

Selected Responses from discussion of Memorandum dated
September 5, 2012, from Troy Gilchrist, Esq.

COMPREHENSIVE PLAN

(1) "Would the Town intend to develop and adopt a comprehensive plan?"

Doing something you call a comprehensive plan, it keeps that door open for you to do another year's moratorium.

Our land use plan can be called a comprehensive plan for the purpose of -- the purpose of these rules, right, that's what the lawyer said.

The comprehensive plan is whatever you want it to be. It does not have to be a huge plan with a lot of rules and ordinances and restrictions.

(2) "If so, which parts of a comprehensive plan would the Town like to develop and adopt in addition to the land use plan (there are a number of plans available for review on the internet)?"

Let's just take our land use plan and add some things for mining and call it a comprehensive plan.

We don't -- like if you have a comprehensive plan -- we talked about this before -- you look at a comprehensive plan for a big city like Minneapolis, you know, what makes the comprehensive plan is they have these different chapters. One might be on land use. Another chapter might be on transportation planning.

We could add a mining plan. You can have, you know, a technology plan. So it's kind of like based on these different categories.

That lines up with what he advises. He said if you are going to add something, just don't add a mining ordinance.

Be careful when you say "ordinance" because an ordinance is not a "plan." The comprehensive plan or land use

plan leads to a separate document called an ordinance. Those are the rules, the teeth.

So we could have a mining plan as one of our comprehensive plan chapters, and then it could lead to a mining ordinance.

ZONING ORDINANCE

1. "What are the goals the Town would like to achieve by adopting a zoning ordinance?"

To respond to the community's desire to protect their environment, their roads, and their health and safety.

To have control over where, when and if mining is brought into our community.

I also would like to say that I think we need to really take a good sound look at economic opportunity, and not just for the sake of emotion that possibly could come from this. Because we still need a tax base in this township or we can't survive.

I think the only reason to adopt a zoning ordinance is to account for areas where the county ordinance is not regulating things we need. I think we need to be regulated, and so most things are, depending on how the zoning -- the mining ordinance turns out and what, you know, we as a township decide we want.

There are other land use things. Like I've mentioned the bluff top housing, bluff protection issues. It's very weak there, housing subdivisions, things like that.

I would just add wildlife corridors.

2. **"The Town is responsible for administering and enforcing any regulation it adopts, so would the Town want to adopt a full spectrum of regulations (similar to the County ordinance), or would it want to adopt regulations only on a limited number of specific issues/uses?"**

We need to be stricter. So we could just look to a few regulations that we wanted to take care of.

We would only want to regulate a few limited things that the county wasn't regulating adequately.

3. **"Would the Town want to set out the entire text of its regulations in its ordinance or would it want to adopt sections of the County ordinance by reference (there are certain administrative provisions that would need to be included in the Town's ordinance if it adopts one, but there are various sections of the County ordinance that could be adopted by regulation with your ordinance then explaining how it is stricter than the provisions adopted by reference to help reduce the size of the ordinance)?"**

It kind of seems like the same thing in a way as number two, but more specifically saying Article 14 of the county mining ordinance states X. Hay Creek Township also requires Y. And that's the way I think I would want to do it, just kind of the same way I said for item two.

I would concur. If we set out the entire text, I mean, we're going to need a staff of 50 people to constantly compare and contrast and make adjustments. So, definitely, adopt by reference.

4. **"What specific issues/uses does the Town believe are not being adequately addressed by the County ordinance (the answer to this question will help determine whether it is worthwhile for the Town to adopt its own regulations)?"**

Well, mining, and there are some others that I think we might add. We talked about at the last meeting shooting ranges, and I think the setbacks might fall within this question too.

I guess I answered this earlier, but specific issues: mining, residential housing, location and density, bluff

protection with regard to housing, shooting ranges are important.

Wildlife corridors again.

