

Kristina Handt

From: Gregory Page [gregory@minneboha.mn]
Sent: Wednesday, December 19, 2012 3:24 PM
To: k.handt@ci.scandia.mn.us
Cc: Kristin Tuenge; Laurie Allmann
Subject: Zavoral CUP Application
Attachments: Proposal to Deny Zavoral CUP (2).docx

Kristina,

Since the public comment period has been extended, I am taking the opportunity to attached a draft of a resolution to deny the Zavoral CUP application, that I feel does a good job of addressing the critical issues the Planning Commission, and ultimately the City Council, are facing in their deliberations.

Please pass along to the Planning Commissioners

Please acknowledge receipt.

Thank You
Gregory Page
17001 220th Street North

**CITY OF SCANDIA
PLANNING COMMISSION
RESOLUTION NO. XX-XX-XX-#**

**RECOMMENDING DENIAL
OF THE CONDITIONAL USE PERMIT APPLICATION
FOR THE ZAVORAL MINING AND RECLAMATION PROJECT,
LOCATED IN SECTIONS 18 & 19, TOWNSHIP 32 NORTH, RANGE 19 WEST
INTHE CITY OF SCANDIA, MINNESOTA**

WHEREAS, The City of Scandia is the Responsible Governmental Unit in the matter of an application for a Conditional Use Permit (CUP) for the proposed Zavoral Mining and Reclamation Project, located in Sections 18 and 19, Township 32 North, Range 19 West in the City of Scandia; and

WHEREAS, Scandia Ordinance No. 103 regulates the mining of sand and gravel and related activities and each operation requires a CUP and is also required to obtain an Annual Operators Permit; and

WHEREAS, The Planning Commission is responsible to provide guidance to city staff and make findings of fact and recommendation to the City Council regarding acceptance or denial of the Conditional Use Permit application; and

WHEREAS,

The City of Scandia Development Code, Chapter 1, Section 8.0 Conditional Use Permits, 8.4 General Criteria states, *“As may be applicable, the evaluation of any proposed Conditional Use Permit request shall be subject to and include, but be not limited to, the following general criteria:*

(1) The conditional use will be in compliance with and shall not have a negative effect upon the Comprehensive Plan, including public facilities and capital improvement plans.

(2) The establishment, maintenance or operation of the conditional use will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort.

(3) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values or scenic views.

- (4) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.*
- (5) Adequate public facilities and services are available or can be reasonably provided to accommodate the use which is proposed.*
- (6) The conditional use shall conform to the applicable regulations of the district in which it is located and all other applicable standards of this Chapter.*
- (7) The conditional use complies with the general and specific performance standards as specified by this Section and this Chapter;" and*

WHEREAS, The Environmental Impact Statement and CUP application raised a number of complex issues about compliance with, or possible negative effects on, the Comprehensive Plan; the general public welfare; public health and safety; enjoyment of other property in the immediate vicinity; impairment of property values and scenic views; and significance of, or potential for, impacts on environmental and cultural resources of local, state, regional, and national significance; and

WHEREAS, The Planning Commission of the City of Scandia has held **NUMBER (#)** public meeting over the past **NUMBER (#)** months, taking testimony on the Zavoral Environmental Impact Statement and CUP Application, and acknowledges the testimony, documents, comments, and letters received from **NUMBER (##)** regulatory agencies or individuals during the official comment period, including the Minnesota Department of Transportation, the Metropolitan Council, the National Park Service—St. Croix National Scenic Riverway, the Minnesota Department of Natural Resources, the Minnesota Pollution Control Agency, the Carnelian Marine St. Croix Watershed District, the Washington Conservation District, National Parks Conservation Association, U. S. Army Corps of Engineers, traffic engineers, earth scientists, land use specialists, lawyers, adjacent land owners, Scandia residents and other interested persons; and

WHEREAS, An increase in the potential for severe or fatal accidents at the intersection of TH97 and Scenic Highway 95 has been testified to by Vernon Swing, President/CEO, and Principal Transportation Engineer, RLK Inc. Citing Federal and State Access Management Manuals, Swing testified the risk of severe or fatal accidents will increase by as much as 350%. He said, "Even if Tiller (the mine operator) constructs a site access offset from the TH95/TH97 intersection in accordance with MnDOT guidance, the risk of severe or fatal accidents will still increase by 100%;" and

WHEREAS, There is an increased susceptibility of the site to a recurrence of the historic blow-out of sediment into the St. Croix, based on existence of a geologic feature known

as a paleo-channel. (Ref. Alexander, "A LIDAR Based Review of the Tiller/Zavoral Mining and Reclamation Project). Alexander also noted "that a ravine is beginning to form on the side of the current sand mine berm." [on the north side of the existing gravel pit leading to Crystal Springs - pages 2, 3 and 4 of Alexander's report]; and

