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Title: Memorializing the City Council's decision to deny an appeal by the St. Anthony Park Community Council from an Administrative Decision of the Zoning Administrator granting conditional approval of a site plan application submitted by Rohn Industries to construct a parking facility at 2495 Kasota Avenue.

Sponsors: Amy Brendmoen

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Date	Ver.	Action By	Action	Result
8/7/2020	1	Mayor's Office	Signed	
8/5/2020	1	City Council	Adopted	Pass

Memorializing the City Council's decision to deny an appeal by the St. Anthony Park Community Council from an Administrative Decision of the Zoning Administrator granting conditional approval of a site plan application submitted by Rohn Industries to construct a parking facility at 2495 Kasota Avenue.

WHEREAS, on August 9, 2019, Rohn Industries ("Applicant"), in Zoning File No. 19-101-370, submitted to the department of safety and inspections ("DSI"), a site plan review application for the Applicant's property commonly known as 2495 Kasota Avenue in order to construct a semi-trailer staging facility to serve the Applicant's paper recycling business located nearby on property commonly known as 862 Hersey Street; and

WHEREAS, on September 16, 2019, after reviewing the said application with various City departments, the Zoning Administrator issued a conditional approval of the Applicant's site plan application; and

WHEREAS, on September 25, 2019 and pursuant to Leg. Code § 61.701, the St. Anthony Park Community Council ("Appellant"), in Zoning File No. 19-088-143, duly filed an appeal to the Planning Commission ("Commission") from the Zoning Administrator's conditional approval of the Applicant's site plan application and requested a public hearing on the matter; and

WHEREAS, on October 24, 2019, the Commission's Zoning Committee, pursuant to Leg. Code § 61.303, duly conducted a public hearing on the said appeal at which Zoning staff delivered a report and recommendation to the Committee which staff recommended denial of the appeal for the reasons stated therein and, following the report and recommendation of staff, all persons interested in the matter were afforded an opportunity to be heard on the matter including the Applicant and the Appellant; and

WHEREAS, immediately following the close of the public hearing, the Committee deliberated and conducted a series of votes either to recommend approval or denial of the appeal and, unable to obtain a majority to recommend either approval or denial, the Committee duly moved to send the matter to the full Commission with no recommendation; and

WHEREAS on November 1, 2019, the Commission took up the matter and, following deliberations on the matter, duly moved to deny Appellant's appeal and to uphold the Zoning Administrator's conditional approval of the Applicant's site plan based upon the following findings as set forth in Planning Commission Resolution No. 19-54:

1. The city's adopted comprehensive plan and development or project plans for sub-areas of the city. The site plan is consistent with the goal in the Saint Anthony Park Community Plan (WSA3) to reduce the input of contaminants to surface waters from Saint Anthony Park. Capping this site with a bituminous surface will limit the amount of water percolating through contaminants underground on the site.

The site plan proposes tree planting that exceeds requirements and lighting that is aimed downward and does not spill onto adjacent properties, consistent with St. Anthony Park development guidelines.

The site plan is consistent with comprehensive plan economic development policies to grow Saint Paul's tax base to maintain and expand City services, amenities and infrastructure. Developing this lot as a semi-trailer storage and staging facility will allow Rohn Industries to continue to operate and grow in Saint Paul. Improvements on this parcel will add to Saint Paul's tax base. The parcel has not been identified in the comprehensive plan as a public water basin, park, wetland, river source or other public watercourse or green infrastructure.

2. Applicable ordinances of the City of Saint Paul. The site plan is 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 located to the east of the site and separated by an elevated four-lane highway (TH280). It is proposed to be enclosed with a six-foot-high chain link fence with slat inserts to screen it from Kasota Avenue. There is no servicing, processing, or manufacturing proposed for the site.

3. Preservation of unique geologic, geographic or historically significant characteristics of the city and environmentally sensitive areas. The site plan is consistent with this. An incidental wetland determination application was submitted to the City on 7/30/19. (Reference Minnesota Wetland Conservation Act (WCA) Notice of Decision). 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 aeriels, 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. 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.

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.

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 site plan is 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 semi-trailers 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.

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 site plan is 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 recommended using plant materials for visual screening, including evergreens for year-round coverage.

