CITY COUNCIL STAFF REPORT

1. **FILE NAME:** Rohn Industries Site Plan Appeal **FILE #** 19-101-370

2. **APPELLANT:** St. Anthony Park Community Council **HEARING DATE:** 3/4/20

3. **TYPE OF APPLICATION:** Appeal of a Planning Commission Decision

4. **LOCATION:** 2495 Kasota Avenue, west of Highway 280 **PIN:** 20.29.23.33.0007

5. **PLANNING DISTRICT:** 12 - St. Anthony Park **PRESENT ZONING:** I1

6. **ZONING CODE REFERENCE:** § 61.702, § 61.402(c)

7. **STAFF REPORT DATE:** 3/2/20 **BY:** Amanda Smith

8. **DATE RECEIVED:** 11/12/19 **DEADLINE FOR ACTION:** 3/15/20

A. **PURPOSE:** Appeal of a Planning Commission decision to deny an appeal and uphold conditional approval by the Zoning Administrator of a site plan for a semitrailer storage and staging facility.

B. **PARCEL SIZE:** 72,652 square feet, ~ 1.7 acres

C. **EXISTING LAND USE:** Vacant

D. **SURROUNDING LAND USE:** Industrial, railroads, Highway 280, and stormwater ponds

E. **ZONING CODE CITATION:** § 61.702 specifies standards and procedures for appeal of Planning Commission decisions. § 61.402(c) lists criteria for review and approval of site plans.

F. **HISTORY/DISCUSSION**:

A 10/17/19 a Minnesota Pollution Control Agency letter notes that “the Site was part of the larger Elm Street Ash Dump, which was used for the disposal of incinerator ash and other debris, such as concrete, brick, wood, metal, glass, plastic, slag, cinders, tires, paper, and clay tile. Most of the Elm Street Ash Dump has already been redeveloped and is covered by industrial/warehouse buildings and parking lots. … Several environmental and geotechnical investigations have been completed at the Site since the mid-1980s. Soil borings have identified up to 22 feet of fill soil intermixed with debris, underlain by peat and/or glacial till.”

7/2/19	The site was voluntarily enrolled in the Minnesota Pollution Control Agency (MPCA) Brownfield Program. The 10/17/19 MPCA letter states that “the role of the Brownfield Program is to make sure that environmental issues are appropriately addressed during construction and redevelopment.”
8/9/19	Rohn Industries submitted a site plan review application for a semi-trailer staging facility at 2495 Kasota Avenue for their nearby paper recycling business at 862 Hersey Street.
8/23/19	City Water Resources Coordinator noticed a decision that the site includes an incidental wetland (a separate process from site plan review).
8/27/19	Site Plan Review Committee met to review the site plan.

9/10/19	MPCA issued a No Association Determination letter for the actions proposed by the developer at the site.
9/25/19	St. Anthony Park Community Council appealed the conditional approval by the Zoning Administrator to the Planning Commission.
10/17/19	MPCA issued an approval letter for both the Response Action Plan (RAP) and the Construction Contingency Plan (CCP) for proposed construction on the site. The 10/17/19 MPCA letter states that "the RAP and CCP describe how environmental issues will be managed during construction activities."
10/24/19	Zoning Committee held a public hearing on the appeal.
11/1/19	Planning Commission decision to deny the appeal and uphold the conditional approval by the Zoning Administrator.
11/12/19	St. Anthony Park Community Council appealed the Planning Commission decision to the City Council.
12/2/19	The Minnesota Environmental Quality Board (EQB) formally notified the City as the appropriate government unit, that the EQB received a petition requesting an Environmental Assessment Worksheet (EAW) for 2495 Kasota, filed on behalf of the St. Anthony Park Community Council.
12/13/19	The City requested an extension of the period for decision until 1/15/20, and on
12/18/19	the MN EQB extended said decision date.
1/15/20	The City completed review of the petition for an EAW, and concluded an EAW was not needed, and noticed the Finding of Fact and Record of Decision.
3/15/20	Deadline for final action, 60 days from the completion of the EAW.

G. **FINDINGS:** Zoning Code § 61.702 provides that the City Council shall have the power to hear and decide appeals of Planning Commission decisions where it is alleged by the appellant that there is an error in any fact, procedure or finding made by the commission. In their appeal, the St. Anthony Park Community Council alleges that the only sustainable options for the site are to remove the polluted material and restore the original wetland condition or leave it undisturbed,

This statement does not accurately characterize the Community Council's position. We do not necessarily expect that this privately-owned site will not be developed or remediated. We were asked by a Zoning Committee member at their public hearing what we wanted, and we answered with our aspirations. We are appealing this specific approval of this proposed site plan because of multiple errors in fact, procedure, and finding. Other uses are potentially acceptable, if they maintain or improve the current functions of the site.

and alleges that there are errors in seven of the eleven findings required for site plan approval that the Planning Commission made in support of the decision to deny their appeal and uphold the conditional approval by the Zoning Administrator of a site plan for a semi-trailer storage and staging facility. The issues raised in the appeal are organized according to the eleven findings required for site plan approval. They are addressed under the eleven items listed below, with which the site plan is required to be found consistent.

1. *The city's adopted comprehensive plan and development or project plans for sub-areas of the city.*

The Planning Commission found the site plan to be consistent with comprehensive plan goals related to contaminated sites. A 10/7/19 Minnesota Department of Health letter finding that "the

proposed conversion of the vacant 2495 Kasota property into a parking lot does not pose a public health hazard"

We maintain that the MPCA did not require adequate preconstruction (Phase I) sampling of the site (explained below). The MDH letter expressly indicates that their conclusions are based on MPCA's evaluation, which we maintain were based on inadequate sampling and incomplete review of historical documentation. In addition, we question the analysis of the samples, because it did not include a separate analysis of fine particles. These can have much higher metal concentration than the whole sample and which are most likely to contaminate workers' clothing, and injure the health of workers, their children and nearby residents in SAP. Samples also should have been analyzed for friable asbestos, because of anecdotal reports that shingles were disposed at this site.

notes that "when completed, the paved parking lot and landscaping will prevent potential soil contaminants exposure," and "the pavement cap will also minimize potential leaching of contaminants deeper into the soil profile and groundwater."