WHEREAS, Separation between the excavation and groundwater may be insufficient to protect groundwater and groundwater-dependent resources. See: a) Alexander, "A LIDAR Based Review of the Tiller/Zavoral Mining and Reclamation Project for discussion regarding implications of potentially higher water table at site relative to exposure of groundwater to surface contaminants, and b) communication from M. Doperalski, Minnesota DNR, estimating increase of 8.69 degrees Celsius in the waters of the trout stream, wherein a temperature swing of +4 degrees could be detrimental to trout; and

WHEREAS, Increased risk of potential impacts to downstream water resources, associated with a major erosion/sedimentation event that could occur during the period "immediately after soil stripping and prior to overburden removal" (See ES-7 and ES-19, Environmental Impact Statement), in particular if a storm event should coincide with this period. If this should occur, the risk exists that habitat for trout and listed mussel species may be negatively impacted. (See comment to DEIS, A. Horton, U.S. Fish and Wildlife Service); and

WHEREAS, Increased exposure of residents and water resources to silica and particulate matter over the life of the mine, as quantified in EIS (4-75-4-97). In particular, detrimental effects on public health due to cumulative impacts of total mitigated emissions on vulnerable populations, including children and adults with documented respiratory illnesses such as asthma and COPD. (Personal communication, neighboring landowner, Dec. 4 public hearing). Potential for incremental increases in particulate matter to trigger greater incidences of air quality alerts; and

WHEREAS, Loss in property value for nearby landowners, disproportionately impacting low income homeowners, for whom their property essentially represents their personal estate (Personal communication, neighboring landowner, Dec 4 public hearing) Anyone attempting to sell or remortgage their house or land during the duration of mining activities could be subject to a potential financial loss of from 2% to 25%, based on testimony by industry analysts; and

WHEREAS, Increase in mine-related noise audible to recreational users of the St. Croix National Wild & Scenic Riverway, at a level considered by the National Park Service to exceed its standards. Based on the reasonable expectations of the public when visiting this section of the National Scenic Riverway (managed as “quiet waters”) this noise would unreasonably diminish the unique values for which the river was designated Wild and Scenic, and

WHEREAS, Chapter 4, Section 7 Operating Conditions of the of the Development Code of the City of Scandia Pertaining to the Regulations of Mining and Related Activities states, “(6) Noise. All equipment and other sources of noise must operate so as to be in accordance with Federal, State and City noise standards.”; and

WHEREAS, Ordinance No. 103 City of Scandia Pertaining to the Regulation of Mining and Related Activities, Chapter 2 Zoning Regulations, Section 3.0 Development Standards, 3.3 Environmental Regulations, (4) Nuisances, states “No noise, odors, vibration, smoke, air pollution, liquid or solid wastes, heat, glare dust or other such adverse influences shall be permitted in any district that will have an objectionable effect upon adjacent or nearby property owners and residents. Minimum standards shall be as follows: (A) Noise, Air and Water Pollution. Notwithstanding anything contained herein to the contrary, the standards of the Minnesota Pollution Control Agency for noise, air, and water pollution shall be the standards applied in those areas”; and

WHEREAS, The City of Scandia Development Code, Section 1.5 Application states, “(1) In their interpretation and application, the provisions of this Chapter shall be held to be the minimum requirements necessary to accomplish the general and specific purposes of the Development Code.
(2) Where the conditions imposed by any provisions of this Chapter are either more or less restrictive than comparable conditions imposed by other law, ordinance, rule, or regulation of the city, state, or federal government, the law, ordinance, rule, or regulation which imposes the more restrictive condition, standard, or requirement shall prevail;” and

WHEREAS, The proposed Zavoral Mine does not create or add jobs to Scandia’s job base, but merely moves jobs onsite, temporarily, from other city and county locations; and

WHEREAS, The access road to the mine would be directly off of Highway 95, a Minnesota State Scenic Byway; and Highway 95 Highway 97 intersection adjacent to the proposed mine is designated as a Scandia Gateway on Map 15, Character Districts; and

WHEREAS, GUIDELINES FOR THE PROTECTION OF SCANDIA’S PRIORITY SCENIC VIEWSHEDS, Resolution No. 05-15-12-01, Exhibit A, states *“In Scandia, views with highest Visibility/Duration were those at gateway points (e.g... Hwy. 97 and 95) that sustained themselves along corridors creating a density of scenic views, (e.g... Hwy 97 east of the village approaching Hwy 95)”*; and

