

May 26, 2011

A special meeting of the City Council was held on the above date. The purpose of the special meeting was to consider hiring special counsel to advise on the Zavoral Mining and Reclamation Project EIS (Environmental Impact Statement). Mayor Simonson called the meeting to order at 6:30 p.m. The following were present: Council members Connie Amos, Chris Ness, Jim Schneider, Sally Swanson and Mayor Randall Simonson. Staff present: City Administrator Anne Hurlburt, City Attorney Dave Hebert and Deputy Clerk Brenda Eklund.

Following the Pledge of Allegiance, Mayor Simonson opened the meeting to public comments.

Bruce Malkerson, attorney representing Dr. James Zavoral: Mr. Malkerson stated that his experience with land use law determined that the standards regarding the application date and the procedural requirements governing the application has been correctly applied. His analysis is in agreement to the legal opinion of the City Attorney and that of Mr. Korstad's, the attorney representing Tiller Corporation. At previous meetings on this discussion, City Attorney Hebert had advised the council that the EIS study be allowed to continue according to the zoning and development code that was in place at the time of Tiller Corporation's CUP application in November 2008.

Greg Korstad, attorney representing Tiller Corporation: Mr. Korstad referenced a letter addressed to the council, dated May 25, 2011, which included a detailed analysis of information that is consistent with legal research and established case law for the purpose of supporting continuation of the EIS. Mr. Korstad stated that the City's decision to process the application and perform the environmental review under the requirements in place when the application was submitted and not to apply changed requirements is well supported in the City ordinance and state law. Tiller Corporation wants to keep this process moving forward without distractions and complications and to keep the focus on completing the EIS.

Council member Swanson stated that she had not yet read this recent letter which contains substantive information regarding the legality of the process. She would like additional time to review the letter.

Kirsten Tuenge, 20595 Quinnell Avenue: Ms. Tuenge, representing the TA-COS group, expressed her appreciation to the council for conducting a special meeting for the consideration of obtaining a second legal opinion. Case law and interpretation of the development code has been presented by the TA-COS attorney, Mr. Kieran Dwyer, which gives the city the basis to deny the application, and the city council must clearly understand the discretion they have regarding the mining application.

Mayor Simonson asked City Attorney Hebert to provide his comments. Mr. Hebert stated that although he has no objections to the city's right to a second opinion, the council must analyze whether they need one based on the evidence they have before them. A second opinion wouldn't necessarily be an independent one as the attorney hired would be an advocate for supporting that the city's procedures were followed correctly, and if not, the attorney would provide remedies and options for going forward. Mr. Hebert advised that legal research would need to analyze the

entire process from the beginning to the present, along with the planner's files, to include a broad scope of information. Mr. Hebert suggested that a substantial cost may be expected for a significant amount of time invested in research from an outside counsel.

Mayor Simonson asked the council members to comment on the issue.

Council member Schneider would like to see the completed EIS, but agreed that getting a second opinion would be a costly and time-consuming step. Mr. Schneider would like to hear how the other council members stand on this issue.

Council member Swanson stated that this is a complicated issue. Mr. Korstad's letter referencing case law will need to be more thoroughly reviewed. Swanson understood that obtaining a second opinion would be an expensive process. She questioned if the League could provide outside counsel that may be covered under the City's insurance policy.

Council member Amos stated that she is not in favor of getting a second opinion due to the significant cost involved. Amos felt that City Attorney Hebert was doing a great job in advising the council.

Council member Ness thought a second opinion should be considered, but needs more information concerning the cost before making a decision.

Administrator Hurlburt provided information on using the League of Minnesota Cities Insurance Trust as the source of a second opinion on land use law disputes. They do not provide specific legal advice, but do have a group of lawyers to represent a city once a claim is made against a city. If there is an imminent threat of a lawsuit or if the city is served with a claim, they will provide representation to the city. Upon review of the information presented so far, the League would not provide representation to the city at this point.

Mayor Simonson stated that he sees this meeting as an opportunity for the public to address the council with their concerns on this issue. Simonson agreed that it is a difficult decision to make and careful consideration of the issue should continue.

Mayor Simonson invited those in attendance to approach the council with their comments.

Jean Holding, 21922 Pomroy Avenue: Ms. Holding recognized the high cost of lawyers representing Tiller's defense, and wanted to make sure that the City has adequate and balanced representation.

Pam Arnold, 16560 220th Street: Ms. Arnold stated that the potential environmental concerns and costs to Scandia residents need to be considered and equal representation to offer balance needs to be sought. Ms. Arnold acknowledged that the community cares deeply about the environment and the St. Croix River is an identity of Scandia.

Jill Medland, St. Croix National Scenic Riverway Environmental Coordinator: Ms. Medland relayed the agency's concerns on the noise and indirect impacts mining would have on adjacent lands along the scenic riverway corridor, and the importance of including these in the EIS study.

Gregory Page, 14727 Quarry Road: Mr. Page's concerns were that the EIS was set up on too narrow of a basis and a second opinion would be helpful and money well spent to understand the legal issues and true sense of the EIS process. Legal challenges at a later date may be a possibility.