We do not dispute that leaching occurred while the dump was active or in the years following its closure. There is good evidence for that in the historical soil borings and groundwater analyses. However, the site now has very good vegetative cover and these plants use a lot of water during growth. This process (transpiration) is typically high enough to prevent leaching most years.

Capping contaminated soil with an impervious surface is a common way to manage reuse of contaminated sites such as this.

Without further evidence of the need for an impervious cap, this statement does not support the staff position of approving this site plan. Installation of the parking lot will disturb an estimated 8,000 cubic yards of fill.

The appellant takes issue with this approach, states that the St. Paul Climate Action Plan recommends reducing impervious surfaces where possible

The Saint Paul Climate Action Plan explicitly states the need to reduce the area of impervious surface to reduce the urban heat island effect. "Heatwaves are expected to become more common by the middle of the 21st century. Extreme heat will be exacerbated in urban areas where impervious pavement and limited vegetation result in the urban heat island effect." (p.14) The goal is to "Reduce impervious surfaces where possible…" (p. 28) Already, periods of extreme heat in the Twin Cities result in 4º F higher temperatures during the day, air temperatures are 7º F higher at night – potentially deadly for those without air conditioning.

and argues that the site should be left undisturbed or that all of the contaminated soil should be removed, and this site restored to its original wetland condition.

Please see our earlier comment about the staff's misunderstanding of our position. We clearly would like to see this site continue to function as it is – a turtle nesting ground, a connection along a wildlife corridor, a green space that both reduces the urban heat island and functions well ecologically. It is indisputable that the proposed development will destroy those functions.

However, City code requires parking lots to be paved.

This has no bearing on the argument by staff that the site plan should be approved.

Leaving the site undisturbed is not a good option because without an impervious cap rainwater may percolate through the contaminated soil and leach contaminants deeper into the soil profile and groundwater.

As addressed above, transpiration from vegetation typically is high enough to prevent leaching most years. Perhaps the staff does not consider water balance concepts and did not obtain outside information on this topic, but paving will not provide a better solution than leaving the site mostly vegetated.

In addition, requiring that this privately-owned land be left undisturbed could be a taking, which would require payment of just compensation to the owner.

This is a high legal standard, and denial of one specific development proposal cannot be upheld as a taking.

The owner can't be compelled to return the site to its original wetland condition.

The SAPCC has never suggested that the owner be compelled to do so. This is a needlessly inflammatory statement.

The City could purchase the site and take on wetland reclamation, but public acquisition of the site, transporting the contaminated soil to some other place, and turning this site into a wetland may be an expensive proposition. With contaminants likely to have leached from the site for many years, the peat and glacial till beneath the fill may also be contaminated, and more than the up to 22 feet of fill soil may need to be moved in order to successfully restore a wetland here.

Again, we stated an aspiration, not a demand. These are all points we made in response to a question by a member of the Zoning Committee. Removal of the fill would, in our opinion, be in the best long-term interests of the City, but this solution would require considerable evaluation by various experts to determine whether it is feasible.

The parcel has not been identified in the comprehensive plan as a public water basin, park, wetland, or other public watercourse or green infrastructure location.

As far as we can tell, this statement is correct, but wonder how the site could have been identified in any of those ways since it is currently zoned I1 and would have been easy for staff to overlook during the development of the 2040 and previous comprehensive plans.

The Planning Commission found the site plan to be consistent with comprehensive plan economic development policies to grow Saint Paul's tax base to maintain and expand City services, amenities and infrastructure.

The SAPCC acknowledges that economic development is a stated goal of the Comprehensive Plan, but equity in the face of climate change, retaining wildlife habitat, and preservation of green space are also stated goals in the Plan that should be weighed in decision making.

It found that developing this lot as a semitrailer storage and staging facility will allow Rohn Industries to continue to operate and grow in Saint Paul, and that improvements on this parcel will add to Saint Paul's tax base.

This development would add to Saint Paul's tax base. But is the need so great that this site must be developed in the proposed way, given the tremendous increases in tax base that will

come from major redevelopment in the Ford, Snelling Midway, West Side Flats, and Hillcrest sites?

Without further evidence, the SAPCC takes the statement from Rohn Industries at face value. To that end, we have suggested in writing to their real estate agent several nearby sites that might be available to lease for the purpose Rohn Industries seeks to fulfill. According to their agent and the counsel who spoke at the Public Hearing, they would not consider a solution that involves leasing. In addition, we have provided information to the real estate specialist with the Creative Enterprise Zone, who is seeking alternative sites for Rohn to consider. We do this in good faith – the Saint Anthony Park Community Council appreciates the work Rohn Industries and Shred Right do and hopes they will remain in the District.

The appellant takes issue with this, arguing that the proposed site plan is not environmentally and economically efficient, resilient land use development. However, providing a cap to minimize the water pollution hazard created by rainwater percolating through the contaminated soil on the site,

This argument does not hold, as long as the site continues to have good vegetative cover.

and at the same time using this marginal land for semitrailer staging for the nearby recycling business (thus keeping more valuable sites for better uses)

The SAPCC has shown that this is a valuable site already – as a green space to reduce heat stress in summer, as part of wildlife corridor, as a nesting site for turtles from Kasota Pond East and for numerous bird species, and as part of a natural wetland and marsh complex that historically supported swimming and fishing. Without nesting habitat, three turtle species presently at the site will disappear. Future generations will certainly question why we allowed this functioning ecosystem to be lost.

