

Anne Hurlburt

From: lisa.philippi@wellsfargo.com
Sent: Thursday, December 02, 2010 10:55 AM
To: a.hurlburt@ci.scandia.mn.us
Cc: ketuenge@frontiernet.net; lcl333@frontiernet.net; aldenecke@msn.com
Subject: FW: IMPORTANT - CALL TO ACTION - from Take Action- Conserve Our Scandia

Anne,
Here is some information that has been send to all the TA-COS members and friends. Please read carefully. We have also forwarded this to all the City Council members. Chris Ness suggested that you might want to put this in their packets before the 12/7/10 meeting. I am not sure if they all got this e-mail.

TA-COS feels very strongly that the City of Roseville has set a precedence. They were able to vote down the asphalt plant even though the CUP application was applied for prior to the Zoning ordinance being changed. This is very similar to our situation as our Zoning Ordinance no longer allows for mining.

Thanks,
Lisa Philippi

phi, Lisa
uesday, December 01, 2010 1:45 PM
IMPORTANT - CALL TO ACTION - from Take Action- Conserve Our Scandia

Friends,

CALL TO ACTION

Please contact Scandia's Mayor and city council representatives this week and attend the Tuesday, December 7 meeting of the Scandia City Council at 6 p.m., Scandia Community Center.

SUMMARY

Join TA-COS in asking that the City of Scandia apply the rules of the current zoning ordinance and Comprehensive Plan in consideration of the proposed Tiller-Zavoral mine. The City's current zoning ordinance does not allow gravel mining in the location proposed by Tiller.

TA-COS attorney Kieran Dwyer will be present at the December 7 Scandia City Council to provide legal precedent for:

- 1) denying the current proposal to extend the time allowed for preparation of the Environmental Impact Statement (EIS) on the proposed mine,
- 2) halting the EIS process,
- 3) denying Tiller's application for a conditional use permit based on the City of Scandia's current Zoning Ordinance, passed into law on November 3, 2010.

Citizens who support this position are encouraged to contact the Mayor and city councilpersons to request their support of this action.

IMPORTANT NEWS

TA-COS attorneys at the law firm Dorsey & Whitney LLP have identified Minnesota law that supports denying the Conditional Use Permit for the proposed Tiller-Zavoral mine based on its non-compliance with the City's current Zoning Ordinance (passed November 3, 2010) and its current Comprehensive Plan. Contrary to the view held by Tiller and the City, Minnesota law, as established by the Minnesota Supreme Court, demonstrates that

the Tiller Corporation does not have a right to have its application considered under the rules of the now out-dated Zoning Ordinance that was in place at the time of its application over two years ago. A gravel mine in the location proposed by Tiller is against the law, based on the City of Scandia's current Zoning Ordinance.

TA-COS attorney Kieran Dwyer will be present at the December 7 meeting to participate in discussions on this issue as it relates to the City's current consideration of a proposal to extend the time period for preparation of the Environmental Impact Statement. Mr. Dwyer's participation at the December 7 City Council meeting will be at the discretion of the Mayor, Dennis Seefeldt. (For background on the proposal to extend the EIS, see Recent History, at conclusion of this Action Alert).

Consider this recent decision by the City of Roseville!

On Monday, November 29, the City of Roseville voted 4-0 to deny a Conditional Use Permit application by Bituminous Roadways for an asphalt storage plant. While the proposer's application was in process, the City amended its ordinances to prohibit asphalt plants as a land use. Subsequent to this revised ordinance, the Minnesota Pollution Control Agency suspended review of comments to the draft Environmental Assessment Worksheet (EAW) that had been prepared for the project because, according to Minnesota Pollution Control Agency spokesperson Craig Affeldt, "the MPCA does not conduct environmental review on projects that are prohibited by local law." The City then voted unanimously to deny the CUP application. See the Star Tribune article that came out prior to the CUP vote at: <http://www.startribune.com/local/east/110889534.html>

Recent history: City of Scandia considers extending EIS for Tiller-Zavoral Mine

According to Scandia City Administrator, as stated in the City Council Agenda Report prepared for the November 16 City Council meeting, "Since March (2010), some progress has been made on the Environmental Impact Study, but significant delays have occurred due to the proposer's (Tiller Corporation) failure to provide information critical to the EIS, including revised reclamation and operations plans." As a result (despite Tiller's delay of the process), the City is now considering a proposal to amend the contract with the firm hired to prepare the Environmental Impact Study (AECOM) to allow for a 6 month extension in the time allotted to complete the EIS.