Council member Swanson stated that the council is meeting so that all members can discuss this issue. Swanson then made several points. Procedural review is what is being focused on at this point. An opinion may be defined without going too broad. Parameters could be set on how far reaching the request is to control the costs. In addition, attorneys should be consulted with experience in representing both the corporate and environmental side of mining issues. The best way to understand this is to get the facts. An attorney hired by the city should not be biased towards the City's interests. It would be advisable to consult with the League a second time. The council can continue to talk this out at a future workshop meeting.

James Wilcox Dimmers, 125 Depot Road, Osceola, WI: Mr. Dimmers stressed that what is done on this property will negatively affect adjacent lands. Mining would be an assault on the aesthetics of the St. Croix River valley and totally unnecessary. Mr. Dimmers encouraged getting a second legal opinion.

Bill Clapp, 19955 Quinnell Avenue: Mr. Clapp stated that it would be well worth the city's investment to obtain a second legal opinion which would examine the arguments given on both sides and determine if they are correct or not. This would validate the legality of the proceedings so far. The council could put a cap on the cost of researching a second opinion.

Dan Willius, 23577 Quentin Avenue: Mr. Willius noted two points in this discussion. Wear and damage to roads, broken windshields, and noise from the mining site which destroy the environmental experience of the river are some of the costs not measured. He felt an unbiased point of view is not being provided by Attorney Hebert.

Lisa Schlingerman, 20661 Quint Avenue: Ms. Schlingerman reminded the council that Wind in the Pines Park used to be the town dump. She felt that the City has evolved since then and this project to destroy the mining site before restoring it is futile. The City needs to recognize the gifts it has. Ms. Schlingerman stated that she is totally opposed to the project and encouraged a second legal opinion.

Judy Herbert, 15125 220th Street: Ms. Herbert recognized the mayor's comments that there are also those in favor of allowing mining at this site, but she has not heard from any of them. She would be interested in what benefits they think having a gravel mine at this site would have. Would jobs be created for Scandia residents? There are many residents who would be negatively impacted by a gravel operation. She is disappointed that federal government is not interested in

the representation of the people but rather in the interests of big corporations. She urged the council not to take this approach.

Jan Brown, 23110 Manning Trail: Ms. Brown stated that she has opposed gravel operations in Scandia for many years. She feels that the operations have done nothing for the community or citizens. She is concerned that the natural streams could be destroyed and that a second opinion is necessary to fight a big corporation.

Curtis Hadland, 15280 Pilar Road: Mr. Hadland urged the council to make a decision which follows the language of the development code, which states that the EIS must be completed before applying for a CUP, which would negate the whole process at this point.

Laurie Allman, 16220 Norell Avenue, May Township: Ms. Allmann asked the council to uphold the Comprehensive Plan and supported getting a second opinion. There are citizen concerns that this is not being handled in a fair and balanced way. She felt that there are legal arguments that could be made to end the EIS process, and another attorney could broaden the view of the city's authority to do this.

Richard Leider, 23229 St. Croix Trail: Mr. Leider asked the council to look towards a vision for this site and what the possibilities five to ten years out could be, and to consider the moral and value issues involved with this, beyond the legal and economic ones.

Pierce Lewis, 20453 Quinnell Avenue: Mr. Lewis stated that he has not heard from anyone supporting the mine and what they think the benefits would be.

Kristin Tuenge, 20595 Quinnell: Ms. Tuenge stressed the importance of researching a second opinion on the legality of Tiller's application. If the council does not seek out their discretion on this application, the citizens will feel like they are not given equal consideration, nor is the legality of the city's discretion being verified.

Mayor Simonson closed the public comment forum.

Mayor Simonson stated that the meeting was a good opportunity for citizens to have their voices heard and was proud of the community for demonstrating the rights to freedom of speech. He felt that there may be a perception of continuing the EIS is a position of approval of the CUP, but that is not the case. Mayor Simonson explained that allowing the EIS to go forward is a tool the council will use to make a well informed decision. This forum allows the council to formulate ideas and look at the issue of considering the hiring of a special counsel. Mayor Simonson asked City Attorney Hebert for final comments.

City Attorney Hebert asked the council to consider if hiring a special counsel, with the information before them and the costs involved, would be needed. The scope of the project and costs would need to be determined, but the council should not limit the scope to the point that the attorney cannot give a valid legal opinion.

Council member Swanson stated that she will prepare the scope and cost estimates to obtain a second legal opinion to present at the June 14 work session. Swanson felt it would be worth looking at without spending a significant amount of money. Swanson said she would have dollar figures at the work session meeting.

Council member Schneider stated that researching the cost of obtaining a special counsel should be looked at. He stated that it was a good meeting and helpful to hear the environmental concerns, but this decision tonight is strictly a legal issue. The EIS will cover the environmental issues.

Council member Ness was in agreement about looking into a second legal opinion, but questioned if a large amount of money should be spent. Ness would certainly like to see an estimate.

Ness, seconded by Swanson, moved to consider hiring a special counsel to advise on the Zavoral Mining and Reclamation Project EIS and that Swanson prepare the scope and costs to present at the June 14 work session. The motion carried 5-0.

ADJOURNMENT

Ness, seconded by Schneider, moved to adjourn the meeting. The motion carried 5-0.

The meeting adjourned at 7:44 p.m.

Respectfully submitted,

Brenda Eklund
Deputy Clerk