following statements to the Planning Commission:

- Bitker is the land owner of the site to be excavated and mines.
- John Labat is the contractor operating the site.
- The extraction site to be permitted is a hill that is currently farmed around because it is too steep to farm.
- Bitker and others in the area needed fill, so Labat started to remove some from the site.
- The goal of the project is to provide fill for local projects and in the end to lower and re-slope the hill to make it farmable.

The Planning Commissioners had the following questions and comments:

- How did this matter come before the Planning Commission?
- Has Bitker reviewed the proposed permit conditions?
- At the end of the project, with the site be completely flat (will the hill be totally removed)?
- Have a certificate of liability insurance and reclamation surety been provided?
- Will the site be accessed along the headland?

Bitker provided the following responses to the Commissioners:

- Bitker stated that he has read the proposed permit conditions and they look ok.
- The hill will not be totally removed. The knoll on northeast face the hill will be removed, which will reduce the total hill height by a small amount and will create a more gradual slope on the steep northeast hillside.
- Excavation of material from the site will be very sporadic – not very frequent use.
- The site will be accessed along the edge of the field.
- No crushing will occur on the site.

Brozek provided additional information in response to the Commissioners' questions, as follows:

- The site was brought to the attention of the Environmental Office over the summer. Mr. Labat came in to permit the site after staff contacted Mr. Bitker. Mr. Labat chose to obtain a Conditional Use Permit, rather than a Temporary Grading and Filling Permit, because he did not want to be restricted to a one-year timeframe for the permit.
- Mr. Labat has provided a certificate of insurance and Irrevocable Letter of Credit in the amount of \$10,000 to cover the required reclamation surety.

Rohlik inquired if anyone was present to support the project. Jamie Christensen was present and made the following statements:

- Christensen owns the land to the west of Bitker's property, in Lyon County.
- Christensen is not familiar with engineering rules – is concerned about the impact the excavation on Bitker's property will have on Christensen's property.
- Will the hill on Bitker's property be reduced from 26' high down to 0'?

Bitker responded that the top of the hill will be reduced by only a few feet, if at all, per the "Side View" diagram attached to the permit application. The material will all be excavated from the northeast face of the hill, which includes a steep-sided "knoll" that makes farming difficult.

Rohlik inquired if anyone was present to oppose the project. No one came forward.

Rohlik closed the public hearing at 1:12 pm.

Rohlik directed Brozek to lead the Planning Commission through filling out the Commissioner's individual finding of facts worksheets (attached).

Scheffler made a motion to recommend approval of Conditional Use Permit application #16-17, subject to the conditions proposed by staff. Kaufenberg seconded the motion and it passed unanimously.

At 1:20 p.m. Chair Rohlik called to order a public hearing on application for Conditional Use Permit #17-17 submitted by Mike Rasmussen.

Prior to the Planning Commission meeting, the Planning Commission members were provided an informational packet, which included the following information regarding the application:

1. An application for Extraction Conditional Use Permit has been filed by Mike Rasmussen to replace his existing permit, which expires on December 31, 2017. Mr. Rasmussen's current permit is for the reclamation of the kaolin clay pit mine on his property.
2. Rasmussen has been working to reclaim the property since the early 2000s. He permitted the project in 2005 for two years. He re-permitted the project in 2007 and again on 2012 for five years both times. He is now seeking a 10 year permit. Since Rasmussen has been continuously working on the project, by permit, for 12 years, it may not be necessary to keep requiring him come in for a new permit every five years.
3. The clay pit is over 70 feet deep and the sides are prone to sloughing. Before Rasmussen started to reclaim the site, the pit walls were eroding back onto the neighboring property to the south. Rasmussen has constructed several concrete terraces along the west and south sides of the pit in order to prevent further erosion. However, due to the massive size of the pit, more concrete is needed to finish the project. Rasmussen has also used concrete to shore up the base of the hill on which he built his house, on the east side of the pit, which was outside of the original reclamation plan.
4. Rasmussen will need to provide a new certificate of liability insurance and a new reclamation security (irrevocable letter of credit). The security must be effective for the term of the permit plus one year. For a ten year permit expiring December 31, 2027, the security will need to be effective until December 31, 2028. Rasmussen's current letter of credit is in the amount of \$30,000.00. Considering the size of the project and the fact that the project may take up to ten years to complete, the security should not be reduced under the new permit.
5. A copy of the Conditional Use Permit application, maps, plans, and proposed permit conditions are enclosed.
6. For additional information on Rasmussen's project, selections of the memorandum to the Planning Commission prepared in connection with his current permit are provided below.
  - a. An Application for Extraction Conditional Use Permit has been filed by Mike Rasmussen for the grading, filling, and reclamation of the kaolin clay pit on the following described real property, situated in the County of Redwood, State of Minnesota, to wit: LOT A & LOT W IN SW1/4 SW1/4 EX 3.21 A TR TO MN DOT (R/W), 22.13A, Section 35, Township 113N, Range 35W, Paxton Township. The reclamation area is located in an "A" Agricultural District. The northern part of the parcel is located in the Shoreland District. However, the reclamation area is located outside of the Shoreland District.
  - b. The reclamation plan is as follows. The pit sides will be terraced and sloped using clean concrete fill and clay. The terraces will then be covered in black dirt and seeded with an approved grass seed (see reclamation plan diagrams). Mr. Rasmussen is receiving his concrete from various sources. He provides free concrete disposal and allows people to haul concrete and dump it on the site for free. He also disposes of concrete himself from his own excavation business. He then picks out any trash, rebar, asphalt and other materials before using the material as fill. It is not clear where Mr. Rasmussen will obtain the necessary topsoil. The original overburden from the site was piled on nearby land now owned by Brent Prouty, who has a permit to extract and sell the material.
  - c. Mr. Rasmussen's dwelling is located to the east of the reclamation area. Apart from said dwelling and accessory structures, no buildings will be located on the site [NOTE: since the issuance of his current permit, Mr. Rasmussen moved in and placed an old granary building on

the east side of the pond in the pit bottom, to serve as a recreational “cabin” building]. However, equipment will be stored on site, primarily in the bottom of the pit. Mr. Rasmussen will be completing the reclamation himself using his own equipment. The life expectancy of the extraction operation is five (5) years, concluding on December 31st, 2017. Mr. Rasmussen believes he can complete the reclamation within said time. However, Mr. Rasmussen has indicated that he intends to ask for a ten (10) year permit so that he doesn’t have to come back in for re-permit in the event that the project runs longer than expected. The hours of operation are proposed to be from dawn till dark, all days of the week. All work will be restricted to those times.

- d. No additional excavation of clay or other material from the site will occur.
- e. Mr. Rasmussen’s site can be accessed from US Hwy 71 or 340th St.
- f. Pursuant to Sec. 16, Subd. 5, Subp. G of Redwood County Zoning Ordinance, the applicant is required to provide proof of bodily injury, property damage, and public liability insurance in the amount of at least \$1,000,000.00 per occurrence. However, Mr. Rasmussen is not operating a commercial extraction pit and thus the potential for liability is probably much less than that for a typical extraction CUP applicant. That said, he is allowing individuals and companies to dump concrete on his property. Therefore, requiring some amount of insurance seems appropriate. I would note that in connection with his original permit, Mr. Rasmussen was required to provide proof of liability insurance in the amount of \$300,000.00.
- g. Pursuant to Sec. 16, Subd. 5, Subp. H of Redwood County Zoning Ordinance, the applicant is required to post a bond, cash deposit, irrevocable letter of credit, or other security to Redwood County in the amount of \$2,000.00 per acre, a minimum of \$10,000.00, or 125% of the estimated/bid value to reclaim the property, whichever is greater. The Redwood County Board of Commissioners may require a higher surety amount, if in the reasonable discretion of the County, the unique characteristics of the proposed project require more substantial restoration or reclamation. Further, pursuant to Sec. 16, Subd. 5, Subp. I of Redwood County Zoning Ordinance, “[s]ureties shall be for a minimum of one year beyond the ending date of Conditional Use Permit.” Mr. Rasmussen already has a current Bond on file in connection with the expiring permit and therefore he was not required to submit a new one with his application. However, he will have to submit a new bond prior to the old one expiring.
- h. The nearest county ditch or tile is located nearly one mile from the proposed reclamation site.
- i. The soils of the proposed conditional use site are classified as follows: Linder loam; Dickman sandy loam, 2 to 6 percent slopes; and Terril-Swanlake loams, 25 to 70 percent slopes.

