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Excerpts *Kraemer Mining & Materials vs. City of Sauk Rapids, et al.*, Minnesota Court of Appeals, decided July 5, 2011.

This case is identical to the Scandia situation. Kraemer applied for a mining permit and was required to do an EAW. During the EAW process, the City adopted a new zoning ordinance which limited mining. Kramer claimed it was entitled to a CUP under the ordinance in effect at the time of the application. The City instead chose to apply the new ordinance.

> **Ordinarily, changes to zoning regulations may apply retroactively to pending matters**. *See Almquist v. Town of Marshan*, 308 Minn. 52, 65, 245 N.W.2d 819, 826 (1976) (recognizing that "[t]he **rule followed in most jurisdictions** permits the retroactive application of a zoning regulation to deny a building permit for which application was made prior to the effective date of the new ordinance"); *Property Research & Dev. Co. v. City of Eagan*, 289 N.W.2d 157,158 (Minn. 1980) (applying an amended zoning ordinance to affirm denial of plat approval for construction of single-family dwellings that were permitted at the time approval was applied for); *see also Rose Cliff Landscape Nursery, Inc. V. City of Rosemont*, 467 N.W.2d 641, 643 (Minn. App. 1991).
>
> This rule is based on the principal that "[t]here is no vested right in zoning." *Property Research*, 289 N.W. 2d at 158." *Kraemer* at 11 (emphasis added).

The court then went on to discuss the authority of a City to decide whether to apply the new vs. the old ordinance, which it characterized as "a decision subject to the deferential standard of review applicable to legislative-type determinations,'" *Eagle Lake of Becker Cnty. Lake Ass'n v. Becker Cnty.*, 738 N.W.2d 788, 794 (Minn. App. 2007). In *Eagle Lake*, the County applied the old ordinance, but the law, as the *Kraemer* case makes very clear, has long been settled, that this is a legislative decision up to the local governmental unit:

> The *Eagle Lake* court did not hold that the county was *required* [emphasis in original] to apply the old version of the ordinance to the pending application. The court merely rejected the lake association's argument that the language of the new ordinance or the vested –rights doctrine required the county to apply the new ordinance. *Eagle Lake*, 738 N.W.2d at 795. *Eagle Lake* stand for the proposition that **the city had discretion to choose which version of an amended zoning ordinance to apply to the developer's pending application, and that this determination is entitled to deference from a reviewing court**. *Id., Kraemer* at 13 (emphasis added).

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Which choice should Scandia make? Should it follow the majority of other jurisdictions, or should it allow proposers of undesirable uses to exploit inadequacies in our ordinances and be permitted to proceed under the "old ordinance," regardless of a City's clear right to recognize uses that are inappropriate and revise its code. The decision on this CUP will establish a precedent for the future. In a City seeking to preserve its rural character and where major future development is inevitable, the answer seems obvious—we should not apply the "old ordinance."

Jamie Allman

A Resolution for selection of the No-Build Alternative and Denial of a Conditional Use Permit in the Matter of the proposed Zavoral Mining and Reclamation Project

Whereas

The City of Scandia 2020 Comprehensive Plan, to which this application is subject, 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."*

Whereas

The City of Scandia 2020 Comprehensive Plan, to which this application is subject, states under the heading of "*Community Vision and Values*:"..."*(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."*

Whereas

Under City of Scandia Development Code, "*the evaluation of any proposed conditional use permit is subject to...the following general criteria,*" such that a permitted use "*will promote and enhance the public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort,"* and that it "*will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially impair property values or scenic views."*

Whereas

The purposes of the City of Scandia Development code include but are not limited to: "*To conserve and protect natural resources and maintain a high standard of environmental quality, 2) To preserve and protect rural character, the natural landscape, and natural and scenic beauty, 3) To prevent environmental pollution and to protect surface and groundwaters from contamination."*

Whereas

The application presents an unusual and even unprecedented scenario, in that the proposed mine site is part of a complex of documented outstanding natural and cultural resources of local, state, regional, national and even international significance. 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; there is a high quality native brook trout stream under consideration for state designation that runs on the Zavoral property and neighboring property; the access road to the mine would be directly off of a Minnesota State Scenic Highway; the Rustrum Wildlife Management Area is on the river immediately below the bluff where the mine would be located; the area is designated as part of the St. Croix Bluffs Important Bird Area; the neighboring property to the 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 a Minnesota special concern species (Louisiana waterthrush); and 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.

