

ENVIRONMENTAL ASSESSMENT WORKSHEET

This Environmental Assessment Worksheet (EAW) form and EAW Guidelines are available at the Environmental Quality Board's website at:

<http://www.eqb.state.mn.us/EnvRevGuidanceDocuments.htm>. The EAW form provides information about a project that may have the potential for significant environmental effects. The EAW Guidelines provide additional detail and resources for completing the EAW form.

Cumulative potential effects can either be addressed under each applicable EAW Item, or can be addresses collectively under EAW Item 19.

Note to reviewers: Comments must be submitted to the RGU during the 30-day comment period following notice of the EAW in the *EQB Monitor*. Comments should address the accuracy and completeness of information, potential impacts that warrant further investigation and the need for an EIS.

1. Project title:

844 Fairmount Avenue – Single Family Home Roof Renovation

2. Proposer:

Contact person: Peter Stitzel
Title: Property owner
Address: 844 Fairmount Ave.
City, State, ZIP: Saint Paul, MN 55105
Phone: 206-579-3075
Fax: n/a
Email: pjstitzel@gmail.com

3. RGU

Contact person: Josh Williams
Title: Senior Planner, PED
Address: 25 W. 4th Street
City, State, ZIP: Saint Paul, MN 55102
Phone: 651-266-6659
Fax: 651-266-6549
Email: josh.williams@ci.stpaul.mn.us

4. Reason for EAW Preparation: (check one)

Required:

- EIS Scoping
 Mandatory EAW

Discretionary:

- Citizen petition
 RGU discretion
 Proposer initiated

If EAW or EIS is mandatory give EQB rule category subpart number(s) and name(s):

MN Rules 4410.4300 Subp. 31 – Historical Places

5. Project Location:

County: Ramsey
City/Township: City of Saint Paul
PLS Location (1/4, 1/4, Section, Township, Range): SE, SW, Section 2, Township 28N, Range 23 W
Watershed (81 major watershed scale): Mississippi River (20)
GPS Coordinates: Lat. N 44 57 26.586, Long. W 93 18 3.042
Tax Parcel Number: 022823430114

At a minimum attach each of the following to the EAW:

- County map showing the general location of the project;
- U.S. Geological Survey 7.5 minute, 1:24,000 scale map indicating project boundaries (photocopy acceptable); and
- Site plans showing all significant project and natural features. Pre-construction site plan and post-construction site plan.

Response:

Please see Maps 1 and 2 and attachment 1.

6. Project Description:

- a. Provide the brief project summary to be published in the *EQB Monitor*, (approximately 50 words).

Response:

Partial demolition of a contributing structure in the Historic Hill National Register District to accommodate the replacement of two 4-foot dormers by two 12-foot dormers, extension of bay to third floor, and construction of rooftop deck.

- b. Give a complete description of the proposed project and related new construction, including infrastructure needs. If the project is an expansion include a description of the existing facility. Emphasize: 1) construction, operation methods and features that will cause physical manipulation of the environment or will produce wastes, 2) modifications to existing equipment or industrial processes, 3) significant demolition, removal or remodeling of existing structures, and 4) timing and duration of construction activities.

Response:

Existing structure is a single 3 story family residence in the Summit Hill neighborhood of Saint Paul. Construction will require the removal of approximately 36 lineal feet, (less than 10,000 lbs.) of roofing material and rafters which will be hauled off by a 8 x 12 covered trailer and properly disposed of or reused within the building. Duration of demolition and construction will be 30-45 days, planned to begin in early October 2015.

- c. Project magnitude:

Total Project Acreage	0.24
Linear project length	n/a
Number and type of residential units	1, single family
Commercial building area (in square feet)	n/a
Industrial building area (in square feet)	n/a
Institutional building area (in square feet)	n/a
Other uses – specify (in square feet)	n/a
Structure height(s)	33 feet

The property on which the project is taking place is a 10,454 square foot residential lot, and the combined footprint of the house and garage is approximately 2254 square feet. The proposed project will not affect the footprint of either structure. The project will increase the height of the roof as measured to its midpoint.

- d. Explain the project purpose; if the project will be carried out by a governmental unit, explain the need for the project and identify its beneficiaries.

Response:

The purpose of the project is to add living space in the third floor for an above grade playroom for children instead of basement.

- e. Are future stages of this development including development on any other property planned or likely to happen? Yes No
If yes, briefly describe future stages, relationship to present project, timeline and plans for environmental review.
- f. Is this project a subsequent stage of an earlier project? Yes No
If yes, briefly describe the past development, timeline and any past environmental review.

7. **Cover types:** Estimate the acreage of the site with each of the following cover types before and after development:

	Before	After		Before	After
Wetlands	-	-	Lawn/landscaping	0.19	0.19
Deep water/streams	-	-	Impervious surface	0.05	0.05
Wooded/forest	-	-	Stormwater Pond	-	-
Brush/Grassland	-	-	Other (describe)	-	-
Cropland	-	-			
			TOTAL	0.24	0.24

8. **Permits and approvals required:** List all known local, state and federal permits, approvals, certifications and financial assistance for the project. Include modifications of any existing permits, governmental review of plans and all direct and indirect forms of public financial assistance including bond guarantees, Tax Increment Financing and infrastructure. *All of these final decisions are prohibited until all appropriate environmental review has been completed. See Minnesota Rules, Chapter 4410.3100.*

Response:

Unit of government

Type of application

Status

City of Saint Paul	Variance (structure height)	Approved (prior to knowledge of need for EAW)
City of Saint Paul	Demolition	Under review
City of Saint Paul	Building (including trades)	Under review

Cumulative potential effects may be considered and addressed in response to individual EAW Item Nos. 9-18, or the RGU can address all cumulative potential effects in response to EAW Item No. 19. If addressing cumulative effect under individual items, make sure to include information requested in EAW Item No. 19

9. Land use:

a. Describe:

- i. Existing land use of the site as well as areas adjacent to and near the site, including parks, trails, prime or unique farmlands.

Response:

Project is located in a long-developed, urban residential area of single-family housing.

- ii. Plans. Describe planned land use as identified in comprehensive plan (if available) and any other applicable plan for land use, water, or resources management by a local, regional, state, or federal agency.

Response:

The Saint Paul Comprehensive Plan identifies the area where the proposed project is located as part of an "Established Neighborhood", and generally calls for the existing character of "Established Neighborhoods" in regard to land use and structure type to be maintained.

The Saint Paul Comprehensive Plan also includes a Historic Preservation Chapter. Among the 5 strategies outlined in the chapter is to "Preserve and Protect Historic Resources". The chapter specifically calls for the protection of historic resources that are not currently subject to review by the Saint Paul Heritage Preservation Commission (HPC), including those on listed on the National Register of Historic Places.

- iii. Zoning, including special districts or overlays such as shoreland, floodplain, wild and scenic rivers, critical area, agricultural preserves, etc.

Response:

The project is located in an area zoned R4 one-family. If the partial demolition and associated reconstruction of 844 is carried out as proposed, the property will be generally consistent with the zoning in terms of land use and dimensional standards, with the exception of exceeding the maximum allowed structure height of 30', for which the Saint Paul Board of Zoning Appeals has issued a variance.

- b. Discuss the project's compatibility with nearby land uses, zoning, and plans listed in Item 9a above, concentrating on implications for environmental effects.

Response:

The proposed project is generally compatible with nearby land uses in terms of zoning. However, the project may not be fully consistent with the intent of strategies within the Historic Preservation Chapter of the Saint Paul Comprehensive Plan. This issue and potential mitigation measures are discussed under Item 14 of this worksheet.

- c. Identify measures incorporated into the proposed project to mitigate any potential incompatibility as discussed in Item 9b above.

Response:

Please see discussion under Item 14 of this worksheet.

10. Geology, soils and topography/land forms:

- a. Geology - Describe the geology underlying the project area and identify and map any susceptible geologic features such as sinkholes, shallow limestone formations, unconfined/shallow aquifers, or karst conditions. Discuss any limitations of these features for the project and any effects the project could have on these features. Identify any project designs or mitigation measures to address effects to geologic features.

Response:

The geology and soils of the area are generally compatible with the project, as evidenced by the long history of residential uses in the area. The proposed project involves partial demolition of an existing structure and no subgrade work. Any impacts relative to underlying geology or soils would have already manifested during original construction in 1894.

- b. Soils and topography - Describe the soils on the site, giving NRCS (SCS) classifications and descriptions, including limitations of soils. Describe topography, any special site conditions relating to erosion potential, soil stability or other soils limitations, such as steep slopes, highly permeable soils. Provide estimated volume and acreage of soil excavation and/or grading. Discuss impacts from project activities (distinguish between construction and operational activities) related to soils and topography. Identify measures during and after project construction to address soil limitations including stabilization, soil corrections or other measures. Erosion/sedimentation control related to stormwater runoff should be addressed in response to Item 11.b.ii.

Response:

NRCS soil classifications for the property were not available for inclusion in this worksheet. The geology and soils of the area are generally compatible with the project, as evidenced by the long history of residential uses in the area. The proposed project involves partial demolition of an existing structure and no subgrade work. Any impacts relative to underlying geology or soils would have already manifested during original construction in 1894.

NOTE: For silica sand projects, the EAW must include a hydrogeologic investigation assessing the potential groundwater and surface water effects and geologic conditions that could create an increased risk of potentially significant effects on groundwater and surface water. Descriptions of water resources and potential effects from the project in EAW Item 11 must be consistent with the geology, soils and topography/land forms and potential effects described in EAW Item 10.

11. Water resources:

- a. Describe surface water and groundwater features on or near the site in a.i. and a.ii. below.
- i. Surface water - lakes, streams, wetlands, intermittent channels, and county/judicial ditches. Include any special designations such as public waters, trout stream/lake, wildlife lakes, migratory waterfowl feeding/resting lake, and outstanding resource value water. Include water quality impairments or special designations listed on the current MPCA 303d Impaired Waters List that are within 1 mile of the project. Include DNR Public Waters Inventory number(s), if any.

Response:

The project is located more than 1 mile from the nearest body of water, the Mississippi River.

- ii. Groundwater – aquifers, springs, seeps. Include: 1) depth to groundwater; 2) if project is within a MDH wellhead protection area; 3) identification of any onsite and/or nearby wells, including unique numbers and well logs if available. If there are no wells known on site or nearby, explain the methodology used to determine this.

Response:

The City of Saint Paul maintains a record of known wells within the City and no wells are listed for this property. The property is served by municipal water supply. The project is not located within an MDH wellhead protection area. Depth to groundwater is unknown. However, the proposed project involves partial demolition of an existing structure and no subgrade work. Any impacts relative to high groundwater would have already manifested during original construction in 1894 or shortly thereafter.

- b. Describe effects from project activities on water resources and measures to minimize or mitigate the effects in Item b.i. through Item b.iv. below.

- i. Wastewater - For each of the following, describe the sources, quantities and composition of all sanitary, municipal/domestic and industrial wastewater produced or treated at the site.
 - 1) If the wastewater discharge is to a publicly owned treatment facility, identify any pretreatment measures and the ability of the facility to handle the added water and waste loadings, including any effects on, or required expansion of, municipal wastewater infrastructure.

Response:

Wastewater discharge from the project site will be to Saint Paul municipal sanitary sewer and conveyed from there to the Pig's Eye Metro WWTP. Discharge levels are not anticipated to change as use is not changing. No impacts to sanitary sewer system or the WWTP are anticipated.

- 2) If the wastewater discharge is to a subsurface sewage treatment systems (SSTS), describe the system used, the design flow, and suitability of site conditions for such a system.

Response:

Not applicable.