At the November 16 meeting, the Scandia City Council delayed a vote on this proposal, in order to investigate issues raised at the meeting (and in subsequent written correspondence) by TA-COS attorney Kieran Dwyer. Speaking on behalf of TA-COS, Dwyer asked the Council to deny the proposed extension to the EIS based on the 280-day statutory limitation on EIS preparation under the Minnesota Environmental Policy Act. Further, Dwyer cited the proposed mine's non-compliance with Scandia's current Comprehensive Plan as basis for halting the EIS process and outright denial of Tiller's application for a Conditional Use Permit (CUP) to operate the proposed mine. The City Council will take up this issue at the upcoming December 7 meeting.

Anne Hurlburt

From: Dave Hebert [dave@hebertwelchlaw.com]
Sent: Thursday, December 02, 2010 3:17 PM
To: 'Anne Hurlburt'; 'Sherri A. Buss'
Subject: FW: Scandia Tiller Zavoral application

fyi

From: Korstad, Gregory E. [mailto:gkorstad@larkinhoffman.com]
Sent: Thursday, December 02, 2010 3:13 PM
To: 'dave@hebertwelchlaw.com'
Cc: 'Mike Caron'
Subject: Scandia Tiller Zavoral application

Dave;

I have done a little research on the issue of the City's decision to review Tiller Corporations application under the regulatory framework in existence at the time of its application. You will recall this issue has been raised at least twice before and we have previously discussed this point. The law hasn't changed:

Simply stated, a city has authority and broad discretion to consider CUP applications pursuant to the land use controls existing at the time of the CUP application. *Eagle Lake of Becker County Lake Assoc. v. Becker County Bd. of Comm'rs*, 738 N.W.2d 788 (Minn. App. 2007). A city's decision to establish a policy to review CUP applications under the land use controls existing at the time the applications were made is a legislative-type determination that is generally committed to the city's discretion. *Id.* at 794. Even if a landowner does not have vested rights to the use contemplated by the pending application, and even if the government would not be equitably estopped from enforcing the amended ordinance against the landowner, a city may still decide within its discretion to apply the repealed ordinance to the application. *Id.*

This approach has been justified by courts on a rationale that application of the ordinance pending at the time of the application allows landowners to proceed under the known law and not have to omnisciently predict changes in the ordinance. *See, e.g., Save Lantern Bay v. Cass County Planning Comm'n*, 683 N.W.2d 862, 864 (Minn. App. 2004)

Please let me know if you have any questions on this as we are a substantial way through the EIS process in reliance on the City's previous determination on this point.

Greg

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Anne Hurlburt

From: Louie DiBerardini [lsd25350@yahoo.com]
Sent: Friday, December 03, 2010 6:25 AM
To: a.hurlburt@ci.scandia.mn.us
Subject: The Mine

ATTN: Mayor Seefeldt and city council representatives,

I would like to see a No vote on the proposal to extend the time period for the preparation of the EIS by Tiller Corp. I think the city of Scandia has done enough for the Tiller Corp. and its time to say enough is enough. In this economy our home values have taken a huge hit and we don't need a mine to drop them even more. Mayor Seefeldt since your time is short as mayor, stand up to Tiller Corp and just say NO.

Thank You
Louie DiBerardini
20680 St. Croix Trl. N
Scandia

December 3, 2010

To the Mayor and City Council
City of Scandia, Minnesota

RECEIVED

DEC -3 2010

CITY OF SCANDIA

The TA-COS group has brought forward the following provision of law:

An environmental impact statement shall be prepared and its adequacy determined within 280 days after notice of its preparation **unless the time is extended by consent of the parties or by the governor for good cause.**

Emphasis added.

The 280 days has already gone by. If the time is not extended, then there is no adequate EIS, and therefore the conditional permit application cannot be approved, and is dead. A new application would have to be considered under the new city zoning ordinance, which would not allow the project.

Extension of the time deadline requires the consent of the parties. The parties are mining company Tiller, the City, and objecting citizens organized as TA-COS. A decision to extend must be based on "good cause". The history of this project makes it a real stretch to find good cause.

First, after Dr. Zavoral bought the property, a number of years went by with the mining operation shut down and its owner under orders by the county to undertake restoration. He never did this.

Second, when Tiller's application came in to start a new mining operation at the site, the city's decision that there would be no future mining there, had cleared all but final technical hurdles on its way to becoming law. Tiller crawled in just under the wire. Tiller, and the landowner, pushed ahead with

the project fully aware that the city had already decided that it was against the public interest.

Third, not long into the EIS process, Tiller decided to mollify opposition by removing rock processing from the application. Tiller now makes the disingenuous claim that simplifying the project has caused its analysis to take longer. Come now!

During this time, the St. Croix River Association tried to help the landowner find a reasonable use for his land that did not require mining it. There are such ways. Dr. Zavoral was unresponsive.

Given that history, the St. Croix River Association urges the City to acknowledge that it has no good cause to extend the time lines set by the state legislature.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Dan Willius".

Dan Willius,
Board Chair
St. Croix River Association



Tiller Corporation
and its operating divisions

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Commercial Asphalt Co.
Barton Enterprises, Inc.