A copy of the Conditional Use Permit application, maps, plans, and proposed permit conditions was enclosed with the informational packet.

Mike Rasmussen was present to explain the project. Rasmussen made the following statements to the Planning Commission:

- Rasmussen is seeking to continue working on his project, in the same manner as under previous permits, for an additional ten years.
- The rate at which Rasmussen is able to get reclamation work done on his site depends on the construction projects that are going on in the area, because he receives concrete demolition material from said projects and uses it to construct terraces and shore up the sides of the old clay pit on his property.
- The top terrace, or tier, is complete, except for a spot where it recently sloughed down.

- The slough included part of Rasmussen's driveway, making it impassible.
- The second tier is nearly half complete.

The Planning Commissioners had the following questions and comments:

- When does Rasmussen's current permit expire?
- Scheffler noted that big projects such as Rasmussen's can take years.
- Scheffler further noted that his company, in the past, hauled concrete to Rasmussen's site (in connection with a project for Meadowland Coop), as have all local contractors.
- Scheffler noted that he and his company have no financial interest in or benefit in Rasmussen's property.

In response to the Planning Commissioners' questions and comments, Brozek provided the following information:

- Rasmussen's existing permit ends on December 31, 2017.
- If Scheffler has no direct financial interest in Rasmussen's property or project, then he does not have a conflict of interest in the matter.

Rohlik inquired if anyone was present to support the project. No one came forward.

Rohlik inquired if anyone was present to oppose the project. Jeff Schmidt was present and made the following statements:

- Jeff Schmidt works for Schmidt construction
- Schmidt's parents, William and Norma Schmidt, own the land to the south of Rasmussen's project.
- Schmidt is concerned that Rasmussen's project has already been permitted and ongoing for 12 years, and is far from being complete.
- Schmidt has seen (and presented pictures to the Planning Commission) of stockpiled asphalt, a fuel oil barrel, a recent slough or land slide on the slope next to the Schmidt property, and material piled up along or in the MNDOT right-of-way on US Hwy 71.
- Rasmussen should start with the bottom terrace, instead of the top, to prevent further sloughing and sliding of the pit slopes.
- Schmidt has an issue with allowing ten more years for project completion.
- Schmidt is very concerned about Rasmussen's trespass on the Schmidt property after the recent sloughing. Rasmussen used a dozer to flatten the ground south of the slough, but that ground is on Schmidt's property. The edge of the slough is now on Schmidt's property and within 4 or 5 feet of the edge of the tilled field, which makes farming dangerous for Schmidt's renter.
- A pollution rider should be included on Rasmussen's required liability insurance policy.
- A \$30,000 reclamation bond requirement for a project the size of Rasmussen's is very low. Schmidt believes the project will cost hundreds of thousands of dollars to complete.
- The road or driveway on top of the top tier should be abandoned, it has caused nothing but trouble for the Schmidt property, including both the current trespass and earlier encroachments.
- Schmidt wants an assurance that Rasmussen will cause no further erosion, or sliding of ground on Schmidt's property.