- 3) If the wastewater discharge is to surface water, identify the wastewater treatment methods and identify discharge points and proposed effluent limitations to mitigate impacts. Discuss any effects to surface or groundwater from wastewater discharges.

Response:

Not applicable.

- ii. Stormwater - Describe the quantity and quality of stormwater runoff at the site prior to and post construction. Include the routes and receiving water bodies for runoff from the site (major downstream water bodies as well as the immediate receiving waters). Discuss any environmental effects from stormwater discharges. Describe stormwater pollution prevention plans including temporary and permanent runoff controls and potential BMP site locations to manage or treat stormwater runoff. Identify specific erosion control, sedimentation control or stabilization measures to address soil limitations during and after project construction.

Response:

Quality and quantity of stormwater runoff will be identical pre- and post-construction. No subgrade work will be done and any ground disturbance will be incidental. As such, no stormwater pollution prevention measures are proposed.

- iii. Water appropriation - Describe if the project proposes to appropriate surface or groundwater (including dewatering). Describe the source, quantity, duration, use and purpose of the water use and if a DNR water appropriation permit is required. Describe any well abandonment. If connecting to an existing municipal water supply, identify the wells to be used as a water source and any effects on, or required expansion of, municipal water infrastructure. Discuss environmental effects from water appropriation, including an assessment of the water resources available for appropriation. Identify any measures to avoid, minimize, or mitigate environmental effects from the water appropriation.

Response:

No groundwater will be appropriated as part of the proposed project.

- iv. Surface Waters

- a) Wetlands - Describe any anticipated physical effects or alterations to wetland features such as draining, filling, permanent inundation, dredging and vegetative removal. Discuss direct and indirect environmental effects from physical modification of wetlands, including the anticipated effects that any proposed wetland alterations may have to the host watershed. Identify measures to avoid (e.g., available alternatives that were considered), minimize, or mitigate environmental effects to wetlands. Discuss whether any required compensatory wetland mitigation for unavoidable wetland impacts will occur in the same minor or major watershed, and identify those probable locations.

Response:

No wetlands exist on or near the project site.

- b) Other surface waters- Describe any anticipated physical effects or alterations to surface water features (lakes, streams, ponds, intermittent channels, county/judicial ditches) such as draining, filling, permanent inundation, dredging, diking, stream diversion, impoundment, aquatic plant removal and riparian alteration. Discuss direct and indirect environmental effects from physical modification of water features. Identify measures to avoid, minimize, or mitigate environmental effects to surface water features, including in-water Best Management Practices that are proposed to avoid or minimize turbidity/sedimentation while physically altering the water features. Discuss how the project will change the number or type of watercraft on any water body, including current and projected watercraft usage.

Response:

No surface water features exist on or near the site, and thus no impacts to these features are anticipated.

12. Contamination/Hazardous Materials/Wastes:

- a. Pre-project site conditions - Describe existing contamination or potential environmental hazards on or in close proximity to the project site such as soil or ground water contamination, abandoned dumps, closed landfills, existing or abandoned storage tanks, and hazardous liquid or gas pipelines. Discuss any potential environmental effects from pre-project site conditions that would be caused or exacerbated by project construction and operation. Identify measures to avoid, minimize or mitigate adverse effects from existing contamination or potential environmental hazards. Include development of a Contingency Plan or Response Action Plan.

Response:

The project site has been in use as residence for over 100 years, and no subgrade work is proposed. There is no indication of subsurface contamination or hazards, and any unknown conditions will not be impacted by the proposed project.

- b. Project related generation/storage of solid wastes - Describe solid wastes generated/stored during construction and/or operation of the project. Indicate method of disposal. Discuss potential environmental effects from solid waste handling, storage and disposal. Identify measures to avoid, minimize or mitigate adverse effects from the generation/storage of solid waste including source reduction and recycling.

Response:

Typical demolition and construction waste will be generated by the proposed project. The project proposer has estimated the amount of demolition waste at 10,000 pounds or less. The proposed project will require the project proposer to sign a City of Saint Paul "Residential Construction Management Acknowledgement" which enumerates regulations regarding dumpsters and dumpster maintenance in the Saint Paul Legislative Code and applicable to residential construction projects.

The project also requires a demolition permit from the City of Saint Paul and is subject to Ramsey County demolition requirements, including documentation of a pre-demolition inspection and proper disposal of all waste.

- c. Project related use/storage of hazardous materials - Describe chemicals/hazardous materials used/stored during construction and/or operation of the project including method of storage. Indicate the number, location and size of any above or below ground tanks to store petroleum or other materials. Discuss potential environmental effects from accidental spill or release of hazardous materials. Identify measures to avoid, minimize or mitigate adverse effects from the use/storage of chemicals/hazardous materials including source reduction and recycling. Include development of a spill prevention plan.

Response:

No use or storage of hazardous materials other than those typical of small-scale residential construction are anticipated. The project is subject to Ramsey County demolition requirements, including documentation of a pre-demolition inspection and proper recycling or disposal of all waste.

- d. Project related generation/storage of hazardous wastes - Describe hazardous wastes generated/stored during construction and/or operation of the project. Indicate method of disposal. Discuss potential environmental effects from hazardous waste handling, storage, and disposal. Identify measures to avoid, minimize or mitigate adverse effects from the generation/storage of hazardous waste including source reduction and recycling.

Response:

The project will not result in the generation of hazardous wastes.

13. Fish, wildlife, plant communities, and sensitive ecological resources (rare features):

- a. Describe fish and wildlife resources as well as habitats and vegetation on or in near the site.

Response:

- Wildlife on or near the site consists of typical urban species. Vegetation on or near the site consists of turf, gardens, and yard and street trees.
- b. Describe rare features such as state-listed (endangered, threatened or special concern) species, native plant communities, Minnesota County Biological Survey Sites of Biodiversity Significance, and other sensitive ecological resources on or within close proximity to the site. Provide the license agreement number (LA-____) and/or correspondence number (ERDB _____) from which the data were obtained and attach the Natural Heritage letter from the DNR. Indicate if any additional habitat or species survey work has been conducted within the site and describe the results.

Response:

A Natural Heritage Information System (NHIS) data request has been transmitted to the Minnesota Department of Natural Resources. All information reported will be incorporated into this worksheet. Due to the small project size (partial demolition of a single family residence) and project location in an area that urbanized over 100 years ago, it is not anticipated that there will be any impacts to rare natural features.

- c. Discuss how the identified fish, wildlife, plant communities, rare features and ecosystems may be affected by the project. Include a discussion on introduction and spread of invasive species from the project construction and operation. Separately discuss effects to known threatened and endangered species.

Response:

No impacts are anticipated, due to the small scale of the project and the location in an area that urbanized over 100 years.

- d. Identify measures that will be taken to avoid, minimize, or mitigate adverse effects to fish, wildlife, plant communities, and sensitive ecological resources.

Response:

Due to a lack of anticipated impacts, no avoidance, minimization or mitigation measures are proposed.

14. Historic properties:

Describe any historic structures, archeological sites, and/or traditional cultural properties on or in close proximity to the site. Include: 1) historic designations, 2) known artifact areas, and 3) architectural features. Attach letter received from the State Historic Preservation Office (SHPO). Discuss any anticipated effects to historic properties during project construction and operation. Identify measures that will be taken to avoid, minimize, or mitigate adverse effects to historic properties.

Response:

The proposed project is the partial demolition of the residence at 844 Fairmount, located within the Historic Hill State and National Register Districts. The Historic Hill National Register District is

bounded roughly by Irvine Avenue, Grand Avenue, Oakland, Summit Avenue, Lexington Parkway, Dayton Avenue to Grotto Street, and Marshall Avenue. (See Map 3)

The Hill Historic National Register District was nominated for inclusion on the National Register in July of 1976. According to the National Register nomination, the Historic Hill District is significant in the area of architecture "for the largest concentration of nineteenth and early twentieth century architectural styles in Minnesota, as employed by architects, designers, and builders to satisfy the demands of the upper and upper-middle social and economic classes in a testimony of affluence, expression, and fashion."

The National Register nomination also notes the locational progression of concentrated residential development, particularly as pertains to the city's more affluent and influential residents. Saint in its earliest years was really two communities, Lower Town (including what is now the central business district) and Upper Town. After the Civil War, Saint Paul entered a period of great industrial and commercial development. This development united the two halves of Saint Paul, but as industry expanded, wealthier residents began to seek areas of "greater residential desirability. As opposed to other fashionable districts at the time—including Irvine Park and parts of Lower Town—the Historic Hill was relatively undeveloped, and somewhat protected by topography. Improving urban transportation also played a role in making the area more accessible. As it expanded westward and southward, the Historic Hill district recorded in stone, brick and wood not only the story of Saint Paul but also of progression of architectural styles and trends throughout the period of significance.

The National Register nomination identified eight distinct "soft-line" areas in the Historic Hill district. 844 Fairmount is located within Area 6: Lincoln-Goodrich-Fairmount; a residential area approximately four blocks long and four blocks wide developed on the grid pattern; comprising Lincoln, Goodrich, Fairmount and Osceola Avenues. (See map 4)

The National Register nomination provides the following description of the area:

"This area is comprised primarily of a four block wide area of single family residential development which covers roughly the time period between 1885 and 1900. It extends westward approximately four blocks from Crocus Hill and is directly north of the Kenwood-Linwood area. It is separated from Summit Avenue to the north by a one-block wide commercial strip development along Grand Avenue. It is similar to the Portland Avenue area (area 8) in that the buildings are of substantial size and are situated on relatively narrow lots, giving the street-scape a compact appearance. The majority of the buildings are two and one-half or three stories in height and of either frame or brick construction, characteristics which further contribute to the unity of the area. As in the other areas, a chronological sequence in building type is apparent in traversing the area from Crocus Hill toward the west.

"The eastern portion of the Lincoln-Goodrich-Fairmount area exhibits a significant number of frame residences in variations on the Queen Anne mode. The middle portion is characterized by a mingling of Queen Anne with the Neo-classics, whereas the western fringe shows only an occasional Queen Anne with a predominance of Neo-classics and a scattering of medieval and Georgian variant."

The residence at 844 Fairmount was constructed in 1894 and exhibits characteristics of both the late Queen Anne and Neo-Classical styles. Features include a wood-framed, rectangular, two-story volume with a semi-octagonal one- and two-story window bays, a curvilinear porch with columns and

a full cornice, a bell cast hipped roof, and pedimented dormers. Exterior materials include narrow clapboard siding and a shingled frieze. A kitchen bump out on the rear of the structure and back porch remodel were performed in 1998.

The building was originally constructed in 1894 and was designed by noted Minnesota-born architect Clarence Johnston. He attended the Massachusetts Institute of Technology where he received formal architectural education, what later became the Architectural League of New York. He came back to St. Paul in 1882 and opened his own office. In 1885 Johnston entered partnership with William H. Willcox (1832-1929) until 1889. The firm produced many notable buildings, including Summit Terrace (St. Paul), the residence of F. Scott Fitzgerald; First Baptist Church (Chicago); the main building of Macalester College (St. Paul); the Mercantile Library (Peoria, IL); Shattuck School and St. Mary's Hall (Faribault, MN); and residences for W.R. Merriam, F. Driscoll, C.W. Griggs, and A.G. Foster, all in St. Paul. He was elected a fellow of the American Institute of Architects in 1889. In 1901, Johnston was retained as architect to the State Board of Control and later by the Commission of Administration & Finance of Minnesota, in which capacity he designed literally dozens of state-owned office buildings, schools and institutional facilities, and the state prison. He also was appointed architect to the Board of Regents of the University of Minnesota at about the same time, and many of the buildings on the Twin Cities campuses dating from the period between 1904 and 1936 are from his firm.

