



Larkin Hoffman Daly & Lindgren Ltd.

1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431-1194

GENERAL: 952-835-3800
FAX: 952-896-3333
WEB: www.larkinhoffman.com

Memorandum

To: City of Scandia City Council and Planning Commission
From: Greg Korstad, Larkin Hoffman
Date: January 7, 2013
Re: Zavoral Mining and Reclamation Project:

This memo reviews some of the issues considered by the Scandia Planning Commission in its deliberations on conditions for Conditional Use Permit (the CUP) to govern the Zavoral Reclamation and Mining Project (the "Project").

General Approach

Under state law, the City has the ability (and in some cases the obligation) to impose conditions on the land use approvals for a project when it issues a conditional use permit. This ability to impose conditions is not, however unfettered, but rather only authorizes conditions needed to implement the City's exercise of its zoning power. The City has the ability to impose conditions, but only where those conditions will aid in assuring that the performance standards of the City Code or unique requirements of a Conditional Use Permit for the Project (the CUP) will be met.

It is also important that the Planning Commission consider that it must have a rational basis for any determination it makes on the merits of approving the CUP. The City has standards that it directed be followed in deliberating on whether to issue a CUP. The 7 points in the Ordinance are not suggestions or guidelines. A landowner is entitled to have an objective consideration whether each of the standards are met by the proposal. We review the information presented in the public hearings and the EIS as well as presentations to the City by the various consultants against this standard. The result is the conclusion that the City's record to date does not support a denial of the CUP

CITY CODE PROVISIONS GOVERNING CONSIDERATION OF CUP's

General Criteria. As may be applicable, the evaluation of any proposed conditional use permit request shall be subject to and include, but be not limited to, the following general criteria. Each of those criteria are discussed below:

(1) The conditional use will be in compliance with and shall not have a negative effect upon the Comprehensive Plan, including public facilities and capital improvement plans.

The City council has determined that the City's 2020 Comprehensive Plan is the land use plan which governs the Project. The City's EIS describes how this project meets the requirements of that plan. The Planning Staff memos further describe the staff analysis of these issues. Tiller Corporation presented its analysis of the various segments of 2020 Comprehensive Plan applicable to the Project in a letter dated December 12, 2012.

Project opponents would have the Planning Commission apply the 2030 Comprehensive Plan, however that plan still accommodates the gravel mining use in the City and supports the current facilities.

“(2) The establishment, maintenance or operation of the conditional use will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort.”

The City has prepared an Environmental Impact Statement for the Project (the "EIS") as the culmination of a four year long environmental review. The EIS describes the beneficial effects of the Project from reclaiming an un-reclaimed gravel pit. The current circumstances of the Project site presents a 60 acre parcel where there is little vegetation to prevent erosion and no resistance to invasive plants. The project presents the vehicle to obtain reclamation of the mined area, protect the vegetative screening surrounding the Project Site and to prevent invasive vegetation. These benefits clearly promote and enhance the general public welfare. The EIS also describes the production of important construction aggregates and the economic benefit of aggregate taxes generated from this property. This commercial production is another positive aspect of the Project.

The EIS directly studied and evaluated public health, safety and comfort concerns. These issues were presented in the various segments of the EIS relating to Traffic, noise, groundwater, surface water, air emissions so that each aspect of the Project was thoroughly reviewed and critically evaluated.. The EIS made it clear that an unmitigated project could have the potential for concerns in these areas, but also described how the extensive mitigation discussed in the EIS would protect from those concerns. There are dozens of mitigation points identified in the EIS notwithstanding that this project is simply excavation of naturally existing materials and reclaiming an historic mine thereby rectifying an existing situation. The Planning Commission conducted two public hearing sessions. In none of those hearings did any presenters describe more than a concern that the Project could affect the public health safety morals or comfort. None of the dozens of presenters described an adverse impact that would occur from the Project.

The EIS presents an analysis of traffic analysis and mitigation recommendations. In addition the City has obtained further analysis in order to "...determine the potential need for monitoring...." The **TKDA Memorandum: Traffic Monitoring Scandia EIS Scoping Process Zavoral Mine** (the "TKDA Memo") is presented to describe how traffic impacts can be monitored to protect the public interest. Each of the issues identified for monitoring—traffic safety, wear and tear on the roadway system and roadway capacity were addressed thoroughly in the EIS with the conclusion that the worst case scenario evaluated in the EIS would not present any unique safety hazards based on roadway geometry and sight distances. Thus the EIS did not identify any specific safety hazard or significant reduction in level of service. The EIS also confirms that the applicable load limits would be met for the haul routes thus not presenting any increase in wear and tear than currently allowed on these roads.

Traffic safety in the City is provided by the City, the state and the county. The Minnesota Department of Transportation (MN/DOT) has approved the roadway configuration. The Project

traffic has also undergone a critical review by AECOM's traffic consultants who also support the proposed access.

The most telling item in the traffic analysis is found in the key element of the Project. Traffic generated from hauling the material generated by the Project is not new or additional traffic or trucks. Rather it simply replaces existing traffic already on the state highways in the City. With or without the Project there will be trucks hauling materials on both Trunk Highway 95 and 97.

