

December 12, 2012

The Scandia Planning Commission met on the above date. The purpose of the meeting was to continue the public hearing on the Conditional Use Permit for the Zavoral Mine and Reclamation Project (Tiller Corporation, Applicant). Chair Christine Maefsky called the meeting to order at 7:02 p.m. The following were in attendance: Commissioners Jan Hogle, Tom Krinke, Steve Philippi, Peter Schwarz and Commission Chair Christine Maefsky. Staff present: City Administrator Kristina Handt, City Planner Sherri Buss, Attorney Vince Stevens and Deputy Clerk Brenda Eklund.

APPROVAL OF AGENDA

Schwarz, seconded by Krinke, moved to approve the agenda as presented. The motion carried 5-0.

PUBLIC HEARING, CONTINUED: CONDITIONAL USE PERMIT FOR ZAVORAL MINE AND RECLAMATION PROJECT. TILLER CORPORATION, APPLICANT

The Planning Commission opened the public hearing on Tiller Corporation's application for a Conditional Use Permit to allow mining and reclamation of a dormant, unreclaimed gravel mine (east of the intersection of TH 97 and TH 95) on December 4, 2012. The hearing remained open to allow for continued public comments.

Before taking public comments, Attorney Vince Stevens was asked to provide input on the questions regarding which Comprehensive Plan should be applied for the evaluation of Tiller's CUP application. Stevens stated his legal recommendation to apply the 2020 Comprehensive Plan which was in effect at the time of Tiller's submission in November 2008. Under this Plan, mining was an allowed use in the Agricultural District. In the City's current 2030 Comprehensive Plan, adopted in 2009, several zoning districts changed which eliminated gravel mining in the district where the Zavoral property is located. Stevens explained that there is a strong argument that application of the 2030 Comp Plan would result in "manifest injustice" to Tiller which could result in a court challenge against the city. Stevens referred to documentation collected by staff which provided minutes, staff reports and resolutions summarizing the city's position to apply the 2020 Comp Plan to Tiller's application.

City Planner Sherri Buss then presented the criteria of evaluating a Conditional Use Permit based on the City's Development Code. The presentation is attached for the record. Buss discussed each criterion and explained the findings by which the criteria were met. Conditions for meeting each criterion would be part of the Conditional Use Permit. Buss concluded by stating that her analysis indicated that the proposed project meets the ordinance requirements for granting a Conditional Use Permit for the mining operation.

Buss recommended the Commissioners consider the options for the preferred length of the mining operation when evaluating conditions.

It was questioned if the Environmental Impact Statement contained accurate data. Buss explained that the Council determined the EIS to be adequate in September, and it would be difficult at this point to analyze new information or data for its accuracy. New information would

not have the same credibility or value as the information that is included in the EIS for making a decision about whether the application meets the ordinance requirements.

Chair Maefsky re-opened the hearing for public comments at 8:02 p.m.

John Herman, 23355 Quentin Avenue, Scandia, MN: Mr. Herman stated that the location is the wrong place for the city to approve a mine. He stated that he was in disagreement with the Attorney's position to apply the 2020 Comp Plan to the application. Mr. Herman provided a handout on case law that illustrated a City's authority to have discretion to choose which version of an amended ordinance to apply to a developer's application. The handout is attached for the record. Mr. Herman stated that, in the event of approval, more stringent conditions must be placed on the permit. The shortest possible duration should be stipulated, along with 200 foot setbacks, higher barriers along the property lines, and a request to MnDOT to provide for creative signalization at the TH 95/TH 97 intersection. Mr. Herman emphasized the City's goal to preserve rural character, and it is the Planning Commissioners' job to protect the City from inappropriate development.

Dan Willius, 23577 Quentin Avenue, Scandia, MN: Mr. Willius stated his disagreement of applying state noise standards to the application, rather than the federal standards within the Scenic Easement. He said that the context of the sound should be accounted for, not just the decibel levels. Mining sounds are obtrusive and irritating in the context of the St. Croix River valley. Regarding the conditions outlined in the staff report, community-wide values were not addressed. Mr. Willius stated that residents put a high value in their community, and the City should do the right thing by denying the application. He said that everyone's property values could be eroded due to the mine.

Bill Clapp, 19955 Quinnell Avenue, Scandia, MN: Mr. Clapp stated the opposition of the St. Croix River Association to the mining permit. He brought up a possibility that the City could be sued if the mine were approved. Mr. Clapp provided a list of arguments by which the City could deny the permit, including using more restrictive federal noise standards. The mining operation would contribute noise which would violate the use and enjoyment of adjacent property. He stated that the mine does nothing to benefit public welfare. Upon the conclusion of the operation, the resulting terrain would not be suitable for housing or farming, and would provide no economic benefits to the City. Mr. Clapp asked the City to deny the permit based on the facts that it does not meet the criteria of the CUP. He concluded with a comment that he would like to see discussions on what alternatives the current land could be used for, such as a land trust.