The State Historic Preservation Office (SHPO) considers 844 Fairmount to be "contributing" to the Historic Hill District (see Attachment 3). The property was not on a short list of "noteworthy" buildings in Area 6 in the National Register nomination. No formal survey and evaluation of the property has been conducted at this time.

The proposed partial demolition will consist of removal of dormers on the north and east elevations of the structure, as well as a small portion of the main roof below the dormer on the east elevation and portions of the main roof in areas immediately adjacent to the dormers to accommodate new, larger dormers. In addition to new dormers, reconstruction associated with the project will also extend a bay on the east elevation from the second floor to the third floor. The new dormers will reach the height of the original main roofline. The project proposer is also seeking to add a rooftop deck above the main roof.

The proposed partial demolition and associated reconstruction will noticeably alter the roofline of the structure at 844 Fairmount. Because the structure is part of a larger district, the impact to the district as a whole must also be considered. In evaluating the significance of those impacts, the size of the district, and the magnitude of the impact in the context of that size, must also be considered. The potential for long term diminishment of the resource over time due to the cumulative impacts of numerous adverse impacts must also be given consideration.

The City of Saint Paul, as the RGU, suggested several potential design changes to the project proposer which could help to avoid, minimize or mitigate any potential adverse impacts to the historic resource (the structure and the Historic Hill district as a whole) which might occur as a result of the proposed partial demolition. The project proposer provided a response which is hereby incorporated to this worksheet and Item as Appendix A.

15. Visual:

Describe any scenic views or vistas on or near the project site. Describe any project related visual effects such as vapor plumes or glare from intense lights. Discuss the potential visual effects from the project. Identify any measures to avoid, minimize, or mitigate visual effects.

Response:

The proposed partial demolition and associated reconstruction at 844 will increase the height of the structure. However, the increased height will not result in a structure significantly taller than surrounding structures and will largely be screened by trees in summer months and the project does not propose any external lighting changes.

16. Air:

- a. Stationary source emissions - Describe the type, sources, quantities and compositions of any emissions from stationary sources such as boilers or exhaust stacks. Include any hazardous air pollutants, criteria pollutants, and any greenhouse gases. Discuss effects to air quality including any sensitive receptors, human health or applicable regulatory criteria. Include a discussion of any methods used assess the project's effect on air quality and the results of that assessment. Identify pollution control equipment and other measures that will be taken to avoid, minimize, or mitigate adverse effects from stationary source emissions.

Response:

The proposed project will not result in a change of use of the subject property as single family residence, and does not include new proposed mechanical systems that would result in substantial stationary source emissions.

- b. Vehicle emissions - Describe the effect of the project's traffic generation on air emissions. Discuss the project's vehicle-related emissions effect on air quality. Identify measures (e.g. traffic operational improvements, diesel idling minimization plan) that will be taken to minimize or mitigate vehicle-related emissions.

Response:

As the proposed project will not result in a change of use of the subject property as single family residence, no additional vehicle emissions are anticipated in the post-project condition. A small amount of emissions will be associated with construction traffic. However, due to the small size of the project, this amount is not anticipated to be significant relative to ambient urban conditions. The proposed project will require the project proposer to sign a City of Saint Paul "Residential Construction Management Acknowledgement" which enumerates restrictions on idling of vehicles, generators, and other equipment contained in the Saint Paul Legislative Code and applicable to residential construction projects.

- c. Dust and odors - Describe sources, characteristics, duration, quantities, and intensity of dust and odors generated during project construction and operation. (Fugitive dust may be discussed under item 16a). Discuss the effect of dust and odors in the vicinity of the project including nearby sensitive receptors and quality of life. Identify measures that will be taken to minimize or mitigate the effects of dust and odors.

Response:

Dust is most likely to be generated during internal demolition of plaster and lath walls, and during the reconstruction of interior walls associated with the project, and it is not anticipated that dust generated during these processes will have a noticeable effect beyond the project site. External demolition is not anticipated to generate noticeable amounts of dust.

17. Noise

Describe sources, characteristics, duration, quantities, and intensity of noise generated during project construction and operation. Discuss the effect of noise in the vicinity of the project including 1) existing noise levels/sources in the area, 2) nearby sensitive receptors, 3) conformance to state noise standards, and 4) quality of life. Identify measures that will be taken to minimize or mitigate the effects of noise.

Response:

As the proposed project will not result in a change of use of the subject property as single family residence, no increase in noise emission is anticipated in the post-project condition. The proposed project will require the project proposer to sign a City of Saint Paul "Residential Construction Management Acknowledgement" which enumerates restrictions on hours of construction and construction noise in the Saint Paul Legislative Code and applicable to residential construction projects.

18. Transportation

a. Describe traffic-related aspects of project construction and operation. Include: 1) existing and proposed additional parking spaces, 2) estimated total average daily traffic generated, 3) estimated maximum peak hour traffic generated and time of occurrence, 4) indicate source of trip generation rates used in the estimates, and 5) availability of transit and/or other alternative transportation modes.

Response:

As the proposed project will not change the use of the property from its current use as a single family home, there is no anticipated increase in vehicular traffic or parking demand as result of the project, and no additional parking spaces are planned. Due to the relatively small scale of demolition and associated reconstruction, no significant impacts on traffic are anticipated during construction.

b. Discuss the effect on traffic congestion on affected roads and describe any traffic improvements necessary. The analysis must discuss the project's impact on the regional transportation system. *If the peak hour traffic generated exceeds 250 vehicles or the total daily trips exceeds 2,500, a traffic impact study must be prepared as part of the EAW.* Use the format and procedures described in the Minnesota Department of Transportation's Access Management Manual, Chapter 5 (available at: <http://www.dot.state.mn.us/accessmanagement/resources.html>) or a similar local guidance.

Response:

The proposed project will not change the use of the property from its current use as a single family home. There are no anticipated impacts on either streets directly serving the project site or the regional transportation system.

- c. Identify measures that will be taken to minimize or mitigate project related transportation effects.

Response:

As no impacts are anticipated, no minimization or mitigation measures have been identified.

19. Cumulative potential effects: (Preparers can leave this item blank if cumulative potential effects are addressed under the applicable EAW Items)

- a. Describe the geographic scales and timeframes of the project related environmental effects that could combine with other environmental effects resulting in cumulative potential effects.
- b. Describe any reasonably foreseeable future projects (for which a basis of expectation has been laid) that may interact with environmental effects of the proposed project within the geographic scales and timeframes identified above.
- c. Discuss the nature of the cumulative potential effects and summarize any other available information relevant to determining whether there is potential for significant environmental effects due to these cumulative effects.

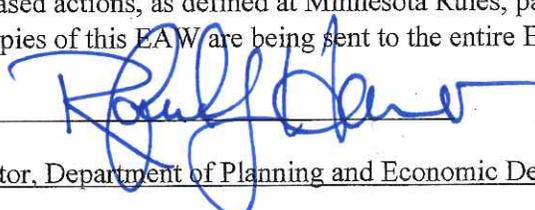
20. Other potential environmental effects: If the project may cause any additional environmental effects not addressed by items 1 to 19, describe the effects here, discuss the how the environment will be affected, and identify measures that will be taken to minimize and mitigate these effects.

RGU CERTIFICATION. *(The Environmental Quality Board will only accept **SIGNED** Environmental Assessment Worksheets for public notice in the EQB Monitor.)*

I hereby certify that:

- The information contained in this document is accurate and complete to the best of my knowledge.
- The EAW describes the complete project; there are no other projects, stages or components other than those described in this document, which are related to the project as connected actions or phased actions, as defined at Minnesota Rules, parts 4410.0200, subparts 9c and 60, respectively.
- Copies of this EAW are being sent to the entire EQB distribution list.

Signature



Date

8/25/2015

Title Director, Department of Planning and Economic Development

Appendix A

August 22, 2015

Josh Williams

Senior Planner, City of St. Paul

RE: 844 Fairmount, Mitigation of Proposed Changes.

Dear Josh,

Thank you for your Aug 21st, 2015 email regarding potential changes to the design of 844 Fairmount.

Part A addresses those potential changes and our response to those changes and Part B addresses those changes as they pertain to the guidelines in preparing an EAW.

Part A.

1. Remove the roof deck with Spiral Stair enclosure from the project.

Response: Agree to removal of Spiral Staircase and enclosure. See updated drawing. Access to the roof changed to an internal dropdown staircase within 3rd story. The approved design by the Board of Zoning Appeals required that the deck be placed directly on top of the roofline and not demolish it. Adding highly ornamented spindles of the railing on the deck matching the porch below will complete the Queen Anne look. (see no. 4 below)

2. Remove the new expanded dormer on the front, (North) elevation from the project and preserve the existing dormer.

Response: We do not agree to this change for the following reasons. The third floor was created as cramped servant's quarters for its original owners. The 4 foot dormers on the east and north side severely limits the square footage on the third floor. Keeping the 4ft façade towards the front will negatively impact both the square footage, the Queen Anne theme, (prominent forward facing gables) as well as the overall architectural balance of the home with the expansion of the other dormers.

3. Do not alter the two-story bay on the west, (actually east) elevation by adding a second story.

Response: We do not agree to this change see Number 4 below.

4. Allow for two original/historic dormers to be removed on both the east and west elevation and allow for two larger dormers that preserve the roof ridge and continuous soffit.

Response: We agree to the expansion of the east dormer but not by keeping the continuous soffit. Note, there is already a 4 foot gap currently under the front, (north) existing gable,

therefore there is no continuous soffit. It is not necessary to expand the west dormer as it is purely for staircase headroom for the 3rd story access, and expanding it won't serve any purpose.

This goal of this renovation is to not only expand the third floor space, but to do it in a way that compliments the neighborhood. This block of Fairmount has so many wonderful examples of Queen Anne Architecture featuring prominent forward facing gables, steep roof pitches and many irregular planes. There are towers and turrets, wrap around porches and highly ornamented and fanciful patterned siding. 844 Fairmount is a very plain and paired down Queen Anne style, upgrading its ornamentation is what impressed the neighbors to write on behalf of the project.

Expanding the east dormer upwards to a bay and removing the soffit to give the appearance of a tower or turret does more to advance the Queen Anne theme than to preserve the soffit. The dormer will still be below the roof ridge. In addition the suggested change of moving the dormer back from the soffit will severely limit the interior space which will take a 12 foot design and pare it back to a 5-6 foot dormer.

5. Allow for a new large dormer on the rear (south) elevation with a balcony deck (there is flexibility on this elevation given that it is not visible from a public right of way, or principle elevation).

Response: We agree to a large dormer on the rear but the Balcony deck suggestion is unworkable as it would cast a large shadow over the master bedrooms southern daylight, be a horrid fixture on an otherwise beautiful design and be prohibitively expensive. Further, the goal of the approved deck was to be as high as possible to avoid as much street light pollution for stargazing which cannot be accomplished at lower elevations.

Part B.

In the EAW guidelines, (version Oct 2013) Preparing Environmental Assessment Worksheets, under Category Specific Guidance of Item 14 allows the following. *Explain any measures to be taken to preserve these values if the property is demolished, such as removing portion for preservation, photographing or documenting. Explain any alternatives to demolition also considered, such as restoration, reuses for another purpose or sale to another owner who would have preserved the property.*

Sale to another owner who would have preserved the property.

This house was on the market for over a year before we purchased it. It sits on a large 10454 sq foot, 1 and ¾ lot which potentially could host a much larger or perhaps even two homes. Among the reasons why it took so long to sell was its 3rd floor was small and disjointed and more suited for storage than for living space. This home was marketed as a non-historical home in the TISH report NOT subject to renovation restrictions, and still it sat for over a year.