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.

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.

Whereas

Impacts that can be expected and/or might reasonably occur as a result of the proposed mining operation despite recommended mitigations proposed by the Final EIS would include:

1. Destruction of 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." This loss would occur if a modified scale alternative eliminating the 9-acre woodland were not required as a condition of operation.
2. 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 outstandingly remarkable values for which the river was designated.
3. An increase in the potential for severe or fatal accidents at the intersection of TH97 and Scenic Highway 95. As quantified by a credentialed 26-year traffic engineer using Federal and State Access Management Manuals (Vernon Swing, Principal Engineer, RLK Inc.) this risk of severe or fatal accidents will increase by as much as 350%. States Swing, "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%."
4. 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)

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.

5. 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.)
6. 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.
7. Loss in property value for adjacent landowners, disproportionately impacting low-income homeowners, for whom their property essentially represents their personal estate (Personal communication, neighboring landowner, Dec 4 public hearing)
8. Increase in the number of years of mine-related traffic on highways 95 and 97, based on proposed interruption and subsequent resumption of mine-related traffic from Franconia mine during the operation of the proposed Tiller/Zavoral mine.
9. Direct conflicts with the current comprehensive plan and the ability of citizens and leaders to achieve the vision it embodies.
10. In the larger context of the St. Croix National Wild & Scenic Riverway as a whole, this proposed mine would add to the many currently active mine sites along the river bluff, increasing the proportion of the Riverway compromised by incompatible land use.

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, while any given impact may not exceed applied standards following

mitigation, the combined impacts of the mining operation as a whole (including those cited above) may be considered to constitute a significant impact.

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.

Whereas

The City of Scandia 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."

Therefore

The City of Scandia deems the "No Build" alternative to be the preferred alternative, and denies the application for a conditional use permit to operate the proposed Tiller/Zavoral mining and reclamation project.

Discussion Points

Thank You Madam Chair for this opportunity to address the Planning Commission.

I urge the Planning Commission to recommend the "NO BUILD" option to the Scandia City Council based on the following criteria:

The Current Scandia Comprehensive Plan does not allow mining at the Zaveral site. There is ample legal precedent to support this decision.

The Public Safety question has not been adequately addressed for the intersection of Hwys 95 & 97. Two very different risk evaluations surfaced during the Dec. 4 meeting.

The Zavoral mine site is located directly adjacent to and up hill from the St. Criox National Scenic Riverway, which makes it a direct threat to the St. Croix River and the unique biology located along its banks. Three points to consider:

1) The St. Croix National Scenic Riverway is a unique and valuable resource. It should be treasured. It should be protected!

2) 300 plus trucks per day will drip fuel oil, antifreeze, brake fluid, grease, and other road contaminants that will work their way down into the water table because there is no Impervious Surface to stop it, thereby contaminating the ground water, the trout streams and the St. Croix River.

3) During a previous mining operation on this site in the 60's or 70's, a "flash flood " event occurred which eroded a significant amount of material that altered the St. Croix River channel.

This alteration is still there. Given the changing weather patterns, we can expect more "heavy rain events" such as that which struck the Duluth area, and given the poor record that Tiller Corp. has demonstrated in adequately protecting the beautiful St. Croix River (re: Grantsburg WI mine site) (previous Reclamation of the Zavoral mine site) NON RECLAMATION

The Zavoral mine site is a real threat to the St. Croix National Scenic Riverway! THERE ARE MANY GOOD PLACES TO OBTAIN GRAVEL - THIS IS NOT ONE OF THEM

Question:
Who will be legally liable for the long term effects of this mine? The Zavoral family, Tiller Corp. or the City of Scandia?