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7200 Hemlock Lane, Suite 200
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December 3, 2010

Mayor Dennis Seefeldt
Council Member Connie Amos
Council Member Pete Crum
Council Member Delores Peterson
Council Member Chris Ness
14727 209th St. N.
Scandia, MN 55073

Re: Zavoral Mining and Reclamation Project

Dear Mayor Seefeldt and Council Members:

This letter responds to various issues raised by the Ta-cos opposition group and others attempting to sidetrack the City's consideration of Tiller Corporation's ("Tiller") application for a conditional use permit ("CUP") in connection with proposed gravel mining and reclamation (the "Project") to be conducted at the Zavoral family's property. Tiller's application was submitted in the autumn of 2008, when the City's comprehensive guide plan and its zoning ordinance permitted the mining use as currently proposed as well as more intense processing activities.

Proactive Environmental Review

Tiller has conducted a strongly proactive approach to the consideration of its application, performing numerous studies and evaluations of an extensive list of items not ordinarily associated with the use of gravel mining facilities of this size. The result is that the proposed project and the Zavoral site are undergoing one of the most strenuous environmental reviews conducted for a simple gravel mining facility in Minnesota.

During the two years since it submitted its CUP request, the Project has undergone extensive evaluation, beginning with an Environmental Assessment Worksheet ("EAW") that was completed in December 2008. In March 2009, the City Council found that an environmental impact statement ("EIS") is required. The City then held a public meeting to "scope" the EIS and, in April 2009, the City approved a final Scoping Decision Document. As part of the information gathering process related to the environmental review Tiller and its consultants have obtained studies and evaluations and supplied information relating to traffic, noise,



surface water, groundwater, plants and animal habitats and endangered or threatened species and prepared and revised mining and operation plans covering a variety of alternative configurations. There have been a variety of issues of concerns and interest raised both formally and informally by interested parties and project opponents, each of which has been carefully considered by Tiller.

Iterative Permitting Approach

Tiller had taken a unique approach to the community concerns as expressed by interested parties. The approach is to listen to the constructive criticism and concerns with a view toward seeking a solution. As a result Tiller has modified the Project extensively in direct response to public input:

- Removed recycling of concrete and asphalt to address visual concerns
- Removed washing of aggregate materials to alleviate perceived groundwater concerns
- Removed all processing and stockpiling of aggregate materials to address noise and visual concerns
- Modified the proposed access to address visual concerns from Hwy. 97

The improvement and modifications to the Project resulted in a revised final Scoping Decision Document which was approved by the City in January 2010.

It is important to understand that these modifications add time to the environmental review process. It is also important to understand that the process is working in that it is identifying issues and concerns and as a result the project is being improved. Tiller's concern and goal is not whether the process is completed in 280 days but that accurate and complete information is included in the EIS

The Revised Plan and Zoning Code

The City completed an EAW for the Project and then ordered the EIS at the same time an amended comprehensive plan (the "New Plan") was being considered. At that time the City made a determination to proceed under the regulations in effect at the time of the application.

Although city's decision whether to review CUP applications under the land use controls existing at the time the applications were made is a legislative-type determination that is generally committed to the city's discretion, that decision has been made and is part of the regulatory framework within which the project is considered. Tiller has made significant investments in presenting the application for the Project based upon the framework established by the City and there is no reason to change that framework now.

Environmental Review Process

The City is being asked to terminate the environmental review process based upon an allegation that the timelines of the Environmental Quality Board Rules has not been met, suggesting that there is a legal requirement to do so. This approach ignores two fundamental



considerations we have made in the environmental review process. First, as contemplated by the EQB Rules, Tiller has agreed to the schedule established by the City's consultants for preparation of the EIS. Secondly, it is Tiller which has the greatest stake in completion of the EIS as without it the Project can not be authorized.

Conclusion

The City made a decision and should abide by it to continue to consider Tiller's request under the law as it existed when Tiller applied. First, Tiller submitted its application to the City several months before the New Plan was adopted and two years before the zoning ordinance was amended. Second, Tiller has expended considerable funds in advancing its application. After adopting the New Plan in March 2009, the City has never suggested that the application should terminate because of the New Plan. Instead, throughout the months since March 2009, the City has moved Tiller's CUP application forward, requesting thorough and expensive environmental review. Tiller has spent considerable amounts in reliance on the City's processing of the application pursuant to the laws effective in 2008. Applying the amended laws to Tiller's application, which was delayed only to complete environmental review as required by law, would not advance any legitimate public interest.

In conclusion, both Tiller's position and the public interest mandate that the City exercise its discretion to review Tiller's application under the regulations existing at the time that the application was submitted.

Respectfully,

Tiller Corporation

A handwritten signature in black ink, appearing to read 'Michael Caron', written over a horizontal line.

Michael Caron
Director of Land Use Affairs