



November 27, 2019

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City of Saint Paul
25 West 4th Street
City Hall Annex, Suite 1400
Saint Paul, Minnesota 55102
Attn: Ms. Amanda Smith

VIA E-MAIL

Re: Appeal of Site Plan Approval – 2495 Kasota Avenue

Dear Ms. Smith:

Our firm represents Stan Koch & Sons (“Koch”) the owner of real property located at 2495 Kasota Avenue in Saint Paul (the “Property”). This letter is provided in opposition to the appeal filed by District 12 Saint Anthony Park Community Council (“SAPCC”) in connection with a site plan approval application (the “Site Plan Application”) submitted by Rohn Industries (“Rohn”). As you are aware, the Site Plan Application proposes the improvement of an existing vacant lot to be used for semi-trailer storage and as a staging facility (the “Proposed Use”).

Despite submitting hundreds of pages of material, SAPCC has failed to establish that there was any error in the denial of the appeal by the Saint Paul Planning Commission (the “Planning Commission”). In addition, the record that has been established through the Planning Commission proceedings clearly shows that the Site Plan Application (a) is consistent with the City of Saint Paul Comprehensive Plan (the “Comprehensive Plan”); (b) is consistent with the Saint Paul Zoning Code (the “Code”), and (c) satisfies all of the eleven (11) required findings outlined in the Staff Report dated October 18, 2019, as amended on October 21, 2019 (collectively, the “Staff Report”). Accordingly, Koch respectfully requests that the City Council deny the appeal of SAPCC and affirm the approval of the Site Plan Application.

Background and Standard of Review

Importantly, the Site Plan Application contemplates a permitted use for a currently underutilized, industrially zoned parcel in the City of Saint Paul (the “City”). The proposed development requires no variances or special use permits. Rohn has a 36-year history in the City and proposes to utilize the site for the expansion of their innovative recycling company, resulting in the maintenance of approximately 80 living wage jobs.

Under the Code, City staff has the authority to review and approve the Site Plan Application for this particular proposal. In accordance with the Code, staff conducted a thorough review and issued a conditional approval of the Site Plan Application on September 16, 2019.

Pursuant to the Code, in order to overturn the decision of the staff, as affirmed by the Planning Commission, the City Council is required to find that there has been an error in fact, procedure or finding made by the Planning Commission. While SAPCC has submitted hundreds of pages of documents, hoping to identify something that constitutes an error, a careful review of the appeal materials shows that SAPCC has failed to demonstrate that any such errors exist.

Analysis of Appeal

City staff has provided a detailed and thorough analysis of the Site Plan Application in the Staff Report and additional materials that were provided to the Planning Commission. In addition, City staff has diligently responded to each and every concern that has been raised by SAPCC to date. In an effort to be concise, we will not address each of the alleged errors in this letter, as the information assembled by City staff already addresses the merits of each claim.

That being said, it is worth noting that Rohn's proposed use is a permitted use as determined by City staff. SAPCC attempts to re-characterize the applicant's use, thereby creating an "error" in the City's interpretation of its own Code. In doing so, SAPCC tries to redefine the use and pigeonhole Rohn's operations on the property as "parking" rather than "storage" or "staging". Clearly, the storage and staging of semi-trailers will require the temporary parking of semi-trucks. Such temporary parking is reasonably part of the expected activities to be conducted in conjunction with this and other permitted uses in the City's industrially zoned districts. Further, with regard to the concern over truck movement on the Property, approval of the proposed Site Plan Application by the City's Public Works Transportation Planning and Safety Division confirms that these issues have been considered by staff, and subsequently by the Planning Commission, and determined to be in compliance.

In addition to questioning compliance with the Code provisions, SAPCC raises concerns about the environmental impact that the proposed development will have on the Property and the surrounding area. As noted by Staff, the Property is currently enrolled in the Minnesota Brownfields program. On October 17, 2019, Minnesota Pollution Control Agency (MPCA) Brownfields staff issued an approval letter for both the Response Action Plan (RAP) and the Construction Contingency Plan (CCP) that were prepared by Landmark Environmental and submitted for agency review. These plans provide protection for unexpected conditions that may be revealed during the construction process. Importantly, these approvals were issued following a 106-day review period and, at the time of the approval, MPCA *had knowledge of the concerns raised by SAPCC*. In addition to MPCA oversight, the Minnesota Department of Health (MDH) issued a Letter Health Consultation (LHC) on October 7, 2019, addressed to Kathryn Murray and the SAPCC, stating that, following review of the environmental reports and after comparing the site contaminant levels to environmental criteria, MDH concluded that the proposed development at 2495 Kasota *does not pose a public health hazard*.

In addition to MPCA and MDH oversight, the project has been reviewed by the Minnesota Department of Natural Resources and the Army Corp of Engineers. At every stage of review, including additional scrutiny resulting from concerns raised by SAPCC, the project has been

deemed to be in compliance with applicable regulations. Perhaps the best documentation of the rigorous review is the Site Plan Review Report dated September 16, 2019 which lists the 19 different departments and agencies consulted in connection with the review of the Site Plan Application. This review and the additional conditions imposed as part of the approval of the Site Plan Application, demonstrate the City's careful consideration of Site Plan Application and support the trust that should be given to the City's approvals to date.

Conclusion

The Site Plan Application has undergone significant and rigorous review by numerous members of various City departments - professionals who are trained in not only land use and planning matters, but engineering, traffic and public safety – as well as review by duly appointed members of the Planning Commission. Not only has SAPCC failed to meet its burden of establishing clear error on the part of the staff or the Planning Commission, but they have failed to show how the Site Plan Application is inconsistent with the City's Comprehensive Plan or Code. To the contrary, as shown in the staff reports and other related materials, the Site Plan Application and the Proposed Use are consistent with the City's Comprehensive Plan and the City Code. In addition, the Site Plan Application demonstrates compliance with all of the findings that are required for approval.

The City's thorough review has proven its commitment to the protection of public health and safety. No less importantly, as noted by Yaya Diatta, the City's Zoning Administrator, in the November 5, 2019 letter to Kathryn Murray, SAPCC Interim Executive Director, the City must also demonstrate a “[commitment] to the right of property owners for approval of reasonable development that meets all state and local requirements.” For all of these reasons, Koch respectfully requests that the City Council deny the appeal of SAPCC and approve the Site Plan Application.

Very truly yours,

WINTHROP & WEINSTINE, P.A.



Tammera R. Diehm

cc: Mr. Robert Buss
Mr. Ron Mason
Mr. Dave Carland
Mr. Randy Rauwerdink