Finally:
If you recommend that a CUP be issued, I request that it requires the mining operation to be SHUT DOWN IMMEDIATELY if any safety or environmental infractions occur, and not wait for an annual permit review.

I also request that the "never mined" nine acres be left undisturbed.

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Scandia Elementary Parent Survey on Walking/Biking to School

Parent's opinions on allowing children to walk and bike to/from school
March 2011

Response Rate:
141 of 306 families (46%)

General Observations:

1) Top 6 issues that affect parents' decisions to allow or not allow biking/walking to school:

- Speed of traffic along route (77%)
- Distance (73%)
- Amount of traffic along route (72%)
- Safety of intersections and crossings (56%)
- Sidewalks or pathways (53%)
- Weather or climate (48%)

2) Top 6 issues that parents answered YES to the question, "Would you probably let your child walk or bike to/from school if this problem were changed or improved?"*

- Sidewalks or pathways (35%)
- Speed of traffic along route (34%)
- Distance (33%)
- Amount of traffic along route (33%)
- TIE: Safety of intersections/crossings -- weather/climate (27%)

3) Distance from school is an issue for the majority of parents:

- 103 (73%) selected distance as an issue.
- 85 (60%) live 3 or more miles from school
- 67 (48%) live 4 or more miles from school
- 67 (48%) selected distance as an issue AND said they would not feel comfortable allowing their child to walk/bike at any age. This indicates that for nearly half of parents, distance (combined with other factors) may be an obstacle to big to overcome, even if safety issues were alleviated.

* NOTE: A large number of parents did not follow instructions on the multiple-column question on page 2. They were asked to check on the left if an issue affects their decision to allow walking/biking, and check on the right if they would probably allow walking/biking if the issue was changed or improved. Many parents only answered the left or the right side. If they only answered the right side, I assumed they were checking which issues cause them concern, rather than indicating which changes would alleviate their concerns. This may be why the percentages are considerably smaller for the changes that would alleviate concerns.

- Olinda is a very busy road with small shoulders one way. If this road had a safe area to ride bikes, I would let my son ride bike with a neighbor to school during fall and spring.
- I would love for my child to ride his bike to school as I did as a child. The traffic is just too heavy. There isn't a sidewalk or riding path. Would like to see that change to Oakhill Road. Even just a shoulder to have so the kids can ride.
- I think an off-road bike trail alongside Olinda Trail would be an EXCELLENT idea.
- I allow my child to bike or walk to/from school during the non-snowy/icy months, but I am concerned about safety and traffic along Hwy 97 (part of the route to school). I do not allow biking in the winter because I worry about the slippery conditions – dangerous for a biker on the shoulder of a busy highway. I might consider winter biking if there was a separate bike trail on Hwy. 97.
- We would love to have a bike path down 97, due to the speed and the traffic that occurs. We would also like a connecting path to get to 95, which would connect to William O'Brian.
- We live on Hwy 97 and unless a path were available, I would not feel safe to let my kids walk or bike on that road regardless of their ages.
- It would be GREAT if we could provide bike paths along Scandia Trail (Hwy 97)!!
- Walking and biking trails are a wonderful idea! I would love to have more in our area.
- Hwy 97 and Oakhill is a dangerous (curves, speed, number of vehicles) intersection. Oakhill is now used as a thoroughfare. There is no posted speed limit; people drive fast and there is not shoulder.
- Too far for my child to ride his bike to school with his backpack.
- My son bikes with a group of classmates, meeting centrally at Scandia Store before school. I am always concerned with the kids needing to cross 97 to get to school.
- My child is in kindergarten and will not be walking or biking to school for some time.
- How about cutting half the bus routes, have kids walk or bike to central location. Save money – healthy – smart.
- I would love to see a trail/sidewalk on our road (Nolan/Oakhill).
- I love Scandia and the community, but because of people driving through that are not from the community, I would not allow my child to walk/bike to school. I just do not think that is safe to do anymore.
- Hwy 97 is the only way to school. [checked would not be comfortable at any grade]
- My children walk/bike to school but I have always been concerned about the speed and amount of traffic in front of the school.
- We could have 4 siblings going to Scandia at once—we/they would rather have them be able to go together instead of 2 able to walk and 2 having to ride the bus. [indicated in survey that he/she would allow child to walk/bike to school without an adult starting in 3rd grade]
- Has to cross 97.
- Hwy 97 is a big problem for kids that live north of the highway. Also, traffic on all roads in Scandia needs to be slowed down.