We talked about shooting, but also dog kennels, people putting in kennels, feedlots again, but we don't need to get into that. But, I mean, it's just very specific. We have to really look at what the county already has too. We'll take exactly what the county has and then -- but I don't know exactly what the county has on everything -- and then add the ones that we want.

I'm in the same place. The gaps I see in the current county ordinance are insufficient setbacks, hours of operation, impact on adjacent property owners, when it comes just to the mining issue. As far as other issues, I agree with we could address in a zoning ordinance other things like dog kennels, shooting ranges, things that people in our community would like us to address.

It comes under -- I mean, that comes under noise, and noise is regulated by the state too. I think most people don't know that.

5. "What regulations that are as strict or stricter than the County ordinance would the Town be interested in adopting (understanding the Town can only be as strict as or stricter than the County's regulations, and the Town may adopt regulations on matters that are preempted from local regulation)?"

Feedlots.

There are certain things the town -- the state doesn't allow local municipalities to regulate.

Nuclear waste.

It kind of flops back to question four for me. I was going to say it's the same.

And on that one it's almost more focused on mining, because now it's starting to say what specific things. And I think this is where we're going to have to lay the County's Article 14 on the table and talk about the things we've already said, and say where is that in Article 14 and how do we want to

address it.

And that brings up what you were saying with setbacks and the hours of operation, adjacent property owners. What about dust?

Dust would be air quality. And the PCA and the State regulate air quality.

Reclamation, if somebody is going to do a mine -

Well, reclamation brings up something that we haven't talked about for awhile and, that is, this earnest money, and how -- where does that get put in this ordinance or plan?

I would put that in under number five, the one we're on right now.

I think that is covered in the County's Article 14. My understanding is the current mining ordinance discusses a bond, and it would be a performance bond, and there are some real issues with that.

That would be a good question for the attorney.

That would. Would earnest money be stricter than a bond or are they the same thing?

6. "Are there any uses the County allows under its ordinance that the Town would like to prohibit or classify as a different allowed use in its ordinance (e.g., classifying a use allowed by the county as a conditional use [or] an interim use under the Town's ordinance."

I did ask him about this, what he meant there. He meant a couple things. One is do you want to do it truly as an interim permit, like a licensing ordinance where you get an annual license? That's different than what's being talked about at the county as an interim ordinance or interim permit. To them, an "interim" is 40 years. But "interim" in this context would be do you want to do something really short to have a lot of control? Or, do you want to prohibit it?

But where he is going here is there are no active mines in Hay Creek right now. There are a couple inactive, and could they become an active type of thing.

But you could say we're not going to have any more mines in Hay Creek. This is where he is asking this question. Do you want to prohibit it?

He said if you say you don't want any more mines, you'd have a lot better chance of having that upheld in court than saying you don't want to have any silica mines. He said if you get that specific, it might be a challenge to try to say why not that type of mining?

He also said, like we did in our moratorium or interim ordinance, you could make exceptions for constructions, sand for farmers for cattle, under ten acres, construction sites, sand being used for construction, all the kind of local things. He said that he's heard of another person say, if it leaves the township it's a prohibitive mining. If it's used in the township it's legal.

And, I mean, we don't want to outlaw any current local use.

He said this is the place where you would say, I don't want any mining in Hay Creek, or I want to control it in a special way that is totally different than what the county is doing, like a licensing ordinance and interim ordinance.

So I'm thinking that if A-2 has an industrial mining facility as a permitted use, I would want that to be conditional or something else, not just permitted, not just in the list of the permitted things. It needs to be conditional or something similar, some other kind of use.

I would want to make sure that we definitely are reclaiming the land, that whatever happens, no matter where it is. And I guess I would not want to restrict mining totally. And to say it happens and not leave the township that really limits it to nothing as well.

I think we need to be concerned about this will be worth nothing if we don't do it across the board and aren't specific. I mean, there are issues here that we're talking about that could get into other facets of this community. Agriculture could very much be impacted by some of what we would

introduce here because, okay, you don't like their dust. Well, I'm sorry, but you look out in those fields and it's full (of dust).