Randy Ferrin, 23290 Quentin Avenue, Scandia, MN: Mr. Ferrin stated he is a Board member of the St. Croix River Association which is on record as opposing the mining project from the start. Mr. Ferrin submitted a resolution adopted by the Association, which is included as an attachment for the record.

Jerry Dorff, 15177 State Road 70, Grantsburg, WI: Mr. Dorff stated that he is a Board member of the St. Croix River Association, and explained his experience with a frac sand mine, operated

by Tiller, located near the river by Grantsburg, WI. He said that the processing sounds are audible 1-1/2 miles from the site, and the community of Grantsburg has had a less than satisfactory experience with Tiller. Last spring, there was a leak in one of the berms which polluted a stream, due to Tiller's failure to maintain and monitor the dikes and berms. He warned that past performance of the company could be indicative of future performance. Mr. Dorff stated that the proposed mining operation is incompatible with current land use plans and the rural atmosphere of Scandia.

Marilyn Chesnik, 15177 State Road 70, Grantsburg, WI: Ms. Chesnik stated she is a business owner in Grantsburg, and has seen significant impacts to tourism due to a frac mine. Highway 70 in Wisconsin is recognized as a tourism corridor, as is Highway 95. She asked the City to consider this impact too, and stated that corporations only care about profit, not communities.

Larry Whitaker, 625 Pine Cone Trail, Marine on St. Croix, MN: Mr. Whitaker urged the Commissioners to consider the no-build option, as the current Comp Plan does not allow mining at the site. He said public safety and welfare for the intersection of Highways 95 and 97 have not been adequately addressed in the study. He spoke of the environmental threats the mining project could have on the St. Croix Riverway, such as the road contaminants from the 300 plus daily trucks which could work their way into the groundwater. Mr. Whitaker stated that if a permit is approved, the shortest interval be designated so as to have a lessened impact on the river system, and to require the operation be shut down immediately if any environmental or safety problems occur. Mr. Whitaker's letter is included as an attachment for the record.

John Lindell, 11240 218th Street, Scandia, MN: Mr. Lindell stated his many concerns about the mining proposal. As a property owner near Tiller's Scandia Mine along Lofton Avenue, he stated instances in which he thought Tiller violated conditions of their permit, such as berm installation, wetland restoration and operating hours. He felt Scandia was taken advantage of when Tiller asked to mine into the groundwater at the site. Mr. Lindell asked the Commissioners to ignore the Planner's recommendation to approve the CUP because conditions and restrictions will not resolve the risks and concerns of the project. He stated that the Highway 97/Lofton Avenue intersection is already the site of traffic accidents and more trucks travelling this route should be a concern. Mr. Lindell stated that applying the old Comp Plan is not correct based on the Planner's and Attorney's interpretation.

Leila Denecke, 21777 Quarry Avenue, Scandia, MN: Ms. Denecke voiced her opposition to the project and noted that she could find no examples in which there would be any benefits to the city or its citizens. She questioned if the motivation is to amend their CUP in order to operate a frac sand mine instead. Ms. Denecke asked the Commissioners to hear the voices of concern and opposition to the mine and choose the No-Build alternative as the most prudent decision in order to honor the constituents and community. Ms. Denecke's statements are attached for the record.

David Shanteau, 13945 195th Street, Marine on St. Croix, MN: Mr. Shanteau spoke of how this could be a foot in the door for Tiller to operate a frac sand mine at the site. He stated that based on the traffic calculations over a 12-hour day, a truck would enter or exit the site every two minutes, leading to backed up traffic. He noted that the insufficient separation from the lowest

mining elevation to the water table. Mr. Shanteau asked the City to deny the CUP, but if approved, to designate the shortest duration possible.

Laurie Allmann, 16220 Norell Avenue, Marine on St. Croix, MN: Ms. Allmann stated that there are very legitimate concerns raised from resource agencies within the EIS that could be used to deny the CUP. She said that the application could be denied even under the 2020 Comp Plan, as the Plan's goal is to enhance the natural resources of the area, with the Riverway being one of the most precious assets, and to not endanger the welfare of the community. Ms. Allmann stated that the EIS documented the high natural and cultural value of the site, which identified significant diversity of native species on the property. She noted the documented impacts of noise, traffic and accidents that will reasonably occur despite having mitigation measures in place. She referenced a LIDAR based review which located a paleo-geologic channel that could have the potential for another blowout into the River. This study also estimated an increased temperature to the trout streams, leading to detrimental effects to the trout habitat. It was recommended that at least three additional monitoring wells be required to better protect the water table. Ms. Allmann asked the Commissioners not to listen to facts as screened by the Planner, but to consider the cumulative effects of a mining operation over a period of time, which could constitute a significant impact overall. Ms. Allmann's submittal is included for the record.