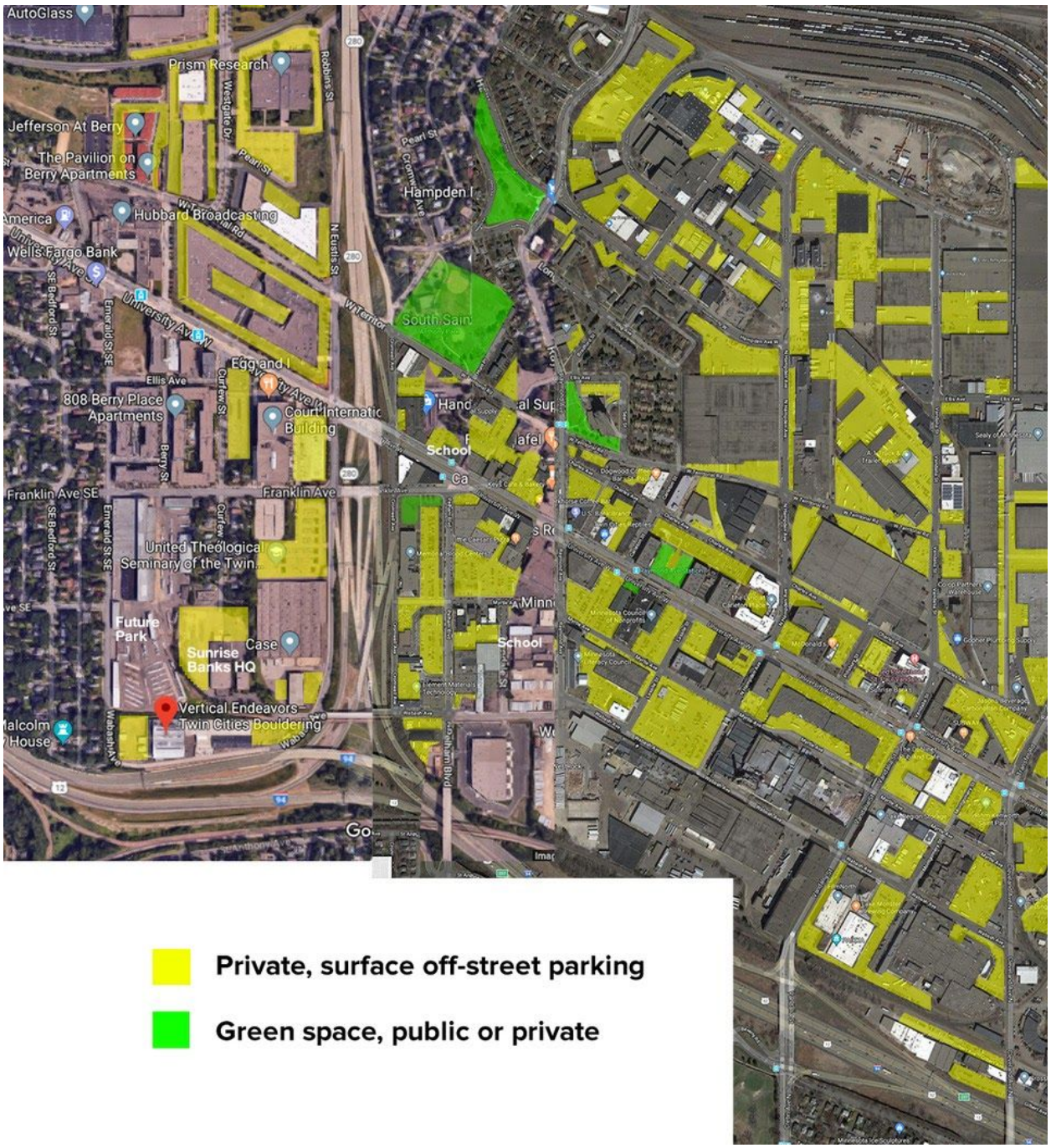
is environmentally and economically efficient, as well as resilient land use and development.

What is resilient about a parking/storage lot? The SAPCC asserts that the staff misrepresent the meaning of ‘resilient’ here. We also assert that a parking/storage lot is far less environmentally efficient, compared to all of its current environmental values which better match many goals of the St. Paul Climate Action and Resilience Plan.

The Plan identifies the problems of the urban heat island effect and flooding, and this project will exacerbate those issues. The Plan also identifies multiple solutions, including: reduce impervious surfaces and decrease permeability; expand and connect green spaces; improve ecological functionality of open space; sequester more carbon in the soil; and improve the resilience of natural infrastructure. All of these solutions are already being conferred by the site. But they will be lost by this project, and the city will be retreating in opposition, not moving forward, with its own Climate Action Plan.

The location of the recycling business in this core city area near the sources of the material being recycled is environmentally and economically efficient because it involves less use of nonrenewable natural resources to transport the material. Finding a site for semitrailer staging near the recycling business is also similarly environmentally and economically efficient.

Half of South St. Anthony Park is already parking lots. Renting while waiting to buy is also reasonable. The image below highlights the number of paved parking lots in South St. Anthony Park.



Constructing a cap for this contaminated site without a use on top of the cap would be inefficient.

This statement is irrelevant. There has been no regulatory decision that the site needs a cap.

Transporting all of the contaminated soil from the site to a different site would be expensive as well as an inefficient use of resources.

We do not base our appeal on the need to do this. However, funds could be sought from the State and Federal Government to achieve this, if the City decides to remediate the site.

There are limited public funds for remediation of these kinds of contaminated sites, so it would be good public policy to manage and remediate the contamination on this site through private redevelopment.

The proposed development will result in very limited remediation; in the present plan only 20 cubic yards of lead-contaminated fill will be removed. Covering the site with asphalt and concrete cannot be considered remediation.

2. *Applicable ordinances of the City of Saint Paul*.