WHEREAS, The 114-acre Zavoral site is designated as part of a Regionally Significant Ecological Area (RSEA); it is immediately adjacent to the lands and waters of the St. Croix National Scenic Riverway, and the area is designated as part of the St. Croix Bluffs Important Bird Area; and

WHEREAS, There is a high quality native brook trout stream that runs on the Zavoral property and neighboring property that is under consideration for state designation, and the Rustrum Wildlife Management Area is on the river immediately below the bluff where the mine is proposed; and

WHEREAS, the neighboring property north of the proposed mine has been determined by the DNR to meet the standards for a State Scientific and Natural Area designation, with documented rare features such as old growth forest, significant geologic features and documented occurrence of nearby Minnesota special concern species (November 21, 2012 DNR letter to Gregory Page); and

WHEREAS, Federally endangered freshwater mussel species are known to occur in the St. Croix within 2000 feet and downriver of the site. These mussels are part of a diverse assemblage of mussel species in the St. Croix that is of international significance. The City recognizes that all of these resources (including the handful of butternut trees on the site) meet the definition of “environmentally sensitive resources” according the Environmental Quality Board Guidelines; and

WHEREAS, It has been established in the EIS and in comments submitted by natural resource agencies that many of these outstanding and remarkable community assets are known to be highly sensitive and vulnerable to impact, with narrowly defined habitat requirements; and

WHEREAS, The CUP Application proposes mining 9 acres of white pine-hardwood forest, which the DNR describes, in comments for the public record, as “a native plant community rare in the St. Croix Valley” and “a loss of biodiversity value;” and

WHEREAS, The proposed mine is surrounded on three sides by “Outstanding Ecological Score[d]” areas in the Regionally Significant Ecological Areas, Map 9 of the 2030 Scandia Comprehensive Plan; and

WHEREAS, Map 4, Natural Resources, identifies the proposed mine site as High Sensitivity for Ground Water Sensitivity to Groundwater Pollution - Prairie du Chien and Jordan Aquifers; and

WHEREAS The entire proposed mine lies within a “Natural Resource Priority Areas” overlay Map 26 ; and the Comprehensive Plan states, *“In overlay areas, increased consideration of natural resources is required in addition to the requirements of the underlying land use area”*; and

WHEREAS, The history of damaging environmental accidents at mining operations in the St. Croix Valley has made clear the reasonable limitations of Best Management Practices, mitigations, establishment of permit conditions and monitoring, both broadly and in the specific case of this site and this mine operator; and

WHEREAS, A higher standard of caution and care is prudent and reasonable when managing community assets such as these that are at the same time valuable, rare, and known to be highly sensitive to irreparable harm; and

WHEREAS, State statute and Environmental Quality Board Environmental Review guidelines allow for the City’s consideration of cumulative impacts. Cumulative Impact is defined in Minnesota Administrative Rules 4410.0200, Subp. 11 as *“the impact on the environment that results from incremental effects of the project in addition to other past, present and reasonably foreseeable future projects regardless of what person undertakes the other projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.”* As such, the City of Scandia recognizes that the combined impacts of the mining operation as a whole (including those cited above) may be considered to constitute a significant impact; and

WHEREAS, Under Growth Management Strategy Overview, the old New Scandia Township 2020 Comprehensive Plan, adopted in 1998, states, *“The primary goal of this plan is to preserve and enhance the rural character of New Scandia as the community continues to move away from an economy based on traditional commercial agriculture to one increasingly related to the diverse metropolitan area.”*; and

WHEREAS, The old Comprehensive Plan identifies as a General Community Goal, to “protect and enhance the natural resources of the area (including rivers and streams) for the enjoyment of present and future generations,” and “ Establish a development pattern that ensures a safe, efficient, and scenic road system consistent with the rural character of the township.”; and

WHEREAS, The old Comprehensive Plan states under the heading of Community Vision and Values that “(New) Scandia’s natural landscape – the St. Croix River Valley, the woods and wetlands are our most precious assets... Our natural resources must be managed with care.”; and

WHEREAS, The old Comprehensive Plan closes the Summary of Major Growth Management Issues with the statement, “Through careful planning and development review, the natural resource base can be protected, existing development respected, and options for the future preserved.”; and

WHEREAS, The City of Scandia Development Code, Section 1.3 states, “It is the policy of the City of Scandia that the enforcement, amendment, and administration of the Scandia Development Code be accomplished consistent with the recommendations contained in the City Comprehensive Plan, as developed and amended by the Planning Commission and City Council of the City. The Council recognizes the City Comprehensive Plan as the official policy for the regulation of land use and development in accordance with the policies and purpose herein set forth. In accordance with Minnesota Statutes Chapter 273, the City will not approve any rezoning or other change in these regulations that are inconsistent with the Comprehensive Plan;” and