Ann Bancroft, 16560 220th Street, Scandia, MN: Ms. Bancroft asked the City to consider the incredible wilderness resource the St. Croix River valley is, and to follow the rules of the River for all, now and into the future. She stated that she finds no benefits, but many detrimental effects to their nearby farm and to their health. Ms. Bancroft stated that the proposed project is no place for a mine, and that just because Tiller can obtain a mining permit does not mean they should.

Pam Arnold, 16560 220th Street, Scandia, MN: Ms. Arnold asked if the CUP can enforce the traffic promises made by Tiller, in that the number of trucks travelling from the Franconia and Osceola sites will be replaced by those from the Zavoral site. She stated that the berms on the north end of the site would not prevent noise and dust from impacting nearby residents, including their farm. She noted her frustrations with MnDOT's earlier response to traffic concerns on Highway 95. Ms. Arnold noted that the EQB does not require the cost of Tiller's investment in the project to be prevalent in the consideration of permitting. She questioned the opinion given in the EIS that Scandia Elementary School would not be affected by the increased amount of traffic. Ms. Arnold asked the Commissioners to protect the community and be an arbiter of good neighbors by denying the CUP.

Katherine Lewis, 20453 Quinnell Avenue, Scandia, MN: Ms. Lewis read a letter submitted by Pam Smith and Lisa Plowman, which was included in the written comments for the December 4, 2012 Planning Commission meeting. Ms. Lewis asked if the project were approved, could the mine be operated during the months of November through April, over one to two years? This would lessen the impacts from noise, dust and use of the River during the summer months. The frozen ground would be less susceptible to contaminants.

Susan Rodsjo, 21450 Pomroy Avenue, Scandia, MN: Ms. Rodsjo stated her opposition to the project and felt frustrated that the City made a choice to apply the old Comp Plan, but noted that this wasn't a promise to Tiller. The City should accept the costs of the risk to deny the CUP to protect the citizens and the best interests of the City. She stated that even a 2% decline in property values is a significant cost to residents, and there is factual evidence in the EIS that this could occur. Ms. Rodsjo submitted a parent survey (attached for the record) taken in March 2011 which indicated a high concern of the traffic speed and safety to students attending Scandia Elementary. She asked that, if approval is granted, Tiller be required to construct bike and walking trails along Highway 97 for a safe route to school for students. Ms. Rodsjo noted her preference to have the site mined for as short a duration as possible. She asked if a "per load tax or toll" could be applied so that some financial benefits could come to the City.

Keiran Dwyer, attorney representing Take Action – Conserve our Scandia: Mr. Dwyer explained that it is the obligation of the applicant, Tiller Corporation, to demonstrate how their application meets the CUP criteria of the City Development Code. He stated the standards are objective and the Commissioners must use sound judgment to make a determination. Mr. Dwyer said that the "manifest injustice" clause does not apply to denying this application, as it applies to something that has already been built. He asked the City to use stricter noise standards when evaluating the project, as the Code does not specifically state that only state noise standards may be used.

Greg Korstad, attorney for Tiller Corporation: Mr. Korstad provided two letters to the City, attached for the record. The letters provided an analysis of the comprehensive plan considerations and the explanation of the how the application meets the standards of the Development Code. He stated that the City must balance the rights of the property owners and adjacent owners using factual statements, something the EIS concluded after four years of study. Mr. Korstad asked the Planning Commission to keep the public hearing open for one additional week for the submission of written comments and responses to the issues being addressed.

Attorney Stevens advised that the Planning Commission leave the record open for one week for the submission of written comments.

Schwarz, seconded by Krinke, moved to leave the record open until a deadline of December 19, 2012 for the submission of written comments regarding Tiller's CUP application. The motion carried 5-0.

Chair Maefsky announced that the hearing was closed for verbal comments at 10:47 p.m.

Commissioner Philippi requested that a site visit of the property be scheduled as he had not yet been on the property for prior site visits during the EIS evaluation. **Philippi, seconded by Maefsky, moved to schedule a site visit for the Planning Commission and any interested parties for December 19, 2012 at 3:00 p.m. The motion carried 5-0.**

Chair Maefsky recommended that the Planning Commission meet for a Special Meeting before their regular January 2, 2013 meeting, to begin deliberations on the CUP application. The members were in consensus to schedule a special meeting for December 27, 2012 at 7:00 p.m.

Planner Buss stated that she will contact the traffic, noise and air quality sub consultants who worked on the EIS study to ask that they attend the meeting to answer any questions the Planning Commissioners may have on these issues. The ground and surface water specialists would be invited to attend the January 2, 2013 meeting.

ADJOURNMENT

Krinke, seconded by Schwarz, moved to adjourn the meeting. The motion carried 5-0.

The meeting adjourned at 11:00 p.m.

Respectfully submitted,

Brenda Eklund
Deputy Clerk