The Planning Commission found the site plan to be consistent with all applicable City ordinances, including required conditions in § 66.541 for outdoor industrial uses. The site is located approximately 375 feet from the closest residentially zoned parcel, which is east of the site and separated from the site by an elevated four-lane section of Highway 280.

The closest residents do not live in residentially zoned areas: they are homeless people who reside at various locations in the immediate area. Using the border of the nearest area zoned as residential does not consider potential impacts on these residents.

The site is proposed to be screened from Kasota Avenue by a fence and landscaping.

This is a requirement of the City, not a reason to deny the appeal.

There is no servicing, processing, or manufacturing proposed for the site.

The appellant takes issue with this Planning Commission finding, arguing that staging of semitrailers is not permitted in the I1 industrial zoning district if they are used within 5 days of being parked, based on a 5-day standard for vehicles in the definitions of parking and storage, and arguing that moving them more often would generate an unacceptable amount of truck traffic.

This is an inaccurate reformulation of Appellant's argument. Appellant's argument is that the Planning Commission erred in finding that the site plan complies with applicable ordinances because the Applicant's intended principal use of the site is in fact parking, not storage, and parking is not a permissible principal use in the I1 district. This argument is premised on the definitions of parking and storage found in the zoning code and the fact that the record does not support a finding that the principal use of this site will involve keeping trailers on site for periods of more than five days at a time. Appellant has never characterized the proposed use as staging, which is not a use recognized in or defined by the zoning code.

It should be noted that the Planning Commission resolution denying Appellant's appeal of the site plan approval did not even consider or make any findings regarding Appellant's use argument, which was an express basis for the appeal.

However, outdoor storage and staging of semitrailers is a common industrial use that has always been allowed in the I1 district without a limit on how often they can be moved.

Outdoor storage is a permitted principal use in the I1 district, and may well be a common use. But the same is not true of "staging." Even assuming this use were defined, it is not a permitted principal use in the I1 district. There must be a permitted principal use of this site in order to approve the site plan, and the only permitted principal use that was approved by the Zoning Administrator as part of the site plan approval was outdoor storage.

A traffic narrative provided by the applicant projects a total of 20 truck movements per day, including trucks coming to the site and trucks leaving the site, a very small volume that is well within the acceptable range at this industrial site.

Appellant has not argued that the Appeal must be granted due to the volume of traffic to be generated by the site. Appellant has observed that one difference between the two uses is that storage uses would be expected to generate less traffic than parking uses due to the number of vehicle trips associated with each use.

The new zoning code in 1975 did not define parking and storage. By 1994 the code had a definition of storage that included storage of "semitruck trailers" with no standard for how often they could be moved. A definition of parking added in 1998 defined parking as "the placement of automobiles, trucks, trailers, semitrailers, or other vehicles for five or fewer days." "For more than five days" was added to the definition of storage at the same time to distinguish it from parking. The stated purpose of the five-day standard was to make it easier to enforce the stricter locational standards that apply to outdoor storage of vehicles and not to parking of vehicles in order to prevent storage where it is not allowed. The purpose of the five-day standard was not to limit the frequency with which semitrailers stored on an industrial site can be used. Such regulation would not only serve no useful purpose; it would also be extremely difficult to enforce, the opposite of the stated purpose to make enforcement easier.

Arguments about legislative intent are not a sufficient legal basis for disregarding the plain meaning of the zoning ordinance, which expressly distinguishes between parking and storage on the basis of whether the vehicle in question is kept on the property for more than five days. This is especially true when those arguments are unsupported by any actual evidence. There is no "stated purpose" in the referenced definitions.

3. *Preservation of unique geologic, geographic or historically significant characteristics of the city and environmentally sensitive areas.*

The Planning Commission found the site plan to be consistent with this.

The SAPCC contends that the recounted use of Skonard Spring by known residents, in addition to swimming and fishing in the Kasota ponds, are historically significant characteristics of the 2495 Kasota Avenue site, in conjunction within the entire wetland complex. The SAPCC also contends this is truly an environmentally sensitive, and significant, area within the Twin Cities urban core.

An incidental wetland determination application was submitted to the City on 7/30/19. The application asserted that the wetland area in the southwest corner of the site reflects wetland characteristics but is an incidental wetland created in an upland for a purpose other than creating a wetland, based on a site visit, historic aerials, soil information, and previously approved development plans.

In 1986 a stormwater pond was designed, approved by the City, and constructed in the southwest corner of the site.

This pond is known personally by people still living in the area to have been on the site for at least decades before that. It is fed by Skonard Spring on the west side of the Minnesota Commercial railroad track.

The state Wetland Conservation Act (WCA) was passed in 1991. The WCA does not regulate impacts on incidental wetlands, defined as wetland areas that the landowner can demonstrate,

to the satisfaction of the local government unit (LGU), were created in non-wetland areas solely by actions, the purpose of which was not to create the wetland. This includes stormwater retention improvements which over time may take on wetland characteristics. City staff reviewed the information, found the area in question to be adequately demonstrated as historically upland, and on 8/23/19 noticed a decision that it is an incidental wetland.

The WCA provides a specific process for appeal of an LGU decision pursuant to MN Rule 8420.0905, which is a separate process from site plan review. Information about this was provided to the St. Anthony Park Community Council on 9/6/19 after a 9/5/19 letter from the district council requesting information related to the wetland delineation. The 30-day appeal period for the incidental wetland decision passed without a petition for appeal.

A Minnesota Board of Water and Soil Resources (BWSR) response to an inquiry about the incidental wetland determination for 2495 Kasota Avenue, sent on 10/23/19, concurred with the review and noticing protocol that was followed and with the City staff findings based on the information provided by the consultants. BWSR is the oversight agency for the Minnesota Wetland Conservation Act.

An Army Corps of Engineers (Corps) response to a request for an approved jurisdictional determination at 2495 Kasota, dated 11/7/19, determined that the aquatic resource is a storm water pond excavated in uplands, and is not Corps jurisdiction. The rationale for this determination is provided in the Corps Approved Jurisdictional Determination form.