WHEREAS, The City of Scandia spent almost two years developing the 2030 Comprehensive Plan, the first Comprehensive Plan adopted by the City of Scandia, in accord with the system statement [requirement] of the Metropolitan Council issued to Scandia in November 2005, and a Comprehensive Plan Committee (CPC) was formed, chaired by the Mayor and including members of the City Council, the Planning Commission, the Parks and Recreation Committee, and citizen representatives. The CPC considered background materials compiled by a consultant team as well as extensive public input provided through public meetings, focus groups and public surveys. The planning process included three rounds of public meetings to solicit input from a diverse group of individuals; and focus groups representing the St. Croix River corridor, the village, the lakes, and the rural residential areas and agricultural producers helped create a Comprehensive Plan that is responsive to the needs of each area and group. Residents were surveyed to complete the sentence “In 2030, I believe Scandia should . . .,” and they

were also asked to select their top three picks from a list of factors defining “rural character” and to describe how development should occur in an area that maintains its rural character; and interviews were conducted with 26 existing Scandia businesses focusing on perceptions of the current businesses environment and expectations for the future; and

WHEREAS, the 2030 Comprehensive Plan was adopted by the City Council at their March 17, 2009 meeting, and the Metropolitan Council found that the City’s Comprehensive Plan update met all of the Metropolitan Land Planning Act requirements and conforms to the regional system plans, and is consistent with the 2030 Regional Development Framework and is compatible with the plans of adjacent jurisdictions; and

WHEREAS, The Metropolitan Council authorized the City of Scandia to put its 2030 Comprehensive Plan Update into effect without any modifications, and the City has brought its ordinances into conformance with the 2030 Comprehensive Plan; and

WHEREAS, The City of Scandia Comprehensive Plan provides guiding principles for defining future land use in the area through 2030, embodying a new vision for Scandia, “*Emphasizing the protection of natural resources that define Scandia’s character, economy, and quality of life;*” and the 2030 Comprehensive Plan does not allow gravel pits as a permitted use under current Agricultural Core Area (AG C) zoning of the proposed mine site; and

WHEREAS, The Planning Commission concludes that the proposed mine fails to meet the criteria of being “*in harmony with the general purposes and intent of the City’s Development Code and applicable Comprehensive Plan,*” in that it presents an unacceptable risk of irreparable harm to the city’s “*most precious assets;*” and

NOW THEREFOR BE IT RESOLVED, The Planning Commission of the City of Scandia finds the proposed Zavoral Mining and Reclamation Project non-conforming to the principles of the old Scandia 2020 Comprehensive Plan, and non-conforming with the principles and zoning of the current Scandia 2030 Comprehensive Plan; and

BE IT FURTHER RESOLVED, that the Planning Commission finds the known cumulative impacts identified with the proposed mine, the unacceptable risk to public safety and to environmentally sensitive resources (as documented by factual evidence in the EIS and CUP, comments to the EIS and CUP, and the public record), together with the limits of proposed mitigation, constitute a reasonable threat of irreparable harm to the community;” and

BE IT FURTHER RESOLVED, That the Planning Commission finds that Granting a Conditional Use Permit for the Zavoral Mining and Reclamation Permit will:

- 1) Not be in compliance with provisions of Scandia's 2030 Comprehensive Plan, and
- (2) The establishment, maintenance or operation of the conditional use will not promote and or enhance the general public welfare and will be detrimental to or endanger the public health, safety, or comfort, and
- (3) The conditional use will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, may substantially diminish and impair property values, and will diminish and impair scenic views, and
- (4) The establishment of the conditional use may impede the normal and orderly development and improvement of surrounding property for uses permitted in the district, and
- (5) The conditional use does not conform to the current applicable regulations of the district in which it is proposed and other applicable standards of the Comprehensive Plan, and
- (7) The conditional use does not comply with the general and specific performance standards as specified by the Scandia Development Code, Chapter 1, Section 8.0 Conditional Use Permits; and

BE IT FINALLY RESOLVED that the Planning Commission of the City of Scandia does recommend to the City Council to **DENY** the Conditional Use Permit Application for the Zavoral Mining and Reclamation Project located in Sections 18 and 19, Township 32 North, Range 19 West in the City of Scandia, and adopts the Record of Decision, Findings of Fact and Conclusions included as "Attachment A" to this resolution.

*******attach copies of noted documents, written and oral comments -(from meeting minutes)*******

PASSED by the Planning Commission of the City of Scandia this 19th day of December, 2012.

Christine Maefsky-- Chair

ATTEST:

City Clerk/ Administrator