- If there was a sidewalk/path to school from our house, we would gladly let our kids use it to get to school/church/etc.
- No sidewalks. Few streetlights. Too far from school.
- I would not feel comfortable with my child walking/biking to school without adult supervision – paths or no paths.
- Olinda is too busy to allow my children to bike on it.
- It's a fun way to help kids get to know each other. Eliminate bus "drama"; motivates child.
- We live too far for my children to walk or bike to school. (4-5 miles)
- Due to the distance we are from school, I do not think this ever will be an option, especially with our weather. (4-5 miles)
- We live on Hwy 95. Deer cannot safely walk this road.

Comments from families who live 5 or more miles from school:

- We live 9 miles from the school so it's not an option. I think it should be encouraged for those closer to the school—good and healthy for kids and saves on bussing. I know many districts won't bus if you live within a mile of the school (or maybe it's ½ mile).
- We live too far away from school to walk or bike.
- I prefer bussing since my taxes are paying for that anyway.
- We live much too far away to walk or bike. Also, path would be 2 main highways. It would be fun and good exercise if possible. I walked as a child.
- The distance is just too far. But if we lived closer, I would certainly have her walk to school with other kids or by 4th grade or so (alone).
- If we lived closer to the school, I would allow my children to walk or bike. I think other families would benefit from this.
- Due to distance, it is too far for my children to walk. Crime levels are not high but kidnappings are always a concern.
- Since we live closer to the Forest Lake side of the Scandia Elementary school zone, I'm not sure how much my child could ride on a trail.
- We live too far out for bike riding to be an option.
- We are too far to even consider the kids walking or biking.
- We live too far away to bike or walk to school.
- We live too far and travel a highway (97)—no way for us.
- We live too far from school to consider walking or biking.
- Because we live so far away and Scandia Trail (Hwy 97) is our only route to school, walking or biking would never be an option.
- We are open enrolled at Scandia Elementary. Walking is not an option due to distance.
- I like the idea of walking/biking, but we live too far away.
- We live too far for the kids to walk.
- I believe most parents in Scandia are pretty strict and wouldn't allow their kids to walk to school anyway. I have found most parents here to be very protective. It's kind of a real shame that most kids don't even play outside anymore unless

A RESOLUTION OF THE ST. CROIX RIVER ASSOCIATION

Whereas: The St. Croix River Association (SCRA) has long established its opposition to the proposed Zavoral/Tiller Mine in Scandia, MN along the St. Croix National Scenic Riverway, a National Park Unit, and one of the original components of the National Wild and Scenic River System.

Whereas: The proposed mine will have negative impacts on the Riverway, its wildlife and vegetation, visitors to the Riverway, and the adjacent State Scenic Byway.

Whereas: The SCRA has numerous members from Scandia and the surrounding communities. Therefore: We, the Board of the St. Croix River Association, request that the Conditional Use Permit for this ill-conceived mine not be granted to the Tiller Corporation.

Unanimously approved on this day, December 4, 2012, at the SCRA Board meeting in St. Croix Falls, WI.

Peter Gove, Chair, St. Croix River Association