There is substantial historical documentation to show that parts of the 2495 Kasota parcel were wet features on various historical maps compiled by MWMO. Some of these were included in our appeal packet, such as the 1895 Mississippi River Commission Wet Feature map and the 1916 USGS Wet Features and Depressions map. Confirming evidence is provided by the many borings taken at 2495 Kasota Ave. that identify ‘peat’, ‘swamp’ and similar deposits at levels below the waste debris – these are diagnostic of a long-established wetland/marsh complex.

4. Protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.

The Planning Commission found the site plan to be consistent with this.

The applicant voluntarily enrolled in the MPCA’s Brownfield Program on 7/2/19. The Minnesota Pollution Control Agency (MPCA) issued a No Association Determination letter on 9/10/19 based on the following documents prepared by Landmark Environmental.

• Landmark Environmental Phase I Environmental Site Assessment (4/30/19)

• Landmark Environmental Phase II Investigation (6/25/19)

• Proposed/Past Action Letter (6/28/19)

As we have documented, the MPCA staff did not have access to the trove of historical documents about the site, because at least two large banker’s boxes were put into storage during the Pawlenty administration and have not been found. Our member who is personally familiar with the contents of those boxes because of her decades-long research in the area, recalls that they contain evidence that hospital waste (syringes, radioactive isotopes, etc.) and shingles (which would have contained asbestos) had been deposited in the Elm Street Ash Dump. Given the principal role that inhaled asbestos particle play in lung cancer, asbestosis, and mesothelioma, we are concerned that Landmark Environmental did not test for asbestos

and that the MPCA has not required that such testing be done by an independent, certified, and licensed environmental inspector with AHERA qualifications.

A Minnesota Pollution Control Agency No Association Determination letter is a legal determination that the developer is not responsible for the contamination detected at the site (described in the letter) and that the actions proposed by the developer (construction of a surface parking lot and related stormwater management infrastructure at the site in accordance with an MPCA-approved Response Action Plan/Construction Contingency Plan, and storage/parking of semitrailers at the site), subject to several conditions specified in the letter, will not associate the parties involved with the proposed actions with the release or threatened release of hazardous substances, pollutants, or contaminants at the site for the purpose of Minn. Stat. § 115B.03, Subd. 3(4).

The MPCA relied on material submitted by Landmark Environmental to make these decisions, which did not follow MPCA guidance for sampling intensity. Only 8 widely separated sites were sampled on the 1.7-acre site, whereas the MPCA guidance document states that 20 should have been required. Samples were not acquired in a standardized manner, that is, they were taken from different depths across the site, which means there is even less data for each depth.

Although Landmark took additional samples around the one site that was shown to exceed the Industrial Soil Reference Value, those samples do not help characterize where other concentrations of hazardous materials may exist at the site. In fact, this second sampling campaign demonstrated that lead-contaminated fill is highly localized. This fact should have convinced MPCA to require further sampling across the site.

On 7/2/19 the developer submitted a Response Action Plan (RAP) and a Construction Contingency Plan (CCP) to the MPCA for review and approval. The RAP and CCP detail how environmental issues will be addressed and release of hazardous substances will be avoided during construction.

The CCP includes stringent MPCA rules which must be followed if asbestos is found. However, asbestos cannot be identified reliably in the field. Friable asbestos will look just like any other soil on-site. After old shingles, pipe wrapping and other asbestos-containing demolition materials have been discarded, friable asbestos is easily ground up into minute particles, especially where any vehicles have been driven across the area. It is those minute particles which are particularly injurious to lung tissue. Such sampling must be carried out in advance of excavation.

On 10/17/19 MPCA Brownfields staff issued an approval letter for both the RAP and the CCP, subject to a number of conditions and clarifications. It notes that standard stormwater runoff and dust control procedures will be implemented during the project, and that a trained environmental professional will be on site during excavation and earthmoving activities to perform field screening and collect soil samples as needed.

If field screening during construction were so reliable, why does the MPCA ever require sampling before construction? At least one toxic metal (lead) is present in a highly localized spot and there is widespread presence of several other contaminants at levels that exceed the Residential standard. There are no visual or olfactory clues to the presence of lead and the other toxins, so neither equipment operators nor the environmental specialist will know that a hot spot has been disturbed. We think it is better to prevent the accidental release of toxic

metals, asbestos, and organic contaminants by identifying where they are and removing the contaminated fill before the entire site is excavated.

The disappearance of historical records and inadequate sampling raise the risk that workers at the site and in surrounding businesses, renters, transients, homeowners, and the environment will be exposed to one or more of these toxins. The liability of the City could be significant if this occurs.

The MPCA's Brownfield Program does not have regulatory authority relative to land-use decisions. The role of the Brownfield Program is to make sure that environmental issues are appropriately addressed during construction and redevelopment, for those projects that voluntarily enroll in the Brownfield Program. MPCA staff were provided three letters submitted by the St. Anthony Park Community Council to the city outlining their environmental concerns, which were considered during their review of the project.

The Minnesota Department of Health (MDH) issued a Letter Health Consultation (LHC) on 10-7-19, addressed to Kathryn Murray and the St. Anthony Park Community Council, stating that MDH believes the proposed development at 2495 Kasota does not pose a public health hazard, based on review of environmental reports and comparing site contaminant levels to environmental criteria.

All of the other approvals (MDH, MWMO, and DSI) are based on the MPCA No Association Determination letter and approval of the Response Action Plan and Construction Contingency Plan, both of which are *premised on MPCA's faulty historical information* in this particular case and the hired environmental engineer's inadequate sampling of the site. Furthermore, MPCA did not require that lead concentration be determined in the very fine particles, which are most likely to leave the site by wind or water erosion.