If we were properly notified of these renovation restrictions, we would NOT have purchased this property as we were looking for a larger above grade playroom for our children. Clearly an accurate historical TISH classification would have caused the previous owners to heavily discount the price and/or sit on the property even longer. Therefore the home was offered to the public for over a year who perhaps would have preserved the property and no buyer took on the challenge.

Alternative to Demolition

There is currently a 7405 foot lot on Osceola which is selling for \$450,000 or \$61 per sq foot in a neighborhood of new \$1.5 million new homes. 844 Fairmount sits on a 10,454 sq ft lot that was purchased for \$685,000 or \$66/sq ft. 27 Crocus Pl was a bargain, as it was purchased for \$875,000 on a 23,522 sq foot lot or \$37/sq ft. With demolition costs at about \$10/sq ft, there is no question that the land is quickly becoming more valuable than the houses themselves. Given these metrics of the value of the land and 844 Fairmount's rare, (>10,000 sq ft) lot size, it ought to be very clear that this property is a perfect candidate for a tear-down. According to the city's new working definition of partial demolition, this EAW process is just as onerous for a full vs. partial demolition, yet it is a developer that has both the incentive and resources to overcome these obstacles and fully develop, (teardown and rebuild) the property.

I believe strongly that this third floor renovation will boost the value of the home beyond a developers reach and therefore protect it from complete demolition far into the future. Surely SHPO would rather homes be renovated rather than torn down. Should SHPO find this third floor renovation to have an adverse effect according to their rules, I would kindly request they add in their comments that it is still preferable to a complete demolition.

Measures to be taken to preserve the property

After a lawsuit by the owners of 27 Crocus Pl, (see attached), the owners were allowed completely demolish the structure and to "preserve" and document the entire structure for historians via photography as allowed by the *category specific guidance* above. Our situation is very similar in that city and state officials had "approved" the project at various stages, including the erroneous TISH report, verification by SHPO, and St. Paul's Board of Zoning Appeals.

Only after the house was purchased, financing arranged, internal demolition and structural engineering to discover how to properly brace the house were we notified that a whole labyrinth of bureaucracy yet remained for approval that stretched from the city and states historical preservation offices to Washington D.C.'s Dept. of the Interior.

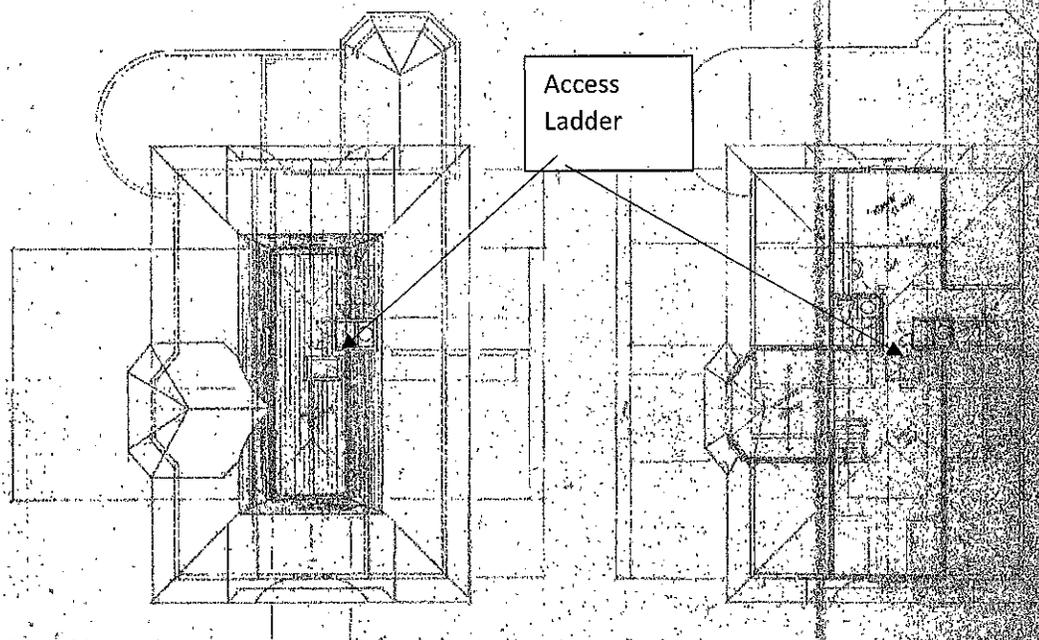
Despite all this and the enormous financial and emotional stress we have endured, we have agreed to modify the design as discussed above, and we would request that any remaining preservation issues be satisfied by documentation as allowed under the guidelines. We would hope that the city would extend us just a fraction of the courtesy as the owners of 27 Crocus Place and allow a photographic record to preserve the two-four foot dormers.

Regards

Peter and Dr. Maria Stitzel

External Staircase removed

Access
Ladder



STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Fred Pritzker, Renee Pritzker,

Court File No. 62-CV-15-677

Plaintiffs,

vs.

TEMPORARY
INJUNCTION

City of St. Paul,

Defendant.

This matter came before the Court for an evidentiary hearing on the motion of Plaintiffs Fred Pritzker and Renee Pritzker for temporary injunctive relief. Specifically, plaintiffs seek an order enjoining the City of St. Paul from revoking or suspending the demolition permit issued on January 7, 2015, relating to their property at 27 Crocus Place in St. Paul. Byron E. Starns, Esq., and Matthew B. Seltzer, Esq., Stinson Leonard Street LLP, appeared on behalf of plaintiffs. Lawrence J. Hayes, Jr., Esq., Assistant City Attorney, appeared on behalf of defendant.

Procedural Background and Jurisdiction

The procedural history of this case is brief but complicated. Plaintiff commenced this action on February 4, 2015, after the City of St. Paul revoked and suspended a demolition permit issued on January 7, 2015. Plaintiffs filed their complaint seeking injunctive and declaratory relief alleging the City acted arbitrarily, capriciously and illegally in suspending their permit. They further seek

numerous grounds for the injunctive relief requested that are independent of the EAW issue. Moreover, plaintiffs argue, Rule 108.01, subd. 2, of the Minnesota Rules of Civil Appellate Procedure, specifically contemplates that the trial court maintains authority to address temporary injunction motions pending an appeal.

This court overruled the City's objection to proceeding with the evidentiary hearing regarding issues unrelated to the requirement for an EAW. Minnesota Statute §116D.04, subd. 10, clearly relegates the EAW issue to the court of appeals. That statute, however, does not implicate any of the other claims alleged in plaintiffs' complaint or supporting the injunctive relief sought independent from that issue. Moreover, there is no pending appeal of an order or judgment of the district court which triggers the stay of authority contemplated in *Gumnow* or by operation of Rule 108.01. The court therefore allowed the evidentiary hearing to proceed and will limit its consideration and analysis to issues other than the EAW issue.

At the hearing the parties offered numerous exhibits, including affidavits of several individuals in lieu of their live testimony. Plaintiffs Fred and Renée Pritzker testified on their own behalf and were not cross-examined. Defendant City of St. Paul did not call any live witnesses. The posture of the case at this stage is that of a motion for temporary injunction pursuant to Rule 65 of the Minnesota Rules of Civil Procedure. The record consists of the pleadings filed to date, the materials submitted in connection with the TRO hearing and subsequent evidentiary hearing, as well as the exhibits and testimony referenced above.

Factual Background

The facts giving rise to this proceeding are detailed in the various submissions of the parties and are largely uncontested. This summary of the facts is taken largely from those submissions, including the affidavits and testimony presented at the evidentiary hearing. The court will not repeat all of the facts in the record, but highlight those facts most relevant to the determination of the current issues before the court.

The Pritzkers have a 30-year-old son, JP, who is physically and developmentally disabled and requires essentially around-the-clock care and supervision. Plaintiffs have cared for their son in their family home at 818 Fairmount Avenue in St. Paul for his entire life. Their home is a typical large older home in the Crocus Hill neighborhood with several flights of stairs and inadequate accommodations for JP. Recently, both Mr. and Mrs. Pritzker have developed their own medical conditions, jeopardizing their ability to continue to personally care for JP and to continue to reside in their home. They are in need of a fully accessible residence that allows for JP to live independent of them with live-in caretakers, and yet allows them to be in immediate proximity to their son to provide emotional stability and alleviate his anxiety. Renovating their existing home is not feasible.

Plaintiffs began to explore the possibility of finding a new home to accommodate their needs. They know that it is in JP's best interest to remain in the neighborhood where he has lived all of his life and where he has friends and neighbors who are familiar with his situation and look after him. As it turns out,

Fred Pritzker's brother and family owned 27 Crocus Place and lived there for over 30 years. That property is in the neighborhood and is one of the largest lots in St. Paul. At one time there were two houses on the lot, but one was torn down by earlier owners. The Pritzkers determined that the property would be their best option if the current structure could be demolished and rebuilt to address their needs.

Plaintiffs' effort to investigate the feasibility of acquiring 27 Crocus Place and demolishing the structures in order to build a new residence to accommodate their physical and developmental disabilities is well documented. To that end, they contacted the City of St. Paul building officials to ascertain whether there would be any limitations or restrictions on their ability to demolish the structure on 27 Crocus Place. In early 2014 Renee Pritzker contacted the City's Heritage Preservation Office of the Department of Planning and Economic Development. She was advised that they could tear down the house and that no preservation restrictions applied to the site. On March 7, 2014, she wrote to the City's Historic Preservation Specialists Christine Boulware and Amy Spong to specifically inquire whether its location in a national historic district created any building restrictions. Ms. Boulware responded in writing that the house was not in a local heritage preservation district, but is in the National Register Hill Historic District and that "[f]rom the federal perspective...a property owner can do whatever they want with their property as long as there are no federal monies attached to the property." See Exhibit 101B.

Plaintiffs also consulted the City's website page entitled "Historic Designation in St. Paul: Frequently Asked Questions." See Plaintiffs' Exhibit 101C. That resource describes the Heritage Preservation Commission (HPC) and its role in protecting historically significant buildings through a review and approval process relating to alterations and new construction. The site clarifies that "[i]nclusion in what is solely a National Register District does not require HPC review of proposed alterations." Exhibit 101C.

Plaintiffs also engaged a real estate attorney, Paul Steffenson, to confirm that they could proceed with their plans and to assist with the purchase and closing of the property. Steffenson personally visited the City's Historic Preservation Officer Spong on May 28, 2014, regarding the desired demolition process. He was informed that "there was nothing the City could do to prevent the demolition of the existing structure at 27 Crocus." Exhibit 104. According to Steffenson, and unrebutted by the City, Spong told him that "she would like to stop the demolition of the structure at 27 Crocus, but that she lacked authority to do so." Exhibit 104.

Having repeatedly confirmed that they could proceed with the planned demolition and reconstruction, Plaintiffs purchased the property at 27 Crocus Place for \$675,000 and closed on the purchase in November, 2014. Their plan was to have the demolition completed quickly so that the new construction could begin in April, 2015, to allow for completion in 2016. The timeframe was important to them because of their immediate need for accommodation.

Plaintiffs engaged Nitti Rolloff Services to provide demolition services in conjunction with the removal of the structures at 27 Crocus Place. Prior to applying for a demolition permit, Tim Morpew of Nitti Rolloff personally visited with the City's Zoning and Site Planning Review division and was told "there would be no problems with proceeding with the demolition." Exhibit 8. Thereafter, Morpew applied for a Demolition Permit on December 16, 2014. See Exhibit 105A.