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.

7. Safety and convenience of both vehicular and pedestrian traffic both within the site and 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 to final approval of the driveway location by the Department of Public Works Transportation Planning and Safety Division, and to a Minnesota Department of Transportation (MnDOT) access permit for the driveway.

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 allows 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 have agreed that the access driveway should line up directly opposite the TH280 ramps. City Public Works staff will work with the applicant to review an updated design of the driveway entrance. The site plan will not be approved until it receives City Public Works approval, as well as a MnDOT Access Permit if required for the new driveway location.

Based on recent MnDOT staff review of the Rohn Industries Traffic Narrative, conversations with City Public Works, and the requirement that Public Works review any future change in operations or use that will affect trip volumes to and from the site, MnDOT is no longer recommending 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 site plan is consistent with this. 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.

Final site plan approval will not be granted until the project shows conformance with Mississippi Watershed Management Organization (MWMO) standards. This approval includes calculations and/or device sizing information showing that 60% total phosphorus removal is provided by the proposed design. The report and plans must also indicate the specific type of filtration device and include 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.

AND, WHEREAS, , in denying Appellant's appeal application, the Commission, also based upon the record produced during the hearing, upheld the following conditions that were placed on the Applicant's conditional site plan approval by the Zoning Administrator:

1. Final approval of the driveway location by the Department of Public Works Transportation Planning and Safety Division.
2. Receipt of a Minnesota Department of Transportation access permit for the driveway if required for the approved driveway location.
3. 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.
4. 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.
5. Ivy rather than slats shall be used and maintained on the screening fence on all sides of the parking lot.
6. 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.

AND, WHEREAS, on November 12, 2019, Appellant, duly filed an appeal to the City Council where the appeal was assigned City Council File No. APC 19-4 and set on for a public hearing on December 4, 2019; and

WHEREAS, on December 2, 2019, the Minnesota Environmental Quality Board (EQB) notified the City that it was in receipt of a petition filed on behalf of the Appellant requesting an Environmental Assessment Worksheet (EAW) review of the Applicant's development proposal and, pursuant to EQB rules, the City Council Appeal date was accordingly continued to January 8, 2020; and

WHEREAS, on December 13, 2019, the City staff requested an extension of the EAW period for decision until January 15, 2020 which the EQB approved on December 18, 2019 and, accordingly, the City Council Appeal date was continued to February 5, 2020; and

WHEREAS, on January 15, 2020, the City completed review of the EAW petition and concluded an EAW was not needed for the Applicant's project and, pursuant to the EQB rules for its EAW petition processes, provided notice of its Finding of Fact and Record of Decision regarding the said EAW petition, and further, pursuant to state statute following the City's EAW decision, March 15, 2020 became the deadline date for taking final action on the Applicant's site plan application; and

WHEREAS, on February 5, 2020, the City Council moved to continue the public hearing date to March 4, 2020; and

WHEREAS on March 4, 2020, having provided notice pursuant to Leg. Code § 61.702(b), the Council duly conducted the public hearing on Appellant's appeal from the Commission's November 1, 2019 decision where all persons interested were afforded an opportunity to be heard and, following the conclusion of the public hearing and discussion of the matter, the Council moved to continue the matter to March 11, 2020 in order to receive additional information regarding two questions posed to staff about parking and the comprehensive plan; and

WHEREAS, on March 11, 2020, having received the information requested, the Council based upon its deliberations and upon all the files, records, and testimony produced; does hereby

RESOLVE, that the Council of the City of Saint Paul hereby denies Appellant's appeal as the Council finds that Appellant has not demonstrated that the Commission erred in its facts, findings or procedures when, on November 1, 2019, it denied Appellant's appeal from the Zoning Administrator's September 16, 2019 decision granting conditional approval of the Applicant's site plan application; and

BE IT FURTHER RESOLVED, in denying the said appeal, the Council adopts as its own in support of its decision, the facts and findings set forth in Planning Commission Resolution No. 19-54 together with the six (6) conditions imposed by the Commission as set forth therein; and

BE IT FINALLY RESOLVED, that a copy of this adopted Memorialization Resolution shall be provided to the Appellant, the Applicant, the Zoning and Planning Administrators and to the Planning Commission.