The City of St. Paul would be well advised to avoid approving a proposal where lead contamination on the clothing of site workers is dragged home to their children, as happened in the Water Gremlin site. Unfortunately, there is no way in this open-air environment for the workers to have changing and showering facilities to avoid lead contamination in their vehicles, as was required by the judge. Also, in that case last fall, the MDH discovered to its surprise that the vehicles were actually more difficult to clean and remove lead from, than they initially expected; so a more rigorous procedure had to be performed a second time.

The appellant is not against excavation and earth moving on the site. Rather, the appellant argues that there should be a great deal more excavation than what is proposed, and that all of the contaminated soil should be transported to a different site and this site restored to its original condition.

The SAPCC respectfully asserts that City staff mischaracterized our position.

The issue raised by the appellant regarding protection of neighboring properties is that the level of soil sampling that has been done on this site and accepted by the MPCA and MDH is inadequate, and that more sampling should be required before excavation and earthmoving activities are permitted on the site.

While the Planning Commission and City Council may impose reasonable conditions in granting approval of a site plan as necessary to protect adjacent properties, the City reasonably relies on the expert state agencies regarding levels of soil sampling for brownfield sites, and they have approved the sampling done here.

At the City Council public hearing on March 4, 2020, the developer's environmental engineer stated that the MPCA guidance of 12 samples per acre is not a hard and fast rule, but what is MPCA guidance for if it's optional? Saint Paul should follow that agency guidance, too, if it's going to follow its other guidance. As we argue, there are good, scientifically based arguments that sampling was inadequate.

On 12/2/19 The Minnesota Environmental Quality Board (EQB) formally notified the City as the appropriate government unit, that the EQB received a petition requesting an Environmental Assessment Worksheet (EAW) for 2495 Kasota, filed on behalf of the St. Anthony Park Community Council.

On January 15, 2020 City staff completed review of the petition for an EAW, and concluded an EAW was not needed, and noticed the Finding of Fact and Record of Decision, to outline the basis for said decision.

The same staff who approved the site plan and recommended against SAPCC's appeals are the same people who reviewed the EAW petition. There is no evidence that they sought outside information or review. We do not think our petition received appropriate review. While the process the City took in reviewing the EAW petition may have followed the EQB process, it does not match what a layperson imagines such a review would entail.

5. *The arrangement of buildings, uses and facilities of the proposed development in order to assure abutting property and/or its occupants will not be unreasonably affected*.

The Planning Commission found the site plan to be consistent with this. It is consistent with the requirements in Zoning Code § 63.114 that required visual screens shall be of sufficient height and density to visually separate the screened activity from adjacent property; a six foot minimum height for a required visual screen for outdoor storage; and that the screen may consist of various fence materials, masonry walls, earth berms, plant materials or a combination thereof. The St. Anthony Park Community Council had recommended using plant materials for visual screening, including evergreens for year-round coverage, and the Planning Commission added a condition for native trees and shrubs, including evergreen trees, along Kasota. The appeal states that the plant materials should include a diversity of native plant species to support movement, sustenance, and nesting habitat for turtles and birds.

The disruption of the wildlife area will be noticeable. There will be a significant decrease in nesting area for turtles and birds, which are occupants as well as the plants. Fencing will prevent turtles from crossing to nesting habitat, and even if it is installed with space for them to pass, trailer movements will kill several. Planting of native vegetation to support movement, sustenance, and nesting habitat on the remaining permeable ground is important, if the project is built. But downlighting, while better than broadcast lighting for surrounding human residents, will nevertheless disrupt nesting for birds and other species. On balance, there are far more deleterious environmental impacts to this current site than can possibly be mitigated by the project.

In addition, the SAPCC asserts at least one, but better two, fire hydrants should be required installed if this project is approved. The nearest fire hydrants are located on the other sides of the railroad tracks of BNSF (to the northeast) and of Minnesota Commercial (to the west). Trying to use those would jeopardize the safety of firefighters, and seriously impact the operations of those railways. The next nearest fire hydrant along Kasota Avenue is over 1,000 feet to the

east, but it would be unsatisfactory for a fire at this site because fire departments generally need a hydrant within 600 feet.

6. *Creation of energy-conserving design through landscaping and location, orientation and elevation of structures*.

The site plan proposes landscaping that is consistent with this, including planting 16 new shade trees and using a MnDOT seed mix for all undeveloped space. The appeal states that new trees will not offset the new pavement on the site. However, this condition doesn't require that there cannot be urban development in the city, or that pavement be offset be landscaping somewhere else. It just requires energy-conserving design.

All of this is counter to the Climate Action and Resilience Plan's call to decrease pavement and urban heat island effects. Climate change in Minnesota is resulting in more excessive heat and higher humidity. These two factors together expose our population to greater heat stress. As an equity issue, those without air conditioning will suffer and are more likely to die than people with more resources. The City's Plans have pledged to address such equity issues. Paving the site will increase excessive heat over at least twice the area, whereas trees across a significant green space can reduce extreme heat over a larger area by evaporative cooling.

City code requires parking lots to be paved. In this case, paving is also needed to reduce infiltration of rainwater through contaminated soil.

The first point is immaterial. We already have countered the argument about leaching and the staff's incorrect assertion that a 'pavement cap' is needed.

7. *Safety and convenience of both vehicular and pedestrian traffic both within the site an in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site*.

The site plan is consistent with this subject and has been approved by the Department of Public Works Transportation Planning and Safety Division and the Minnesota Department of Transportation (MnDOT). Said approvals are subject to receipt of a MnDOT access driveway permit, for the curb cut located directly opposite the MN 280 access ramp.

The site plan was sent to MnDOT for review in August because of proximity to TH280 ramps, and on 8/30/19 MNDOT staff responded with a letter recommending a traffic study and requiring the applicant to obtain a MnDOT Drainage Permit.

