Friday, May 18, 2012

Anne Hurlburt, City Administrator
City of Scandia

RE: Tiller Zavoral Draft EIS Questions / Comments:

Dear Anne,

Please include the following questions in the record of public comments – apologies in advance for the many acronyms, including:

NSTDC = New Scandia Township Development Code
CoSDC = City of Scandia Development Code

Procedural Question:

With respect to the City's authority relative to updating and implementing it's most current Comprehensive Plan and Development Code, I understand the law as revealed through the exchange between lawyers representing Tiller and TA-COS with the City's attorney to confirm the following: Scandia may exercise it's authority to either impose the latest Comp Plan and Development Code, or allow the former versions to apply, or some combination of former zoning controls with current goals and procedures, at it's discretion. I do not believe the City has relinquished this discretion, contrary to what is asserted in the DEIS executive summary. Please confirm.

As I read the texts without the benefit of legal advice, I believe that this posture is critical for the simple reason that the NSTDC, 6/1/1999 contains the following, under its Intent and Purpose, Section 1.1(20): "To provide for the orderly, economic and safe removal and processing of sand, gravel, rock, soil and other material." No such reference appears in the CoSDC Intents and Purposes, 11/3/2010, indicating a clear intent to remove it from the code. Yet even in applying the NSTDC, the same Intent and Purpose pairs the following in clause 1.1(19): "To provide for the gradual and equitable elimination of those uses of land and structures, which do not conform to the standards for the area in which they are located." I submit that the City's responsibility, authority, and actions to date place it squarely between the "elimination clause" and the new CoSDC. Please consult and advise.

"Allowed Use" versus "Conditionally Permitted Use":

The DEIS refers to mining as an "allowed use". As "allowed use" is not defined [in either version of the Development Code would it be more accurate to call mining a "conditionally permitted use" or a "conditional use" under the NSTDC.

Proposer's Operational Description:

I understand the proposer's primary role in an EIS is to provide the operational detail that is the basis of the study. In regard to the operational detail, I personally find the information provided to be unclear on a number of counts. For example, the report states that the proposer, Tiller Corporation, will be excavating the mine to an average depth of 15 feet. In fact, one document presented publicly at the final PAC meeting even stated a maximum depth of 15 feet. By my calculations, it would take only about a 50% yield of sand and aggregate over the 64-acre area of the proposed operation to an average depth of 15 feet to yield the 1.2 million tons Yet the site sections furnished by the proposer and the summary text indicate excavation depths of up to 70 feet, with up to 25 feet of fill to reclamation elevations. Section 'A', for example, indicates a maximum depth of excavation of about 50' even though the reclaimed grade is in virtually the same place as the existing grade. Beyond that, the sections provided curiously exclude the virtual center of the site. A north-south section roughly midway between sections 'D' and 'E' should be produced to illustrate the proposers intentions in relation to known subsurface conditions there. Proposer requested to better explain the "math of mining".

Alternatives / Preferred Alternative:

The preferred alternative should be established at the conclusion of public deliberations over the alternatives, not as a precursor to public discussions. While neither Dev Code expressly discusses the role of the PC in an EIS process, both the NSTDC and the CoSDC assign/grant broad responsibility/authority to the PC in a CUP Ap in determining what if any combination of mitigating measures should be adopted in order to render a proposed use "consistent with the goals and purposes" of the Comp Plan. With that it mind, the scope of alternatives studied in the EIS should establish a complete range of alternatives from which the City may choose with respect to: area of mining, intensity [depth] of mining, duration of mining. Similarly, the nature and extent of reclamation plan should be subject to public discourse. In other words, all options should be on the table: a full range of area of mining from 0 to 64 acres; a full range of intensity of mining from an average depth of 0 to 15 feet; a full range a duration of mining from 0 to 10 years. And given the sensitivity of the site location and its significance to the future health of Scandia and indeed the entire Saint Croix Valley, the extent and quality of the reclamation plan should also be publicly critiqued. How and when can this happen?

Reclamation Plan:

The City has a legitimate interest in ensuring that the reclaimed property has value for uses consistent with the long-range goals and plans of the community. A site that has been excavated to a depth of up to 60 feet and backfilled to a net depth of 25 feet may not

be of use for the allowed uses present in the current zoning. A site that is not restored with topsoil equivalent to what was present prior to any mining on the site will not be useful for agriculture. A site with significant amounts of backfill, especially non-granular soils, may take many years before it is sufficiently consolidated for conventional foundations, whereas deep pile foundations would likely be cost-prohibitive. Suitability for future uses should be addressed.

Graphic representation / Viewshed Analysis:

The selective use of limited views can be easily chosen and manipulated to represent conditions that are not representative of the actual result of the activity and may not even take into consideration significant viewshed impacts. The city should require that a 3D model be made publicly available so that all potentially significant views of the operational and post-operational states of the property are considered.

Statements of Fact supported by Study versus statements of Opinion or Conclusions unsupported by the Study:

Will acceptance of the DEIS mean that the numerous statements that may be opinion rather than fact be legally construed as statements of fact and not subject to challenge? For example, a search of the document for the phrase "no significant impacts" finds twelve such statements. [34, 46(3), 58(2), 93, 134(3), 193, 194]. Will the city representatives – elected and appointed - have the opportunity to publicly vet these statements?

Respectfully submitted,

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