

TOWN
of
MAY



CHAIRMAN
Bill Voedisch
14625 Old Guslander Trail.
Marine on St. Croix, MN 55047
(651) 433-5976

SUPERVISOR
John Adams
14035 Oldfield Road N.
Stillwater, MN 55082
(651) 430-8134

SUPERVISOR
John Pazlar
16601 Orwell Road N.
Marine on St. Croix, MN 55047
(651) 433-5013

13

CLERK
Linda L. Klein
13519 May Avenue North
Stillwater, MN 55082
(651) 439-1706 · Fax (651) 430-0107

TREASURER
Cheryl D. Bennett
16624 Square Lake Trail N.
Stillwater, MN 55082
(651) 439-8599

PLANNING COMMISSION
John T. Arnason
15149 Old Guslander Trail
Marine on St. Croix, MN 55047
(651) 433-8510

September 7, 2012

To: Anne Hurlburt, City Administrator
City of Scandia
14717 209th St. N
Scandia, MN 55073



From: May Town Board

RE: Comments on Tiller/Zavoral Mining and Reclamation Project and on the Final Environmental Impact Statement (FEIS)

May Township interests at stake in proposed Tiller/Zavoral gravel mine

In November of 2010, the May Township Board of Supervisors voted to declare the Township a “party of interest” in the issue of the proposed Tiller/Zavoral mine, which would be located at the intersection of Scenic Highway 95 and Highway 97 in Scandia.

May Township’s Board of Supervisors recognizes the potential for the Township’s citizens, property, and interests to be negatively impacted by a mining operation at this location, thus we registered ourselves as a party of interest on your website and we’ve been getting updates ever since as this project has progressed. These are our first comments on the matter.

May Township is in relatively close proximity to this mine

As the crow flies, May Township’s nearest proximity to the proposed mine is only 3.5 miles. The Township includes roughly 3.75 miles of river frontage along the St. Croix, located approximately 5.5 miles downstream from the proposed mine. Areas of concern include but are not limited to:

- Potential impacts to local nature- and recreation-based tourism and economic activity, due to gravel truck traffic and related impacts affecting residents and travelers on State Scenic Highway 95
- Potential impacts to quality of life, due to noise/disturbance that degrades the ability of May Township residents (in particular canoeists, pontoon boaters, fishermen) to enjoy this section of the St. Croix River. May Township residents access the river not only from public landings but also from local marinas and their own riverfront properties. Quietude is much valued by these river users.

- Potential environmental degradation of valued community resources:
 - 1) St. Croix River
 - 2) St. Croix Bluffs Important Bird Area
 - 3) Federally-endangered species (mussels)
 - 4) Crystal Springs Creek (aka Zavoral's Creek), among the highest quality trout streams in the Carnelian-Marine- St. Croix Watershed District
 - 5) Rustrum State Wildlife Management Area

The applicant and especially the proposed operator, the Tiller Corp, has provided ample justification for May Township's concerns that environmental degradation could reach beyond the immediate vicinity of the mine and impact downstream resources. It has come to the attention of May Township that action is now pending with the Wisconsin Attorney General against Tiller Corp for a series of violations at a Tiller-operated Grantsburg WI "frac sand" mine in May of 2012, that resulted in a major sediment spill into area streams, including the St. Croix River.

We also recognized the potential exists for more extensive and longer-term mining at the site than is presently proposed. Once granted a Conditional Use Permit, it is common practice in the mining industry generally, and Tiller Corp in particular, to request and receive approval from local RGUs for such expansions of operation. Current assessments of impact are based on removal of 1.2 million tons of material in ten years or less. But if additional aggregates / sand remain after the 1.2 million tons initially proposed are removed, they would likely apply to expand the permit to extract more. If Scandia grants this CUP, Scandia and its neighboring communities—including May Township—may be exposed to impacts from this mine for the indeterminate future.

An IUP, not a CUP, is the proper permitting vehicle for mining

For our concerns expressed above, we believe a Conditional Use Permit (CUP) is the *wrong* vehicle for "permitting" this or any other mining operation. In May Township we deem mining an "Interim Use" within the permitted zone, not a "Conditional Use," and as such, our mining permits are Interim Use Permits (IUP) and have a limited term, currently of five years. You could limit an IUP to a set number of years, and require a new application after that term expires. Alternatively, you could treat an IUP as being a one year-term with automatic one-year renewals, subject to city approval. *In either scenario, there's a known ending point if things go badly.*

According to the League of Minnesota Cities, "If a city wishes to place time constraints on particular uses, then the appropriate zoning tool is an interim use permit, rather than a conditional use permit."

With a CUP, as long as the applicant operates within the bounds established by the permit, you are pretty much stuck if things still go badly.

May Township Comments to the City of Scandia on the Final EIS, Tiller/Zavoral Mining and Reclamation

1. Noise

The Town of May concurs with the National Park Service that natural ambient sound levels should be used as the standard of comparison in the Final EIS noise analysis for the proposed mine. This is consistent with the standards for the St. Croix National Scenic Riverway, as outlined in the 2006 National Park Service Management Policies. The FEIS use of *general* Minnesota State Noise Standards to assess impacts of noise on river users is inappropriate, given the existence of an official government management (including noise) policy specific to a natural resource area under public management, in this case, a National Park. The Council of Environmental Quality (CEQ) regulations (40 Code of Federal Regulations [CFR] 1508.270) defines impact levels based on consideration of context. Here, the context is a National Park. If the correct standard of comparison (natural ambient sound) were applied to the noise analysis, the FEIS could not conclude, as it does, that “No impacts that reached the level of significant impacts were identified in association with the project.”

2. Cumulative Impacts

According to Environmental Quality Board guidelines, assessment of the cumulative impacts of a project requires that project’s potential impacts be put into the context of impacts caused by other past, present, or anticipated future projects in the area. Given that the applicant is seeking a Conditional Use Permit (rather than a time-limited Interim Use Permit) and given that the applicant’s customary business practice is to expand operations from that initially proposed for a site, and that the potential exists for additional sand and gravel at the site after the initial 1.2 million tons is taken, the FEIS assessment of cumulative impacts should reasonably include the potential for future aggregate and sand mining at the Tiller/Zavoral site, and a longer time frame than what is currently being applied for.

This again gives merit to the IUP rather than CUP approach.

3. Risk assessment to include operator history

Given the alleged failure of a berm at Tiller’s Grantsburg WI mine and the resulting environmental degradation, the FEIS proposed solution of securing applicant funding for “aggressive monitoring” of operations at the proposed Tiller/Zavoral could be cold comfort to communities down river. May Township requests that the FEIS recognize and assess the increased risk of impacts due to the operator’s potential for noncompliance with established procedures, policies and Best Management Practices, in particular when the proposed mine is in the immediate vicinity of sensitive, high value natural resources such as a trout stream and a Federally protected National Scenic Riverway.

Respectfully submitted,

May Town Board