The EIS provides a thorough evaluation of the mitigations provided for groundwater and surface water resources in the City. The Project and its mitigation measures will operate to protect those resources. The City's consultants have proposed significant monitoring requirements to assist the City in understanding Project performance which also will operate to assure none of those resources are impaired as a result of the Project.

“(3) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values or scenic views.”

The EIS has an extensive description of the land uses in the immediate vicinity of the Project. These uses are the variety of uses currently found throughout the City. Each of the land uses surrounding the Project is also represented in the collection of land uses found surrounding the Scandia Mine, and the other facilities in the City, each of which are not only authorized uses in the 2020 Comprehensive Plan which the City is using to review the Project, but also are specifically identified as authorized uses in the City's 2030 Comprehensive Plan. The Project site is in a zoning district in which crop agriculture is an authorized use. In allowing that use, the City's Zoning Code does not require any special performance standards to be followed notwithstanding the agriculture use involves heavy machinery operations, refueling, stripping large tracts of land of all vegetation for long periods of time producing dust and erosion of valuable topsoil and uncontrolled runoff. In contrast, the EIS, the City Zoning Code and the Project application describe how the Project is to be operated in conformance with several operating plans:

- A Conditional Use Permit
- And Annual Operating Permit
- A Stormwater Pollution Prevention Plan
- A Reclamation Plan
- A Groundwater Monitoring Plan
- A Surface Water Monitoring Plan
- A Traffic Monitoring Plan
- An Air Monitoring Plan

all of which operate to assure that the Project would not be able to be injurious to the use or enjoyment of the land uses in the vicinity.

In addition, it is important to note that none of the testimony presented to the Planning Commission described any way in which land in the vicinity would not be useable for the uses currently found. Certainly there was a large volume of testimony that expressed the opinion that the Project was disfavored, however there is nothing in the record that prevents the current use of lands surrounding the Project. The City's Planning Report stated that the Project would not prevent continued residential and agricultural uses from continuing.

The EIS and AECOM's *Visual Assessment Technical Memorandum* describes how the Project would be well screened from view so as not to “significantly diminish and impair ...scenic views.”

- Currently the EIS reports that “very little of the Site is visible from sensitive viewpoints” and that the current conditions already present an interruption to the view shed. Project cross sections in the EIS show that the natural elevation changes on the Project Site combined with setbacks screen the Project activity from both Trunk Highway 95 and the St. Croix River.
- The River is not visible from the mining area, thus the mining area would not be visible from the River. The Scenic Easement buffer acquired by the U. S. National Park Service provides additional screening at the River as it was intended to do.
- The EIS, the Project Application, the Conditional Use Permit and the Annual operating Permit would all operate to assure that the Project site is screened by maintaining a vegetated buffer surrounding the Project.
- The Reclamation Plan for the Project operates as the vehicle to assure that that current vegetative buffer remains in place between the mining areas and Trunk Highway 95.
- The deletion of processing and stockpiling from the Project eliminates any substantial item which could be visible on the Project Site. Inherently, because of this factor any visibility of the Project would only be temporary while the trucks are being loaded.
- The Project screening is inherently improving as the Project is implemented and the working area is lowered. All of the activity will occur at the floor or the excavated areas.

There has been a lot of testimony about impacts to property values, presenting concerns and fears and conjecture about what might occur to values. There was, however, no evidence presented that the Project would actually “significantly diminish and impair property values in the vicinity.” Even the City’s consultant who prepared the property value segment in the EIS was unable to confirm objectively any measurable impacts. This subjective analysis is further compounded by the fact that it ignores the positive benefits to the area presented by reclaiming the old mine area and the certainty presented by completing the site. The objectively measured information presented to the Planning Commission includes both a critical analysis of the EIS as well as a separate appraisal report that shows objectively that the market values would not be substantially adversely affected by the Project.

“(4) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district”.

Generally, the immediate vicinity of the Project is developed and used for uses authorized as described in the City’s Zoning Ordinance. The EIS described compatibility of the Project with the City’s Comprehensive Plan which governs any potential for further development. Tiller presented additional information about development surrounding long term gravel mines in Washington County with similar circumstances to the Project. This information shows that the presence of a gravel mines does not prevent development of residential uses.

“(5) Adequate public facilities and services are available or can be reasonably provided to accommodate the use which is proposed”.

The Project is directly accessed by State Trunk Highways 95 and 97 without the need to rely upon either local or county roadways. This means that the Project would only use the roads most capable of safely and effectively handling the Project traffic. The Project needs no other infrastructure or public facilities.

“(6) The conditional use shall conform to the applicable regulations of the district in which it is located and all other applicable standards.”

The Project will only be operated pursuant to a Conditional Use Permit and an Annual Operating Permit issued by the City Council. The City Staff, independent consultants and the Planning Commission have identified dozens of proposed conditions which would operate to assure the Project meets the City’s

requirements. The City has taken the additional measure to require monitoring to confirm that the Project operates within the parameters of the EIS analysis and the City's permitting requirements.

“(7) The conditional use complies with the general and specific performance standards as specified in ...[the Code.]”

The Planning Commission has developed conditions that assure the City Code's Performance Standards are met.