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TKDA

Memorandum

To:	Scandia Planning Commission	Reference:	Zavoral Mine and Reclamation Project CUP Application
Copies To:	Kristina Handt, City Administrator		
	Tom Miller, Attorney		
From:	Sherri Buss, RLA, AICP, Planner	Project No.:	14305.001
Date:	November 27, 2012	Routing:	

The staff report that analyzes the Zavoral Mine and Reclamation Project application is attached. The report includes the staff analysis, findings, and proposed conditions. Attachments to the report include:

- Tiller Corporation letter submitted with the revised application form, dated September 15, 2012. This letter updates information included in the original application
- Map C2, the Site Plan
- Map C1-A, Land Features map
- Maps C1-C5, the Reclamation Plan and Phasing maps
- Comment letter from the Carnelian-Marine-St. Croix Watershed District

The applicant submitted several reports with the application. The reports are available on the City's website for your review, and include the following:

- Zavoral Property Reclamation Plan
- Zavoral Mine and Reclamation Project Surface Water Plan
- Stormwater Pollution Prevention Plan (SWPPP)
- Zavoral Mining and Reclamation Groundwater Quality Protection Plan
- Zavoral Mining and Reclamation Project Emergency/Contingency Response Plan
- Zavoral Mine Dust Control Plan

The Planner used all of the information listed above, the Zavoral Mine and Reclamation Project EIS (which is part of the application) and related materials to complete this report. The EIS and related materials are also available on the City's website.

The proposed project is the same project that was evaluated as Alternative #1 in the EIS.

Organization of the Report

The report is organized as follows:

- Section I – a brief summary of the request
- Section II – background information about the project and report

- Section III – evaluation of the application in relationship to Ordinance 103, Mining and Related Activities
- Section IV – evaluation of the application in relationship to Chapter One, Section 8 of the Development Code (Conditional Use Permits)
- Section V – discussion of the alternatives that were evaluated in the EIS
- Section VI – Options for the Planning Commission
- Section VII – Planning staff findings and recommendations, including conditions

Approach to Review

The Planner's approach to this review included the following:

1. Identification and listing each of the requirements and criteria in the Code that apply to the proposed use and project
2. Evaluation of the proposed project in relationship to each of the requirements and criteria. Some of the criteria in the code are general in nature. For each of those items, the Planner identified the specific objective criteria in the code that may be used to evaluate the general criteria. For example, Chapter One—Section 8 of the Code includes a general criteria related to “public welfare.” The objective criteria that are included in the Code that can be used to evaluate the project's potential impact on public welfare include the following: traffic; environmental impacts (including hazardous materials, noise, odors, air pollution, waste and dust); surface and ground water, and economic impacts. The planner's analysis used information from the application and the EIS to evaluate the project's potential impacts on each of the specific criteria related to “public welfare” based on the code requirements.
3. Identification of conditions that would be required so that the proposed project meets the ordinance criteria. For example, the conditions include hours of operation that are consistent with the Code requirements. Many of the conditions are based on mitigation measures included in the EIS. The Planner also consulted with several technical experts to develop proposed monitoring protocols and conditions related to ground water and surface water resources, traffic, noise, air pollution/dust, rare resources, and the reclamation plan.
4. Discuss the Alternatives evaluated in the EIS in relationship to the application and Code
5. Develop summary of findings and recommendations.

Planning Commission Review Process

On December 4, we will hold a public hearing on the CUP application during the Planning Commission meeting. The Planner will provide a summary of her findings, and the Applicant will have an opportunity to speak about the project. The public will then have an opportunity to discuss the application. Public comments will be particularly helpful if they specifically address:

- How the application meets or does not meet the standards and requirements of the ordinance
- Comments on the alternatives, and which may best meet ordinance requirements or result in least impacts
- Suggestions for revisions, additions or deletions to the conditions.

After the public hearing, the Planning Commission will begin its review of the application. The Planner suggests that we go step-by-step through the report, clarifying any information as needed in Sections I and II, and then discussing each of the criteria in the Mining Ordinance and Chapter One of the Development Code. The criteria in the Mining Ordinance are more specific

than those in Chapter One, and reviewing the criteria in the Mining Ordinance first will give a more detailed understanding of the project, which will assist with evaluating the criteria in Chapter One.

The Planner has provided draft findings for each of the evaluation criteria, and a summary of the findings toward the end of the document. The Planning Commission may use the draft to develop its findings and recommendation to the Council. The report to the Council will need to include the Planning Commission's findings related to each of the ordinance criteria, overall findings, and recommended conditions. City staff will record your findings and the rationale for the findings.

The Planning Commission should consider the following in making its recommendations (taken from the League of Minnesota Cities guidance on CUP applications):

- The City is exercising “quasi-judicial” authority in considering this application. The City’s role is limited to applying the standards that are in the ordinance to the facts presented by the applicant. In this case, the EIS is part of the application, and therefore part of the facts presented by the applicant. The EIS has been deemed adequate by the City. We cannot revise or change the EIS at this point.
- The City acts like a judge in evaluating the facts against the standards. If the applicant meets the standards, the CUP should be granted.
- The key question for the City’s deliberations is “does the project comply with the zoning ordinance?” Evaluation of potential compliance can include the conditions.
- Resident testimony can be helpful to the City’s consideration of the application when it provides facts to help the City to determine whether the application meets the standards. The factual basis for the City’s decision should be included in the record. Unsubstantiated opinions do not form a legitimate basis for a CUP decision. Local government decisions that have been based solely on opinions have been overturned by Minnesota courts.

The City must make its decision on the application by February 20. If it fails to approve or deny by that date, the request will be considered an approval. The Planning Commission’s recommendations should go to the Council no later than the January 15 meeting (staff memo to be completed by January 10), so that the Council has at least 2 meetings to review the application and recommendations.

