



Staff Report

Date of Meeting: December 12, 2012

To: Planning Commission

From: Kristina Handt, City Administrator

Re: Zavoral Mine and Reclamation Information and Process Suggestions

Agenda Item #: 3.a)

Comprehensive Plan (2020 v 2030):

At the December 4, 2012 Public Hearing on the Zavoral Mine and Reclamation CUP, there were comments and questions about which Comprehensive Plan should be applied to the evaluation of Tiller's CUP application. Some Planning Commission members asked for documentation of when Tiller was told that the 2020 Comprehensive Plan would be applied in the evaluation of their application. I have reviewed all of the agendas for the City Council from 2009-2012 and the corresponding minutes when the agenda referenced the Zavaoral Mine and Reclamation Project. Below is a summary of the findings. Minutes in their entirety are available on the city's website or you may contact me for copies but in the interest of time and space I've only provided a summary below.

March 3, 2009: City Planner staff report for item 6a) includes the following:

“The site is proposed for mining and related processing activities, and is within the General Rural/Agricultural area in the City's adopted Comprehensive Plan and Land Use Map. It is zoned for Agriculture under the City's current Zoning Map. Mining is an allowed use within the Agriculture zone. The City's 2030 Comprehensive Plan proposes Mining as a specific land use designation. This site is not included in the area designated for Mining in the 2030 Plan. However, since the 2030 Comprehensive Plan has not yet been adopted by the City, this Application must be reviewed under the current, adopted plan.”

April 7, 2009: City Council Minutes:

“Krinke suggested that in Alternative #1 (page 2), the words “current Comprehensive Plan” be replaced with “2020 Comprehensive Plan” which was in place when the application was made last November.”

April 21, 2009: Resolution No. 04-21-09-02:

“The EAW for the Zavoral site was submitted to the City on November 25, 2008. The site is within the General/Rural Agricultural Area on the City's 2020

Comprehensive Plan and Land Use map, which was the current plan at the time of the EAW submittal. The proposed use is consistent with the 2020 Comprehensive Plan and Zoning Ordinance. The City's 2030 Comprehensive Plan, adopted on March 17, 2009 proposes Mining as a specific land use designation. The Zavoral site is not included in the areas designated for Mining in the 2030 Plan. However, since the EAW was submitted under the 2020 Comprehensive Plan, the EAW must be reviewed under that plan."

December 15, 2009: City Council Minutes:

"Council member Lindell questioned the issue of reviewing the Conditional Use Permit application based on the former land use map. Administrator Hurlburt explained that state law requires the application be reviewed under the comprehensive plan that was in affect when the application was submitted. Under the former land use plan, mining was an allowed use in agricultural areas. The new plan classifies mining as a separate land use, which is not designated at the Zavoral site. Tiller's CUP application was found to be complete in November 2008, prior to adoption of the new Comprehensive Plan in March 2009. Council agreed that the city's review is following the correct procedure as designated by law."

January 19, 2010: Resolution No. 01-19-10-05:

"The Zavoral site and the Scandia Mine site are both within the Agriculture Zoning District under the City's 2020 Comprehensive Plan, which was the adopted plan at the time of the Tiller application for the Zavoral Mining and Reclamation Project. Mining is an allowed use within the Agriculture zone. A portion of the Zavoral site is located within the St. Croix National Scenic Riverway. Reclamation activities are proposed within this area. Mining is not allowed within the Riverway Zone."

May 17, 2011: City Council Minutes:

"Councilmember Swanson stated that she believed that the submission has been procedurally correct in its review. Tiller had completed the Environmental Assessment Worksheet in December 2008."

"City Attorney Dave Hebert advised the council on the questions brought forth concerning the legality of the process so far. Mr. Hebert stated that this is a complicated project with many issues, but the environmental review must proceed. Tiller is relying on a decision made by the seated council at the time of the application to follow the code which was in effect at the time of submission. A review time of 2-3 years is reasonable under the law; a schedule has been set for completion of the EIS."

June 14, 2011: City Council Minutes:

"Simonson felt that there was no evidence that City Attorney Hebert misrepresented the law which would warrant an outside counsel."

This information should be used along with the legal opinion from the City Attorney. The City Attorney's opinion will be transmitted to you separately as it is protected by *attorney-client privilege and should not be shared with the public.*

Suggested Procedure for December 12th meeting:

While the Chair has the discretion to run the meeting as she sees appropriate on December 12th, I would suggest the following in keeping with past practice and making the best use of the time for the two remaining Planning Commission meetings.

- Begin the meeting by having City Planner Sherri Buss present the information from the staff report related to the Conditional Use Permit criteria. (Development Code, Chap. 1, Sec. 8).
- If necessary, discuss additional reports from staff
- Continue taking public comment. This includes allowing Tiller Corp the opportunity to respond or provide additional information, if necessary.
- Close the Public Hearing and begin the Planning Commission deliberation/discussion.
- I don't anticipate the Planning Commission will be ready to make a recommendation at this meeting but would do so at the January 2, 2013 meeting. **It is important that the Planning Commission begin their discussion at the December 12th meeting so staff has some guidance on drafting the resolution for the January meeting.**