Well, with dust and mining, we're mainly concerned about crystalline silica, right? We're not so much worried just road dust from trucks as much, because then you get into agriculture and it overlaps.

And it's a debate that has happened for a long time about the dust issue there and the health issue, and that's probably why it shouldn't be called "dust." You pointed that out earlier. It should be called "air quality," because, when it's dry like this, a hundred different activities are going to create dust.

But only one activity I currently know of -- and there's probably more than one -- creates those silica shards, those little crystal shards, that can be very negative -- a negative health impact.

Breathable crystalline silica. I think we should be careful to use that word when we're talking about that --

7. "Are there any uses the Town does not want to regulate itself, thus leaving it to the County?"

We stated some earlier. We stated we don't want to control feedlots. We don't want to control roads. We don't want to control transportation.

I feel strongly whatever we do pass we have to be able to enforce. So I think we have to be very conscious whatever we do work with, anything over and above the county.

I will make a comment on that. Maybe it's time or maybe it's not. I've got copies of ordinances at home where communities made the mine pay for an enforcement organization that reported to the town, not to the mine.

8. "To what extent would the Town want to be responsible for issuing permits?

- a. Land use and building permits?**
- b. Conditional use permits?**
- c. Interim use permits?**
- d. Variances?"**

My comment would be, to what extent does the town want to be responsible for issuing permits? Yes, on land use and building; yes, on conditional use permits, but on a very limited basis like for mining; the same on interim use permits; and, no, on variances.

So what you're saying is an absolute no to a variance; that we wouldn't handle that. We would refer that to another body, or just it wouldn't happen?

That's probably "yes" to variances too then.

I think if we are going down the road that I think we're going, we're going to be saying "yes" to all of these -- but I think it's -- that's my big, you know, problem with doing all this stuff. If we have to do this, I just feel like we're going to need to maybe find some professional land use planner. We can share, maybe we can go along with other neighboring townships that are doing this planning and zoning.

9. "Would the Town want to require an applicant to obtain a permit from the Town even if the County requires the applicant to go through a duplicate process to obtain a County permit?"

It depends on what they're looking at doing, if we are not going to be any more restrictive than the county is on certain things.

If we have certain things we're more restrictive on, then we have to control the permitting process. If we don't have any additional restrictions, then the county controls the permitting process.

Start at the local level and work up to the county with it coming in first.

10. "Who would be responsible for administering and enforcing the ordinance locally (a town officer or would the town hire a zoning administrator.)"

I think the solutions are -- kind of what he's saying here is -- does a town official take on this responsibility? If it's one permit application a year, five permit applications a year, eight permit applications a year, well, then a town official could probably take care of it. If it's a hundred, then probably not.

I think a town official could do it.

I just think in the long-term I don't think a town officer could do it.

I guess I get to thinking about the amount of time, the commitment it really would be to really consider these permits. For every facet of the ordinance or license or whatever, I think we need someone that has the expertise to really evaluate that. And I don't know that the person on that town board would have the time to commit on a volunteer basis for whatever it would encompass.

Again, I'm just wondering if we can combine resources of townships and have multiple townships foot the bill, and then this person is responsible for multiple townships. If there's just some business in town that has an office, like a lawyer or something with a secretary, that could be a possibility too.

11. Additional items.

I'm concerned about sort of the social impact on the township as a whole. I mean, if we get too many big mines close together you end up -- you know, what's left between the mines isn't very desirable to live in and we end up with people taking less pride in the community, less community cohesiveness. I'm concerned about the social impact of multiple large mines, you know, on the township. Social impact would be discussed like if a big mine came in and there was a -- what do you call it -- an economic impact statement done. They have covered stuff like that. But I think we should still sort of preemptively think about it.

(Someone) may have gathered kind of a white paper on that. What happens to a community if it turns to be

predominantly mining?

The biggest thing is the need to protect -- not to go so far that we have impact on -- what we have already. I don't want to let these ordinances or whatever we do start to take away from what we already have.