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October 21, 2009

Gary Spanel
Polk County Zoning Administrator
100 Polk County Plaza, Suite 130
Balsam Lake, WI 54810

**RE: KRAEMER MINING AND MATERIALS, INC. SPECIAL EXCEPTION USE PERMIT
APPLICATION**

Dear Mr. Spanel:

I am Town Attorney for the Town of Osceola. The Town asked me to respond to the allegations in Kraemer Mining's Special Exceptions Permit application that the Town improperly considered factors relating to the operation of a quarry and its impact on surrounding lands, in the Town's review and recommendation against Kraemer's rezoning application. The Town also asked me to respond to Kraemer's allegations of bias which it raised in its letter to the Polk County Corporation Counsel dated September 18, 2009.

1. The Town properly considered the proposed use as a quarry in its review and recommendation against Kraemer's rezoning application.

In the Town's resolution recommending disapproval of Kraemer's rezoning application, the Town recommended disapproval based on the Town's findings that the 1) use of the property for a quarry would be incompatible with the residential uses in the area; 2) the blasting, noise, dust, and increased truck traffic generated by the quarry would negatively impact residences in the area; 3) truck traffic in the area would increase substantially and would negatively impact roads and residential uses in the area; and 4) rezoning the property to Agricultural for use as a quarry would be incompatible with the Town's Comprehensive Land Use Plan.

Kraemer's claim that the Town acted improperly in considering these impacts of the proposed quarry on surrounding land uses is totally without merit. Consideration of compatibility with surrounding land uses is an appropriate consideration in the rezoning decision. Step Now Citizens Group v. Town of Utica Planning and Zoning Committee, 264 Wis.2d at 662, (Ct. App. 2003). In that case, the Court said:

"The factors to be weighed in considering the validity and reasonableness of rezoning are several . . . the pertinent inquiries go to whether the rezoning is consistent with long-range planning and based upon considerations which affect the whole community. The nature and character of the parcel, the use of the surrounding land and the overall scheme or zoning plan are also relevant . . . Finally, the interests of public health, morals and safety must also be considered as well as promotion of public welfare, convenience and general prosperity . . .

The concept of public welfare is broad and inclusive and embraces in comprehensive zoning the orderliness of community growth, land value and aesthetic objectives."

In the Step Now case, the Court of Appeals affirmed a rezoning decision based on the town's consideration of various factors directly related to an ethanol plant, which was the proposed use that prompted the rezoning application. In deciding whether to rezone the property to allow an ethanol plant, the town Planning and Zoning Committee considered, among other things, odor emissions, noise and traffic considerations, fire control considerations, water considerations, all related to the proposed ethanol plant. The Court of Appeals affirmed the municipality's rezoning decision, stating: "Step Now cites no authority for the proposition that in making a legislative decision, a municipality that gathers all possible information and better educates itself and its citizens about the ramifications of a zoning decision is abusing its discretion or acting in excess of its power." Id 264 Wis.2d at 688-689.

In the present case, the Town of Osceola went to great effort and expense to educate itself and its citizens on the ramifications of rezoning the property to allow a quarry; ramifications such as noise, dust, traffic, impact on wells, effect of blasting on surrounding areas, compatibility with surrounding land uses. Consideration of impacts specific to the proposed use that is prompting the rezoning application is especially important in this case because the proposed zoning district, Agricultural, allows for a wide variety of uses, some of which may not be compatible with each other. In certain locations within an Agricultural District, a quarry may be compatible with surrounding land uses. However, in other locations, it may not be. One objective stated in the Town's 1998 Comprehensive Plan is to ensure that adjacent land uses are compatible with regard to such factors as noise, smoke, odor, traffic, activity and appearance. This is true within a zoning classification as well as between different zoning classifications.

In addition, the nature of quarrying is such that it will likely have significant short and long term impact on surrounding lands. The Court of Appeals recognized that a municipality acts within its authority when it considers the impacts of the proposed use that is prompting the rezoning application. The need to do so is especially important when a high impact, long-term use of property, such as a quarry, is proposed.