On December 17, 2014, Morpew contacted Historic Preservation Officer Spong again to confirm that there were no historic preservation issues prior to preparing the property for demolition. According to Morpew, and un rebutted by the City, Spong told him "that even though she wanted to, she could not stop the demolition from happening." Exhibit 105. He then obtained authority to disconnect utilities, which were disconnected by Xcel Energy. Water was disconnected on December 26, 2014. On December 29, 2014, City Preservation Officer Boulware signed off on the demolition permit application that historic preservation review was "Not Required." Exhibit 105A. After obtaining all required permit signoffs, the City issued Morpew Demolition Permit #20 15 000569 on January 7, 2015. Exhibit 105A. The abatement contractor was scheduled to proceed with abatement the next day.

On January 8, 2015, Renea Fritsker went to 27 Crocus Place to open the door for the abatement contractors. She noticed a red tag on the garage stating "Demo Work Permit Revoked." Exhibit 101E. Later that day the red tag was modified to read "Demo Work Permit Suspended," and the word "revoked" was scribbled out.

Exhibit 101/3. Based on that notice, Plaintiffs cancelled the demolition preparations scheduled to begin that day.

Plaintiffs next received a letter dated January 9, 2015, from Donna Drummond, the City's Director of Planning, stating that "it is mandatory under Minnesota law that an environmental assessment worksheet [EAW] be prepared if your intent is to demolish these structures" and that "it is my understanding that your demolition permit has been temporarily suspended by the City's building official." Thereafter, in connection with Plaintiffs' motion for temporary restraining order, the City submitted an affidavit of Historic Preservation Officer Spong stating that she met with her historic property counterpart in Minneapolis and learned that "there might be a separate state environmental review process for building demolitions proposed in state or federally designated historic districts or sites." Exhibit 1. She states that she contacted the City Attorney's Office regarding whether that applied to 27 Crocus Place. The record establishes, however, that the demolition permit had already issued.

The bulk of the evidence submitted by the City in connection with the temporary restraining motion and at the evidentiary hearing relates to investigation and research performed by the City after the demolition permit was issued regarding federally designated historic districts. This information relates to whether properties in the Historic Hill District are designated as historic properties or are designated contributing structures, etc. This evidence relates to the legal issue of whether an EAW is required under the MERA for 27 Crocus Place, which is

not a designated historic property. The City argues that the property is a contributing structure and therefore subject to the EAW requirement. They rely on a computer-generated "Y" on the website of the Minnesota State Historic Preservation Office and their interpretation of Minnesota Rule 4410.4300, subp. 1 and subp. 31. Subpart 31 requires EAWs for the destruction of a property listed on the National Register of Historic Places. As stated at the outset, the Minnesota Court of Appeals has sole jurisdiction to address the legal issue of whether an EAW is required in this case. Thus this court's analysis is limited to the non-EAW arguments raised by the parties.

Plaintiffs submitted additional evidence regarding the City's treatment of demolition and building permits granted to other residents in the Historic Hill District in the recent past. Through the testimony of William Weber, an urban planning consultant, plaintiffs demonstrate that the City authorized either full or partial demolition at four separate addresses in the Crocus Hill neighborhood without suspending the permits or demanding an EAW. These properties all appear to be within a few blocks of 27 Crocus Place. According to Weber's affidavit, the City authorized demolitions at 785 Linwood Avenue by permit issued on July 31, 2013, 793 Fairmount Avenue on October 10, 2013, 700 Osceola Avenue on September 17, 2014, and 788 Goodrich Avenue on November 20, 2014, approximately six weeks before the City issued the demolition permit in this case.

Counsel for the City represented several times at oral arguments that the City has no intention of preventing plaintiffs from demolishing the home at 27

Crocus Place. The City further concedes that they have no knowledge of the City suspending or denying demolition permits for properties in the Historic Hill District in the past. The City does not challenge or dispute that it authorized the demolitions of the properties identified by William Weber, also located in the Historic Hill District. Finally, it is undisputed that the City failed to afford plaintiffs notice of or an opportunity to challenge its revocation and later suspension of the demolition permit.

In support of their requested injunctive relief, plaintiffs testified that the suspension of their demolition permit has caused and threatens to further cause them substantial irreparable harm. This includes the delay in being able to provide an accessible living environment for their family, exacerbated by the progressive nature of Fred Pritzker's condition, public humiliation, emotional distress and substantial expenditures of money for legal fees, architectural fees and experts.

Legal Analysis for Injunctive Relief

The party seeking relief must establish that "there is no adequate remedy at law and that denial of the injunction will result in irreparable injury. The purpose of a temporary injunction is to preserve the status quo until a trial can be held on the merits." *Sanborn Mfg. Co. v. Carrie*, 500 N.W.2d 161, 164 (Minn. Ct. App. 1993). Because a temporary injunction is granted prior to a complete trial on the merits, it should be granted only "when it is clear that the rights of a party will be irreparably harmed before a trial on the merits is held." *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). The harm "must be of such a nature that money alone could not

suffice." *Morse v. City of Waterville*, 458 N.W.2d 728, 729-30 (Minn. Ct. App. 1990) review denied (Minn. Sept. 28, 1990). "The failure to show irreparable harm is, by itself, a sufficient ground upon which to deny a[n] . . . injunction." *Id.* at 729.

A. Irreparable Harm

To prove irreparable harm, plaintiff must demonstrate (1) that it has no adequate legal remedy, and (2) that an injunction is necessary to prevent irreparable harm. *Cherne Indus., Inc., v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). "More injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of (an injunction) are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Miller*, 317 N.W.2d at 718 (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)). Irreparable harm does not exist where the damage alleged is primarily economic. *Morse*, 458 N.W.2d at 729-30; see also *Exton, Inc. v. State*, 521 N.W.2d 51, 54 (Minn. Ct. App. 1994) (injunction properly denied where plaintiff failed to show that an award of money damages would be inadequate compensation). As a general matter, because monetary injury can be estimated and compensated, the likelihood of such injury does not constitute "irreparable harm" justifying a preliminary injunction.

Plaintiff argues that the unilateral suspension of their demolition permit is causing substantial irreparable harm. The most obvious of this harm is their inability to proceed with the construction required to have a home that is accessible

for their needs. In combination, this delay compounds the harm to the family. Lives are obviously finite; the loss of a year to this family under their circumstances can never be regained. This harm, by definition, is irreparable.

Plaintiffs have also established that they have been the subject of public ridicule and humiliation due to the City's action and the resulting publicity and controversy. The court cannot find that this is due entirely to the City's suspension of the permit. Destruction of old homes is becoming a hot-button issue as noted by the parties, and it is impossible to parse what portion of public dissent is due to that controversy and what is due to the publicity generated by the City's action. Nonetheless, the impact on plaintiffs has no doubt been aggravated by the heightened public interest in the controversy due to the delay and litigation. The monetary cost to the plaintiffs is also compelling. Like their life-long good standing in the neighborhood, it is difficult to envision a scenario where they are fully recompensed.

B. *Dahlberg* Factors

If the threshold showing of irreparable harm is met, the court must consider the five factors that were enumerated in *Dahlberg Bros., Inc. v. Ford Motor Co.*: (1) the nature and background of the relationship between the parties prior to the request; (2) the harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) the administrative burdens involved in judicial supervision and enforcement. *Dahlberg*, 137 N.W.2d at

321-22 (Minn. 1965). Of these factors, the most important is a party's likelihood of prevailing on the merits at trial. *Id.* at 322.

1. The Relationship of the Parties.

The first *Dahlberg* factor requires the court to consider the relationship of the parties prior to the dispute giving rise to the request for relief. In this case the relationship is one of property owner and regulator. Plaintiffs followed every rule and directive required by the City in obtaining their demolition permit. The City was the only entity that could issue the permit and the only entity that can reissue it. There is no doubt that the relationship between the parties supports the issuance of a TRO when appropriate.

This factor weighs in favor of granting the requested injunctive relief.

2. Balancing the Relative Hardship of the Parties.

The second factor requires weighing the relative hardship to the parties if their positions on injunctive relief do not prevail. The court must balance the severity of the impact on plaintiffs should the temporary injunction be denied and the hardship accruing to defendants should the injunction be granted. *Grand v. AFL-CIO*, 126 N.W.2d 252 (Minn. 1964). As stated at the outset, a temporary injunction should be granted only when it is clear that the rights of a party will be irreparably harmed before a trial on the merits is held. *Miller*, 817 N.W.3d at 710.

In this case the court must weigh the relative harms to the parties if an injunction issues. Plaintiffs' harm resulting from the permit suspension is outlined above. The City argues that they would be harmed by not allowing an EAW. This

is the only harm alleged by the City. Yet the record is replete with evidence that the City has never sought to require an EAW under identical circumstances. Four permits in the same neighborhood were issued in less than the two years leading up to this permit. In fact, one was issued just six weeks earlier without requiring an EAW. While it is conceivable that the City could be harmed by the demolition occurring without an EAW, it must be of such little relevance given the City showed no similar concern in those other situations—all within the same historic district.

The City concedes it will ultimately allow the structure to be demolished. When asked in court about what benefit might come from an EAW, the City suggested that the process may require photographing the property or other documentation process. That is easily remedied by the court conditioning the demolition on such actions by plaintiffs, if sought. Under the present circumstances, the court finds the continued harm to plaintiffs by delaying the demolition would far outweigh the potential harm to the City. The court will consider incorporating reasonable conditions the City seeks to minimize the potential harm resulting from immediately proceeding with the inevitable demolition of the structures at 27 Crocus Place. There is no other practicable way to minimize plaintiffs' ongoing harm.

This factor weighs in favor of granting the requested injunctive relief.

3. Likelihood of Success on the Merits.

The party seeking temporary relief must demonstrate a reasonable likelihood of success at a trial on the merits. See *Queen City Construction, Inc. v. City of*

Rochester, 604 N.W.2d 368 (Minn. Ct. App. 1999). A primary factor in determining whether to issue a temporary injunction is the proponent's probability of success in the underlying action. The greater the probability that a party will prevail, the greater the need for a temporary injunction. *Jannetta v. Jannetta*, 285 N.W. 619 (Minn. 1939).

As noted at the outset, this court will not address the legal issue of whether the law requires an EAW in this case. That issue is before the court of appeals. Plaintiffs assert six separate causes of action arising out of the City's suspension of the demolition permit. Plaintiffs filed their complaint seeking injunctive and declaratory relief alleging the City acted arbitrarily, capriciously and illegally in suspending their permit. They further seek damages for the alleged violations of their rights under the Americans with Disabilities Act, Fair Housing Act, Minnesota Human Rights Act and their rights to equal protection and due process under the Minnesota and U.S. Constitutions. Injunctive relief can be appropriate if a party demonstrates the likelihood of success on even one of its claims. *Metro Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 226 (Minn. Ct. App. 2002). Even a doubtful showing as to likelihood of prevailing on the merits is sufficient for a court to issue a temporary injunction. *Dahlberg*, 137 N.W.2d at 321 n. 13 (upholding temporary injunction despite finding plaintiff may have serious obstacles to overcome in prevailing on some claims).

Plaintiffs argue that they fully complied with the City Code and relevant state building code when applying for their demolition permit. The City does not

dispute this fact. The record shows that the plaintiffs acted with an abundance of caution in repeatedly addressing the potential for added regulation for properties in historic districts. They went so far as to specifically bring that fact to the attention of the Historic Preservation Office before purchasing the property and obtaining the demolition permit.

The court has examined the several claims asserted in the complaint and the defenses raised by the City. There are, no doubt, challenges ahead for plaintiffs with respect to some of those claims, including potential immunity issues raised with respect to their claims for damages. Nonetheless, however, with regard to such claims as equitable estoppel and equal protection, plaintiffs have made a showing that they are likely to prevail on some of their claims.