The applicant provided a traffic narrative to the City, dated 9/26/19, that identified a defined traffic pattern between the main Rohn Industries site at 862 Hersey Street and 2495 Kasota Avenue. Ingress to the site will be from the east via Energy Park Drive, egress from the site will be towards the east via Energy Park Drive, and there is no proposed use of TH280. Turning movement exhibits for a 53-foot trailer (WB 67) and a fire truck were required and provided. The driveway entrance allowed adequate space for trucks entering and exiting the site to queue on private property and not on public right-of-way. The site plan shows space for 25 trailers, with a projection of 20 truck movements per day.

The applicant noted that they employ their own drivers, and that the travel route in the traffic narrative will become the standard operating procedure and added to the driver's instructions. The applicant worked with City Public Works staff to design an entrance location based on the proposed traffic pattern. A best practice in the Public Works street design guidelines is to locate

driveway entrances 100 feet away from an intersection but based on site specific considerations this was not required.

On 10/17/19 City staff were notified in writing by MnDOT staff that the proposed driveway location at Energy Park Drive is MnDOT right of way, and therefore will require a MnDOT access permit. Ramsey County data available to city staff does not show this area to be MnDOT right-of-way. MnDOT staff additionally indicated they are currently evaluating the intersection of Energy Park Drive and TH280 ramps. There is likely to be a traffic signal installed there in the future, but because they are still completing their evaluation, MnDOT could not provide information on precisely where and how the equipment will be located and configured. Based on this new information, City and MnDOT staff agreed that the access driveway should line up directly opposite the TH280 ramps.

In response, Rohn Industries consultants provided an updated WB-67 Truck Turing Moving Exhibit (dated 10/17/19), with an updated location of the driveway access curb cut, which is located opposite the TH280 ramps. On November 20, 2019 City and MnDOT staff approved the updated design of the driveway entrance. Additionally, based on MnDOT staff review of the Rohn Industries Traffic Narrative, conversations with City Public Works staff, MnDOT staff are no longer recommended that the City require a traffic impact study for this development.

The traffic narrative states that all truck movements will come from the east on Kasota with no use of 280 or Kasota to the west. Minnesota Commercial stops traffic on Kasota completely at times to the west. There is nothing to keep Rohn Industries from leasing spots in this lot – or selling it in the future – to another user who would move vehicles in those directions or make much heavier use of the lot entrance within the TH-280 ramp right of way. The city staff have not considered those potential other users.

8. *The satisfactory availability and capacity of storm and sanitary sewers, including solutions to any drainage problems in the area of the development*.

The Planning Commission found the site plan to be consistent with this. The appellant argues that the site plan does not adequately provide for stormwater retention and storage because the paved area will increase runoff and 1000-year storm events have become more common. However, the stormwater system meets City standards for run-off rate control. Changes in stormwater runoff rate are a result of changes in land use and land cover. The city's stormwater rate control standard restricts a site's discharge rate to 1.64 cubic feet per second per acre of disturbed area. This standard is based on mitigating changes in land cover that accelerate the rate of runoff. The modeling appropriately reflected proposed land cover and land use drainage patterns, and proposed stormwater practices to control changes in runoff rate.

The Stormwater Model is incomplete as it omits the baseline stormwater flow of the site's perched water table/springs that will most definitely contribute to the Stormwater Model. This baseline flow will likely overwhelm the proposed lined stormwater pond when it rains and the stormwater will simply bypass the storage and treatment system. This will result in no storage or treatment actually taking place, therefore it will not meet the current and required City of St. Paul/MWMO maximum discharge rate, minimum storage, and pollutant loads reduction requirements. The flow of untreated and unregulated stormwater exiting the site will directly enter surface waters of the Kasota Ponds Wetlands and/or Mississippi River.

We do note the 1,000-year typo in our appeal: it should have been 100-year. Additionally, we would like to note the observation that the stormwater plan still does not address the updated

Atlas 14 rainfall data. As written, the inaccurate model neglects to show what would happen in any current rainfall scenario as the City is still utilizing outdated scientific data that is no longer sufficient. For example, the City Requirement is to utilize a 5.96 inches in a 24-hour 100-year event for St. Paul, MN, when the current data tells us it is 7.44 inches in a 24-hour 100-year event is more accurate. The inaccurate data leads to a proposed system that does not account for current rainfall and will most likely lead to flooding~~,~~ inadequate storage, little or no pollutant treatment and dangerous/damaging stormwater discharge intensities.

The stormwater design is flawed as it appears that it will be impossible to install a liner in an open body of water. This conclusion is based on the water elevations recorded on site per the project team's soil bore logs and surface water data. Therefore, it is impossible to meet the City's stormwater treatment requirements on this site as currently proposed.

The applicant's stormwater engineering report dated 8/9/19 states that "the soils on-site are largely contaminated." A geotechnical report dated 6/21/19 was included as an appendix. The geotechnical report describes test pit and soil boring results.

The stormwater engineering report and site plan indicates that alternative (non-infiltration) methods to manage stormwater will be employed. This is consistent with the Minnesota Construction Stormwater Permit, which prohibits permittees from constructing infiltrating systems where infiltrating stormwater may mobilize high levels of contaminants in soil or groundwater. The infiltration test method, as well as other infiltration requirements including a three-foot buffer, are not relevant to this site given the extent of documented contamination, which precludes infiltration as a stormwater management method.

The project has been approved by the City's Water Resource Coordinator, and the proposed plans show conformance with the Mississippi Watershed Management Organization (MWMO) standards. This approval includes calculations and/or device sizing information that shows 60% total phosphorus removal is provided by the proposed design, the specific type of filtration device is indicated, and it includes an operation and maintenance plan.

The City's Water Resource Coordinator either did not notice or did not understand that the proposed plans were based on an outdated precipitation model.