Thus, the Town acted properly in considering the impact the proposed quarry would have on surrounding land uses (considering noise, dust, traffic, appearance, etc.) and in considering whether the proposed use as a quarry would be consistent with the Town's Comprehensive Plan.

2. Kraemer's allegations of bias are without merit.

In their letter dated September 18, 2009, Kraemer's attorneys argue that Polk County should disregard the Town Board's recommendation against the SEP application because, they claim a member of the Town Plan Commission was biased against Kraemer's SEP application. Kraemer argues that it did not get fair consideration from the Town because there were anti-quarry signs on or near a Plan Commission member's property.

Kraemer's claim of unfair treatment is without merit. It is not impermissible bias for a Plan Commission member to have an opinion about an application that is before the Commission. Wisconsin courts recognize that sensitivity to local concerns plays a role in local zoning decisions because of the potential impact change has on neighboring land. It also recognizes that the primary expertise these boards have is in their capacity as representatives of community concerns, and it is not inappropriate for the members to listen to community concerns. Sills v. Walworth County Land Management Committee, 254 Wis.2d 878, 648 N.W.2d 878 (Ct. App. 2002).

Furthermore, the Plan Commission is not the decision maker regarding the Town's recommendation on this application. The Town Board, not the Plan Commission, makes the Town's recommendation to Polk County for or against the SEP application. The Town Board Resolution and minutes show that the Town Board thoroughly considered all the information the Town had gathered regarding the proposed quarry. The Town Board considered the pros and cons of the various issues that have been identified regarding the Kraemer proposal, including, impacts the quarry may have on groundwater, stormwater/water discharge, environmental/cultural impacts, traffic/access, economic benefits, blasting/noise/ground vibration, and compatibility with nearby land uses. After considering all this information the Town Board adopted a resolution recommending that Polk County Land Information Committee deny the Kraemer SEP application.

Clearly, the Town Board recommendation against the SEP is a result of the Town Board considering all the information, weighing the pros and cons, and coming to a reasoned and reasonable recommendation. Kraemer's attempt to discredit the Town's review of this matter is without basis and completely disregards the diligence with which the Town Board has reviewed this application, not to mention the countless hours they have devoted to it. While Kraemer may disagree with the Town's conclusion, its attempt to undermine the integrity of the Town Board's decision-making process is unfounded. Enclosed is a copy of the Town Board Resolution referred to.

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In conclusion, the Town acted properly in considering the impacts the proposed quarry may have on surrounding lands, in connection with its recommendation to deny the Kraemer rezoning application. The Town also acted properly in its deliberations related to its recommendation to Polk County Land Information Committee to deny Kraemer's SEP application. After a lengthy process in which the Town considered all the information related to the proposed quarry, the Town Board concluded that the SEP should be denied because the quarry would have a significant negative impact on the surrounding area due to noise, dust, traffic, blasting, etc. It also found that a quarry in that location would be inconsistent with the Town's Comprehensive Plan. Furthermore, the Town Board's recommendation to deny the SEP is consistent with Polk County Zoning Ordinance Section IV C, which requires the County to consider factors such as smoke, dust, noise, vibrations from operation of heavy equipment, heavy vehicular traffic, and increased traffic, in deciding upon a Special Exception Permit application. The Town respectfully requests that the Land Information Committee give full consideration to the Town's recommendation and deny the Kraemer SEP application.

Thank you for your consideration of this matter. Please provide this letter to the Land Information Committee for its consideration. If you have any questions about this, please feel free to contact me.

Sincerely,



CATHERINE R. MUNKITTRICK
Osceola Town Attorney

enc.

cc: Town Chair: Steve Stroshane;
Town Supervisors: Robert Wright and Eugene Lundholm;
Town Clerk/Treasurer: Lorraine Rugroden
Polk County Corporation Counsel: Jeffrey B. Fuge

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