The Minnesota Supreme Court has repeatedly noted that a governing body's decision regarding a permit application may be reversed if the governing body acted unreasonably, arbitrarily, or capriciously. *Schwardt v. City of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003). Moreover, when local actions restrict the use of private property, a landowner denied such may have a lighter burden than one who challenges approval of a permit. *Bd. of Supervisors of Benton Twp. v. Carver Cnty. Bd. of Comm'rs*, 302 Minn. 493, 499, 226 N.W.2d 815, 819 (1975).

The City has pointed to no authority or available process to suspend a demolition permit where a property owner has done nothing to violate the permit conditions. To be sure, no process was provided to plaintiffs whatsoever. Similarly, plaintiffs have demonstrated that they relied entirely on the representations made

by the City when committing over one million dollars toward the purchase and demolition of this property. Further, that the City, on this record, never subjected any similarly situated property owner to an EAW requirement before or after a demolition permit was issued in the exact historic district demonstrates that plaintiffs were treated differently than similarly situated applicants.

This factor weighs in favor of granting the requested injunctive relief.

4. Public Policy Considerations.

Public policy weighs in favor of both parties. A property owner should be able to rely on the regulatory agencies involved to honor the permits they issue. More importantly, residents should be treated the same as their neighbors in regulatory matters involving similar issues. Public policy does not support arbitrary treatment of one resident over another.

Public policy also supports the environmental review process passed by the legislature in the MERA and its related regulations. Environmental review can be critical to the preservation of history and community. Here it is unclear whether an EAW is required. If applicable, it is impossible to find that orderly and predictable regulation is less or more important than proper and thorough environmental review.

This factor is neutral.

5. Administrative Burdens.

This factor involves the administrative burdens on the court in enforcing the temporary injunctive relief involved. The court does not anticipate any significant

burden to the court in enforcing this injunction. In fact, the court is in the unique position of implementing reasonable conditions on the demolition of the property to minimize any potential harm to the City while minimizing the continued harm suffered by plaintiffs resulting from the interminable delay resulting from the suspension of the permit.

This factor weighs in favor of granting the requested injunctive relief.

The *Dahlberg* analysis favors granting the injunctive relief sought by plaintiffs. The status quo was the orderly demolition authorized by the City pursuant to the issuance of a valid demolition permit. It was the same process that allowed many neighboring landowners to demolish structures in the weeks and months before. The City concedes that there is no basis to prevent plaintiffs from demolishing the structures. Any potential harm to the City can be prevented by incorporating reasonable conditions on the demolition to address the concerns identified in court.

Accordingly, IT IS HEREBY ORDERED THAT:

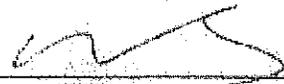
1. Defendant City of Saint Paul is enjoined from suspending Demolition Permit #20 15 000569 issued to plaintiffs for 27 Crocus Place, Saint Paul, Minnesota, on January 7, 2015. As set forth below, plaintiffs shall be entitled to proceed with demolition in accordance with the terms and conditions of the permit.
2. This Injunction shall be stayed until April 21, 2015, to allow for the parties to consider conditions for proceeding with demolition which would minimize any potential harm to the City. Defendant shall notify plaintiffs of any specific

conditions sought on or before April 13, 2015. If the parties are unable to agree on these conditions, they shall each submit brief written arguments regarding their disagreement on April 21, 2015.

3. Plaintiffs are not required to provide any bond or security.

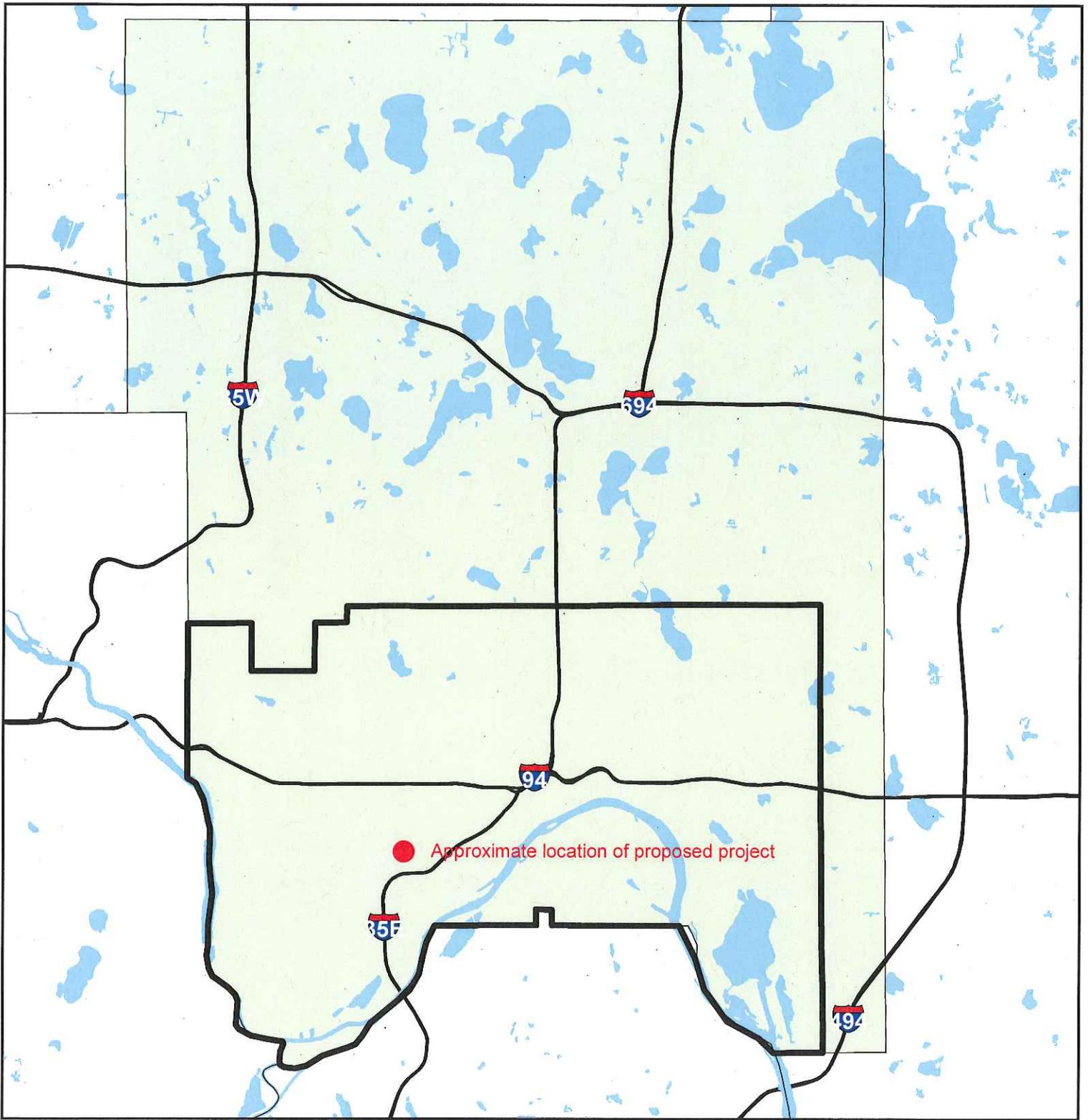
IT IS SO ORDERED.

Dated: April 6, 2015.



Robert A. Awsunb
Judge of District Court

MAPS



Map 1: General Location of Project

-  City of Saint Paul
-  Ramsey County
-  Surface water features
-  Interstate Highways

MAP 2: USGS 1:24k Topo



Minnesota
Department of Natural Resources

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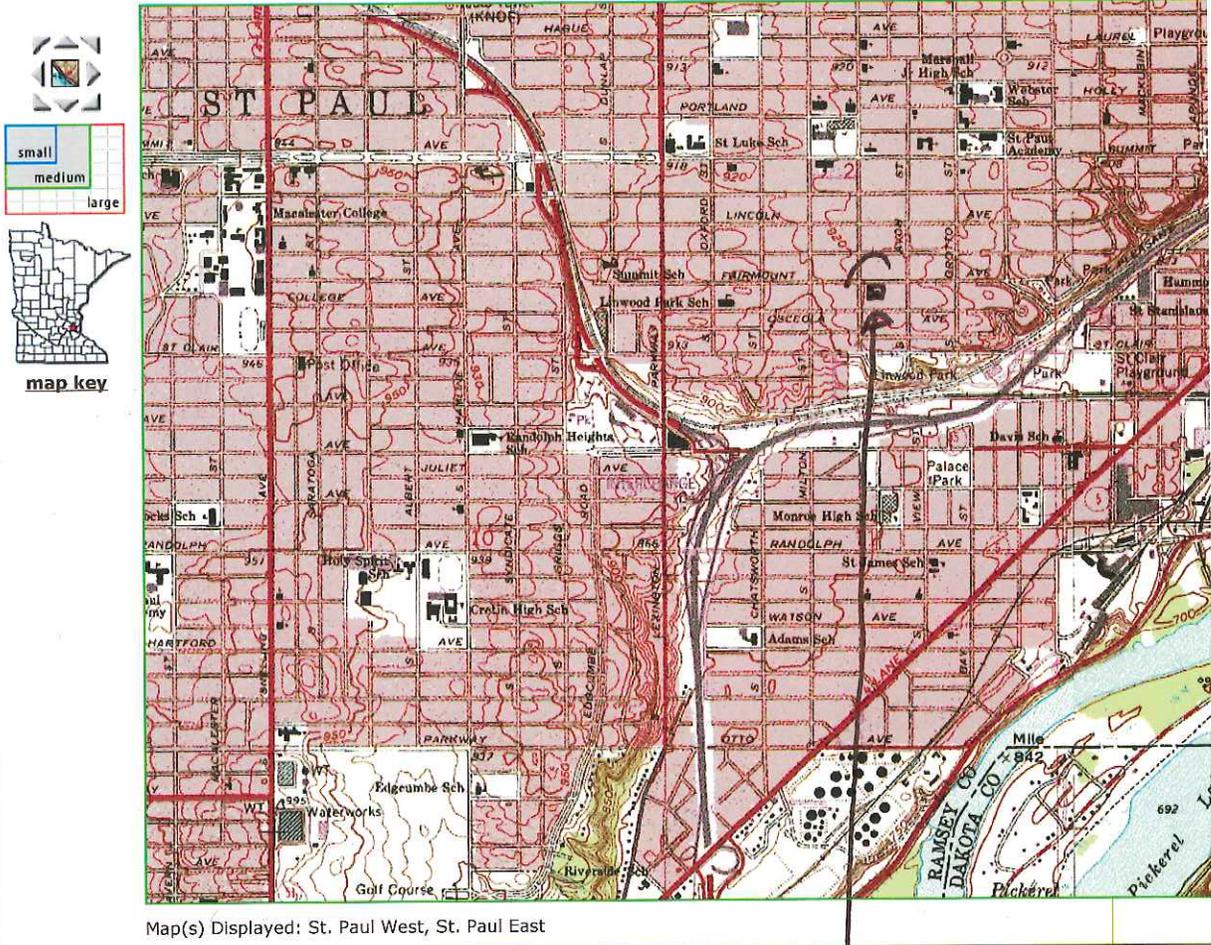
Recreation | Destinations | Nature | Education / safety | Licenses / permits / regs.