Their stormwater model also did not include the impact of the perched water table noted by the applicant's geotechnical testing firm, Braun Intertec, which had recommended drainage tiles beneath the impermeable area (p.12 of their Geotechnical Evaluation Report). We think at least some of that water comes from Skonard Spring. All of the drainage water would need to enter the stormwater pond, and because the spring flows year-round, it would tend to keep the pond full. This means the pond will overflow much more frequently than the model predicts. This water will "overflow into Kasota Avenue where it will either enter the adjacent storm sewer and enter the wetland to the south or continue to flow west down Kasota Avenue."

An additional problem with the perched water table is that it will produce positive hydrostatic pressure on the outside walls of the planned stormwater retention pond, and may preclude successful installation of the liner.

9. *Sufficient landscaping, fences, walls and parking necessary to meet the above objectives*.

The site plan is consistent with this. See findings 5 and 6 above.

10. Site accessibility in accordance with the provisions of the Americans with Disabilities Act (ADA), including parking spaces, passenger loading zones and accessible routes.

Not applicable.

We wonder why this development is not required to install a public sidewalk as part of the work. This stretch of road was indicated as missing a sidewalk on p. 78 of the Comprehensive Plan and on p. 30 of the Saint Anthony Park Community Plan. Policy T-26 of the City's Comprehensive Plan states: "Provide sidewalks throughout the city…"

This site likely will see increased pedestrian and bicyclist traffic as these activities grow in the Cities and especially as the Grand Rounds nears completion.

11. *Provision for erosion and sediment control as specified in the ``Ramsey Erosion Sediment and Control Handbook*.

The site plan includes an erosion and sediment control plan that is consistent with this.

H. CONCLUSION & RECOMMENDATION:

The site at 2495 Kasota Avenue was part to the larger Elm Street Ash Dump, most of which has already been redeveloped and is covered by industrial/warehouse buildings and parking lots. Yes, and this last part has not been redeveloped, making it valuable in many different ways, as described earlier.

Requiring that this site be left undisturbed could be a taking, which would require payment of just compensation to the owner.

The SAPCC asserts that the 'taking' argument would not be upheld in court, because we have not dismissed all potential development on the site.

Public acquisition of the site, transporting all of the contaminated soil to a different site, and turning the site into a wetland would be an expensive proposition. The parcel has not been identified in the comprehensive plan as a public water basin, park, wetland, or other public watercourse or green infrastructure location.

Given the decades-long investment of dollars (at least $100,000) and volunteer time (at least 200,000 hours) in this area, which has been reported annually to the City as part of the Community Council's activities, perhaps the entire Kasota Ponds area should be considered for this type of identification.

Capping contaminated soil with an impervious surface is a common and acceptable way to minimize the water pollution hazard created by rainwater percolating through contaminated soil and leaching of contaminants deeper into the soil profile and groundwater. The proposed paved parking lot would achieve this.

The established vegetation provides an adequate level of protection plus other benefits from a water and climate perspective that a paved parking lot cannot provide.

The stated purpose for the 5-day standard added to the definitions of the terms parking and storage in 1998 was to make it easier to enforce the stricter locational standards that apply to outdoor storage of vehicles and not to parking of vehicles in order to prevent storage where it is not allowed. The purpose of the five-day standard was not to limit the frequency with which semitrailers stored on an industrial site can be used. Such regulation would not only serve no useful purpose; it would also be extremely difficult to enforce, the opposite of the stated purpose to make enforcement easier.

The appellant is not against excavation and earth moving on the site, and argues that all of the contaminated soil should be transported to a different site and this site restored to its original condition. The issue raised by the appellant is the amount of soil sampling needed before excavation and earth moving are permitted on the site. While the City may impose reasonable conditions in granting approval of a site plan as necessary to protect adjacent properties, the City relies on expert state agencies regarding levels of soil sampling for brownfield sites, and they have approved the sampling done here.

We argue that the experts erred in this case because MPCA has lost or misplaced many of their records on the site and ignored the evidence from the Phase II Investigation that sampling at this particular site was inadequate. Other agencies and departments based their conclusions on those faulty findings, and therefore could not adequately and independently review the facts.

There has not been an error in any fact, procedure or finding made by the Planning Commission pertaining to this case.

The SAPCC disputes this statement.

Based on the findings above, staff recommends denial of the appeal of the decision by the Planning Commission to deny an appeal and uphold conditional approval by the Zoning Administrator of a site plan for a semi-trailer storage and staging facility at 2495 Kasota Avenue subject to the following additional conditions:

1. Receipt of a Minnesota Department of Transportation access permit for the driveway.

2. All construction at the site, including a surface parking lot and related stormwater management pond, must be done in accordance with a Response Action Plan and Construction Contingency Plan approved by the Minnesota Pollution Control Agency to address environmental issues on the site and avoid release of hazardous substances, pollutants, or contaminants during construction. A trained environmental professional shall be on site during excavation and earthmoving activities to perform field screening and collect soil samples as needed

This is a condition imposed by MPCA, not the Planning Commission.

Because of the nature of this Brownfield site, the demonstrated presence of hazardous lead levels at a highly localized spot, the inadequate assessment of fill characteristics across the site and by depth, and the impossibility of recognizing which spots should be tested during construction – during excavation, earthmoving, dumping, and similar activities – the SAPCC asserts that field sampling during construction will not, and cannot, adequately protect workers, other people in the area, or the environment.

and shall provide weekly updates to the Planning Commission and to the Department of Safety and Inspections through the duration of the construction.

Weekly reports will not prevent the spread of contamination once hazardous fill has been disturbed.

3. The stormwater management pond shall be designed and constructed with an engineered liner to manage stormwater so that it does not infiltrate from the pond into contaminated soil or groundwater below.

The presence of a perched water table may preclude successful installation of this liner, and allow focused infiltration of stormwater into the fill.

4 Ivy rather than slats shall be used and maintained on the screening fence on all sides of the parking lot.

5. In addition to the trees proposed on the landscape plan, native trees and shrubs, including evergreen trees, shall be planted along the Kasota side of the fence.