

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.
- 9/16/19 Zoning Administrator issued site plan review conditional approval letter.

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

The appellant takes issue with this approach, states that the St. Paul Climate Action Plan recommends reducing impervious surfaces where possible 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. However, City code requires parking lots to be paved. 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. 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.

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

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. 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.

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, 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) is environmentally and economically efficient, as well as resilient land use and development. 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. Constructing a cap for this contaminated site without a use on top of the cap would be inefficient. Transporting all of the contaminated soil from the site to a different site would be expensive as well as an inefficient use of resources. 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.

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

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.

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.

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. 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.

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)

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).

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.

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.

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.

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 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.

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.

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.

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 by landscaping somewhere else. It just requires energy-conserving design. City code requires parking lots to be paved. In this case, paving is also needed to reduce infiltration of rainwater through contaminated soil.

7. *Safety and convenience of both vehicular and pedestrian traffic both within the site 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.

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 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.

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.

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

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.

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 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.

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

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