Home > Maps >

Topographic Maps

1:24,000 1:100,000 1:250,000

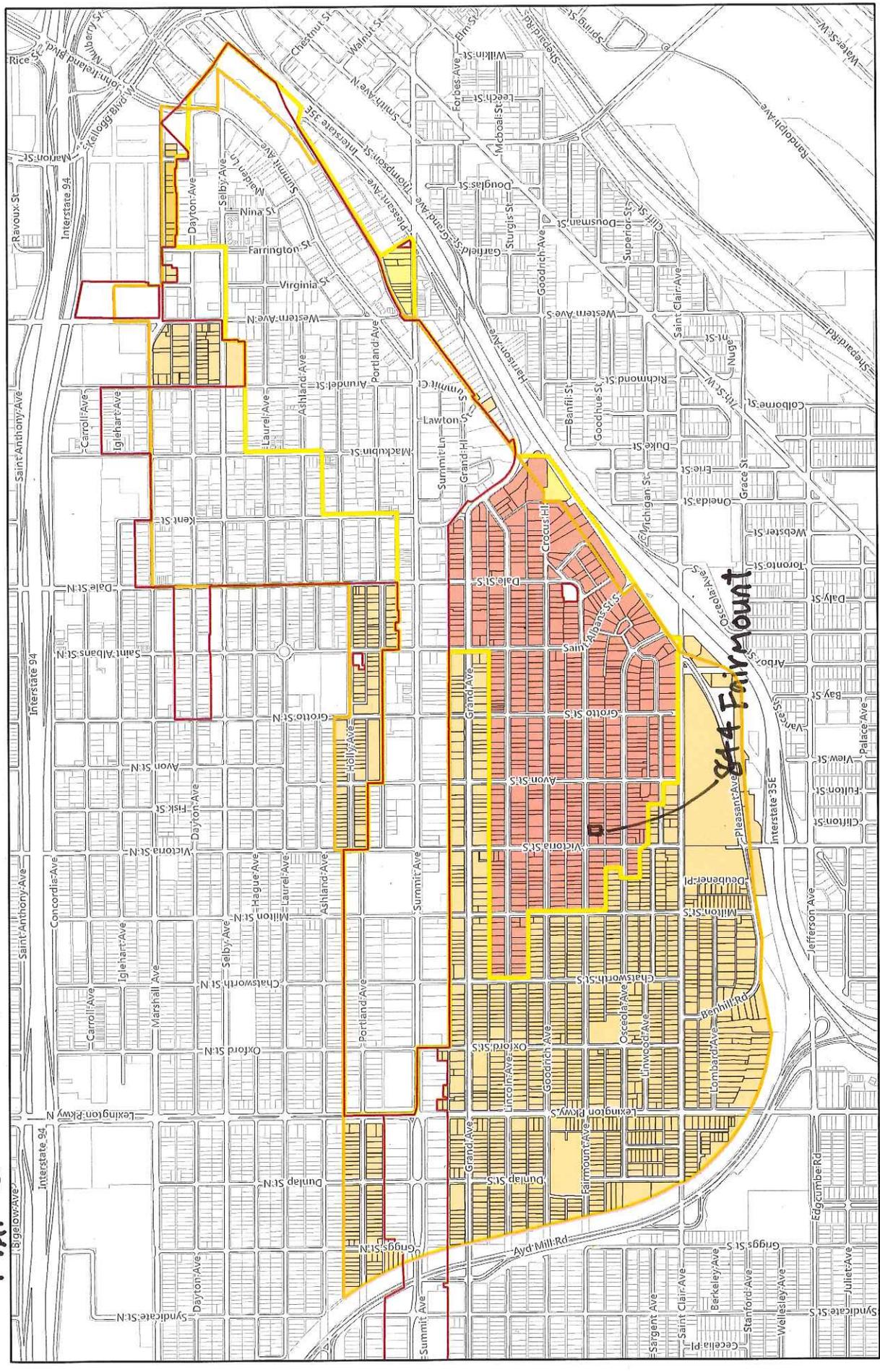
Place: Type: -- any --



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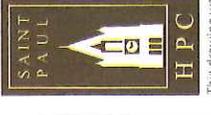
approx. project
site boundaries

MAP 3



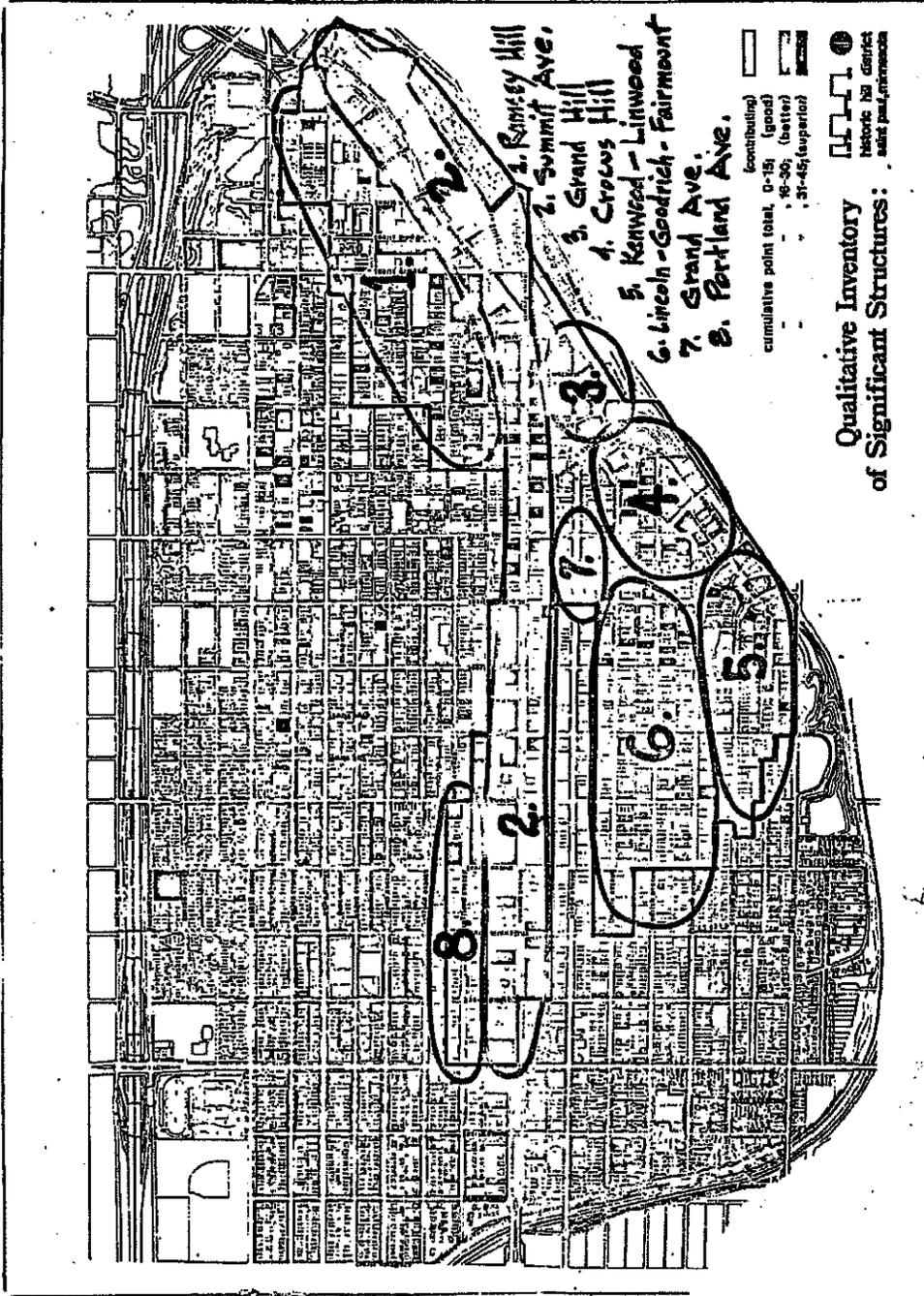
4/23/2015

- Historic Hill District Area**
- National Register - Hill District
 - Parcels, National Register Only (13)
 - State Register Hill District
 - Parcels, State Register Only (1,204)
 - Local Heritage Preservation District/Site
 - Parcels, National and State Register (567)



Document Path: K:\GIS\Projects\HistoricPreservation\WCD\NationalRegister\HistoricHillDistrict.mxd Source: City of Saint Paul Planning and Economic Development - Minnesota Statutes Annotated § 136.73 and Heritage Preservation Commission
 This drawing was prepared for the use of the Saint Paul Planning and Economic Development Department and is intended to be used for reference and illustrative purposes only. This drawing is not a legally recorded plan, survey, official tax map or engineering schematic and it is not intended to be used as such.

Map 4



ATTACHMENTS

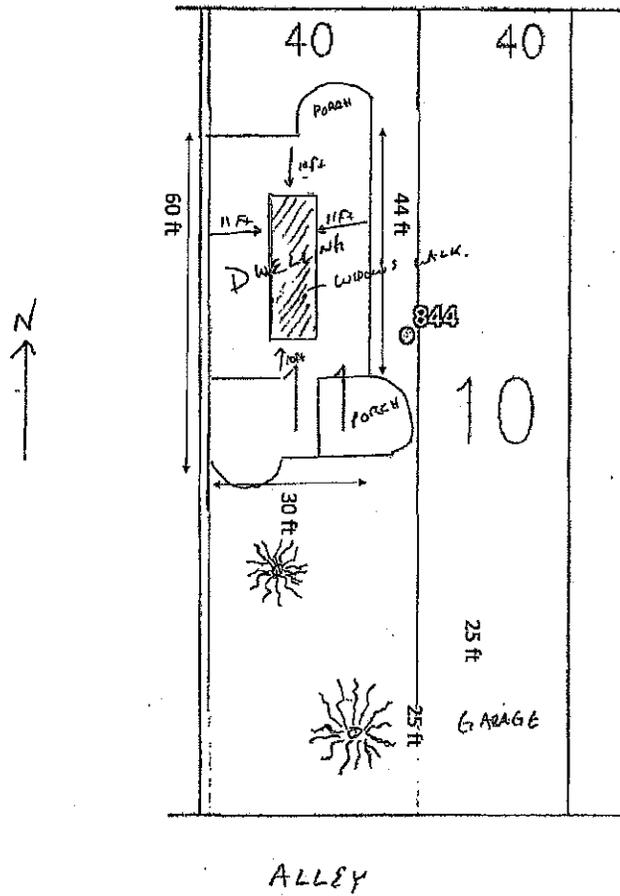
ATTACHMENT 1 - Site Plan

SITE PLAN
844 FAIRMOUNT

FAIRMOUNT AVE

FILE
75-029650

NOTE - WILL REMAIN
UNCHANGED BEFORE/AFTER





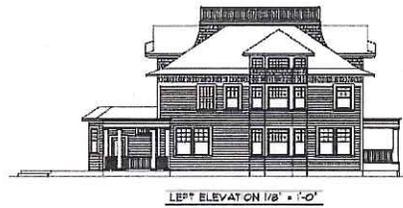
Street View,
North Elevation



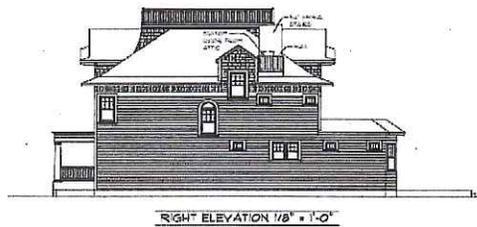
Rear Elevation, (south)



East Elevation



West Elevation



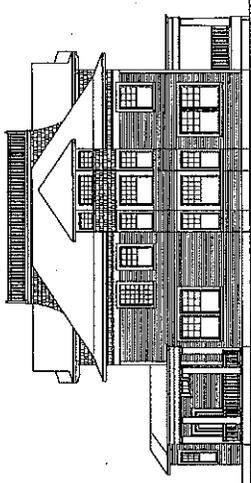
ATTACHMENT 2 - SCHEMATIC PLANS



PLANCO
MINNESOTA, INC.