Rasmussen made the following statements in response to Schmidt's comments:

- The driveway on the top terrace is necessary to access the Rasmussen property and complete the work, because Rasmussen dumps the concrete material down from the top. The bottom is too wet to move material on and drive equipment.
- The old driveway and went diagonally across Rasmussen's property from the pit bottom in the northwest to the house in the southeast, is gone.
- Rasmussen agrees he needs a new driveway and that he is wrongfully trespassing on Schmidt's property.
- The fuel oil barrel on the property is empty and was not used to hold fuel.

- A contractor from Sleepy Eye that dropped off material at Rasmussen's property wrongfully placed it at the bottom entrance to the property, along US Hwy 71. Rasmussen had to push it out of the way of the entrance. This is the material visible along the Hwy 71 right of way. Rasmussen has contacted the contractor about cleaning the material up in the next couple weeks. If the contractor does not come back and take care of it, Rasmussen will move the material on his own, to get it out of the trees and away from the state right of way.
- Rasmussen's grandchild lives with him on the property and sometimes needs medical attention. Rasmussen thought the trespass was necessary to make sure he could get his grandson to the hospital, if needed.

Aerial mapping photos were viewed by the Planning Commission and audience members on the projector screen. Rasmussen and Schmidt explained where the project was progressing, and where the trespass is occurring.

Chair Rohlik stated that he did not approve of Rasmussen's trespass onto the Schmidt property.

Scheffler stated that Rasmussen needs to find an alternate driveway route and construct a new driveway, so that he does not end up trespassing again in the future. Rasmussen should also clean up the junk visible in Schmidt's photos and on the aerial imagery provided by Redwood County, some of which appears to be on Schmidt's property.

Rasmussen stated that he may dig trenches perpendicular through the terraces in order to provide channels for the movement of water. The trenches would be filled with rocks and covered with clay or other earthen material, in order to rebuild the terraces. Schmidt indicated (by nodding) that he thinks this would be a good idea.

The Planning Commission discussed requiring Rasmussen to establish a new driveway, and to repair the damage done to Schmidt's property.

The Planning Commission discussed that Rasmussen's new driveway should be fully on his own property and that the terracing and placement of concrete should start at the bottom of the pit sides.

The Planning Commission discussed requiring Rasmussen to come in for permit review every two years.

Rohlik closed the public hearing at 2:45 pm.

Rohlik directed Brozek to lead the Planning Commission through filling out the Commissioner's individual finding of facts worksheets (attached).

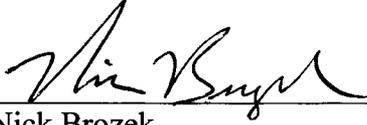
Scheffler made a motion to recommend approval of Conditional Use Permit application #17-17, subject to the conditions proposed by staff, plus the additional condition that the applicant enter into and abide by an agreement with the Schmidts to repair the damages from the applicant's trespass. Kaufenberg seconded the motion and it passed unanimously.

The Commissioners reviewed and discussed the minutes from the August 28<sup>th</sup> Planning Commission meeting. On a motion by Scheffler seconded by Kaufenberg the minutes from the August 28<sup>th</sup> Planning Commission meeting were unanimously approved.

The Commissioners reviewed and discussed the minutes from the September 25<sup>th</sup> Planning Commission meeting. On a motion by Walling seconded by Scheffler the minutes from the September 25<sup>th</sup> Planning Commission meeting were unanimously approved.

The Commissioners reviewed and discussed the minutes from the October 30<sup>th</sup> Planning Commission meeting. On a motion by Mattison seconded by Scheffler the minutes from the October 30<sup>th</sup> Planning Commission meeting were unanimously approved.

On a motion by Mattison, seconded by Kaufenberg, the meeting was adjourned at 3:45 p.m.



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Nick Brozek  
Land Use & Zoning Supervisor  
Redwood County Environmental Office



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John Rohlik, Jr., Chair  
Redwood County Planning Commission