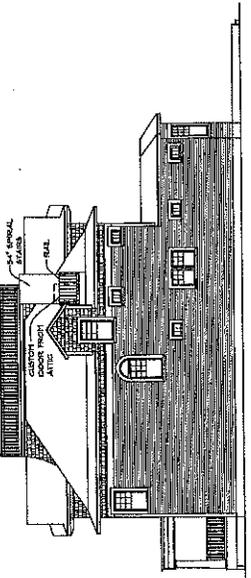
RESIDENCE FOR:
PETER & MARIA STITZEL
ADSON HOMES

1
4

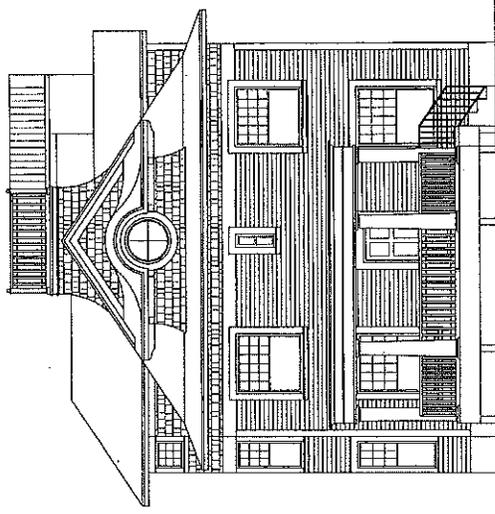


LEFT ELEVATION 1/8" = 1'-0"

VERIFY ALL
GRADE LINES

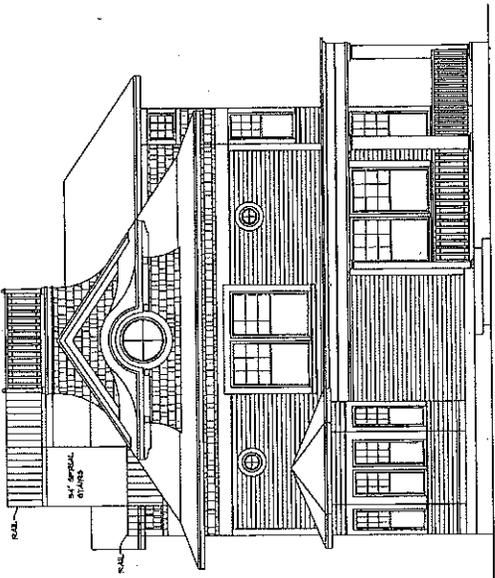


RIGHT ELEVATION 1/8" = 1'-0"



FRONT ELEVATION 1/4" = 1'-0"

ALL STRUCTURAL PROVIDED
BY ENGINEER SEE ATTACHED
DRAWING



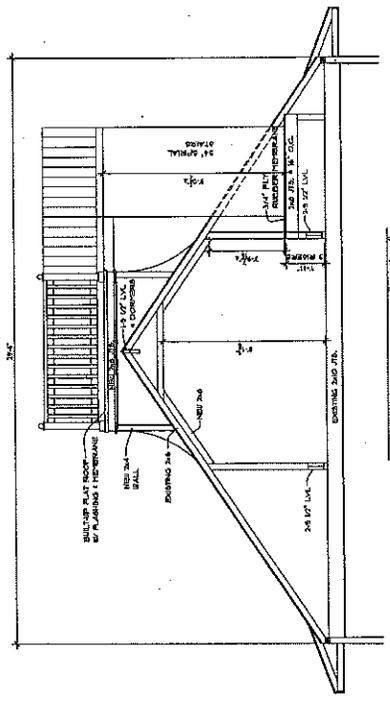
REAR ELEVATION 1/4" = 1'-0"

ALL DOOR & WINDOW HEADERS
TO BE SUP'D BY OR BETTER

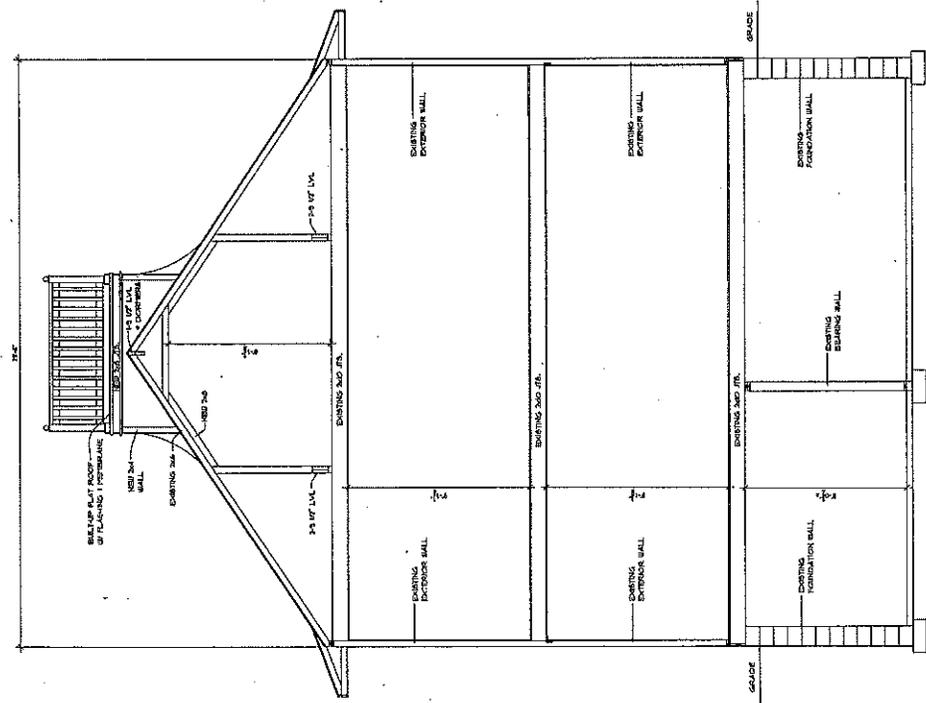
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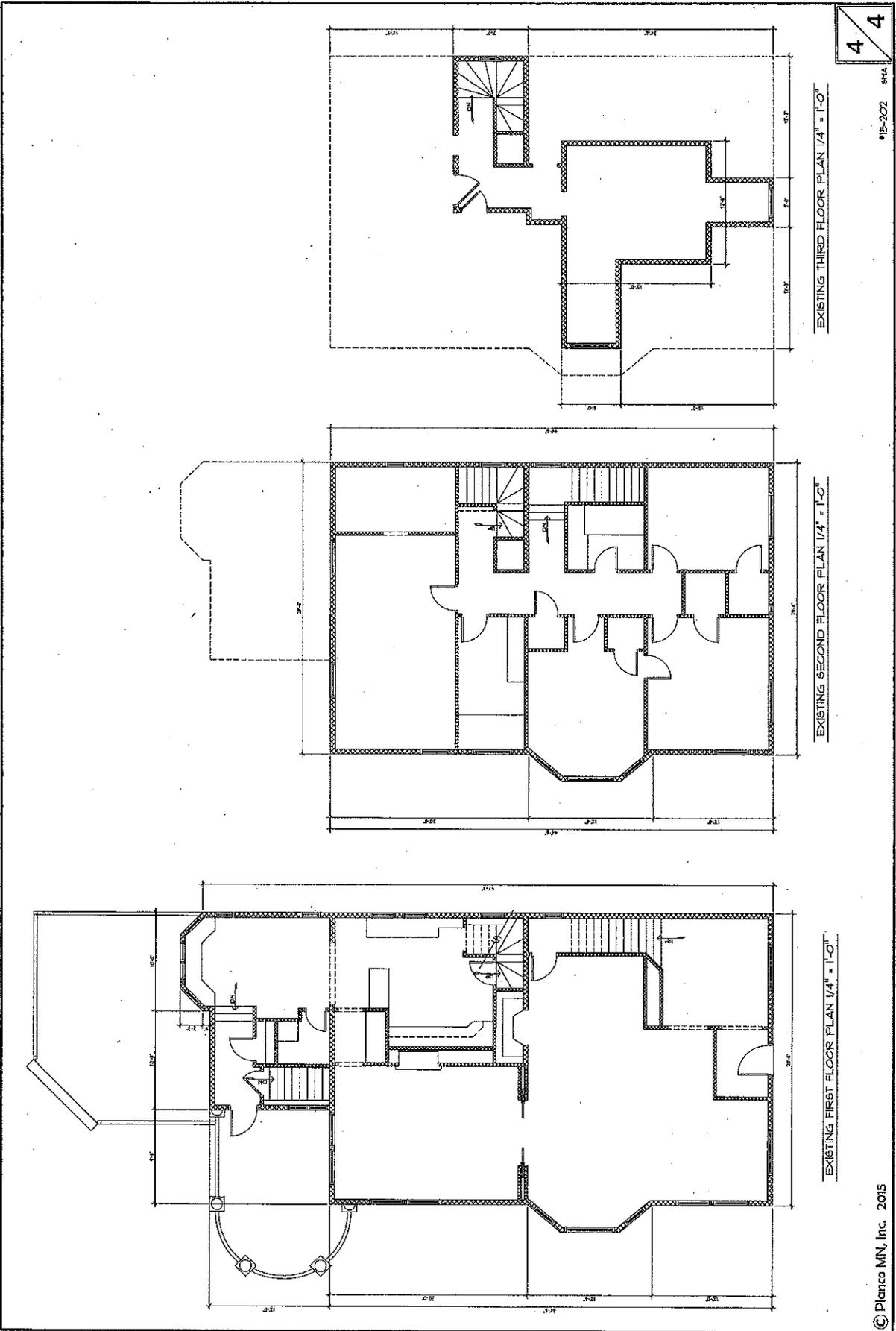
#15-202 8/14



CROSS SECTION 3/8" = 1'-0"



CROSS SECTION 3/8" = 1'-0"



EXISTING THIRD FLOOR PLAN 1/4" = 1'-0"

EXISTING SECOND FLOOR PLAN 1/4" = 1'-0"

EXISTING FIRST FLOOR PLAN 1/4" = 1'-0"

ATTACHMENT 3 – Letter from SHPO

Gmail - 844 Fairmount

<https://mail.google.com/mail/u/0/?ui=2&ik=6414c45c39&view=pt&...>



Peter Stitzel <pjstitzel@gmail.com>

844 Fairmount

Kelly Gragg-Johnson <kelly.graggjohnson@mnhs.org>
To: Peter Stitzel <pjstitzel@gmail.com>
Cc: Sarah Beimers <sarah.beimers@mnhs.org>

Thu, Jul 16, 2015 at 9:20 AM

Hi Peter - You are very welcome. It is confusing, especially when there are National, State and Local districts here, all with different boundaries and different review procedures depending on where your property is located.

In National Register Bulletin 16A, a contributing resource is defined as: a building, site, structure, or object adding to the historic significance of a property (in this case your house is contributing to the historic district). The Historic Hill District was listed in the National Register of Historic Places in 1976, before the National Register required determinations of contributing or non-contributing resources; the nomination form only included a list of properties listed as "intrusions" that we consider non-contributing. Your property is not on this list of intrusions, therefore we must treat your property as contributing.

Best,

Kelly

Kelly Gragg-Johnson, Review & Compliance Specialist
Minnesota Historic Preservation Office | Heritage Preservation Department
Minnesota Historical Society | 345 Kellogg Blvd W | St. Paul, MN 55102
tel: 651.259.3455 | e: kelly.graggjohnson@mnhs.org
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