

MINUTES OF THE ZONING COMMITTEE
Thursday, October 24, 2019 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: Edgerton, Grill, Lindeke, Ochs, Rangel Morales, and Reveal
EXCUSED: Baker and DeJoy
STAFF: Michael Wade, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Edgerton.

160 WABASHA - 19-084-455 - Conditional use permit for a reception hall, 160-162 Wabasha St S, NE corner at Plato Blvd.

Michael Wade presented the staff report with a recommendation of approval with conditions for the conditional use permit. He stated District 3 made no recommendation, and there are no letters in support or opposition.

James Brown, 4110 Blaisdell Avenue S, Minneapolis, MN, stated he is an owner of the building. They purchased the building about two years ago and have been working on plans for the event space. He believes it is a good fit with the current uses around the building. They have studied the plans for West Side Flats and feel that what they are proposing will possibly be a catalyst for some more development in the area. They will meet a need for the community nearby and the greater Metro area. Mr. Brown explained the shared parking agreement they will be entering with surrounding property owners. Shared parking would be in front of Babani's restaurant. They hope to have the shared parking agreement approved within a week or two.

Upon questions from the Commissioner Reveal, Mr. Brown said they are open to making space available for community meetings. Mr. Brown said they will not be sharing parking space with Babani's. They will be using space near the restaurant. Their events will be used on nights and weekends and will not interfere with the restaurant parking.

No one spoke in support or opposition. The public hearing was closed.

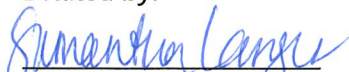
Commissioner Elizabeth Reveal moved approval with conditions of the conditional use permit. Commissioner William Lindeke seconded the motion.

In response to Commissioner Rangel Morales, Mr. Warner said the Department of Safety and Inspection would enforce the shared parking agreement. Mr. Torstenson added that there is a requirement for an annual statement from the property owner to the Zoning Administrator certifying that the agreement is still in operation and the uses haven't changed at the site.

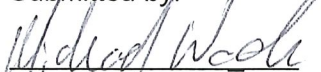
The motion passed by a vote of 6-0-0.

Adopted Yeas - 6 Nays - 0 Abstained - 0


Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Michael Wade
City Planner

Approved by:


Dan Edgerton
Chair

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PRESENT: Edgerton, Grill, Lindeke, Ochs, Rangel Morales, and Reveal
EXCUSED: Baker and DeJoy
STAFF: Amanda Smith, Wes Saunders-Pearce, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Edgerton.

Rohn Industries Trailer Parking - 19-088-143 - Appeal of Zoning Administrator decision on a site plan application for a semi-trailer storage and staging facility at 2495 Kasota Avenue

Amanda Smith presented the staff report with a recommendation for denial of the appeal and upholding the Zoning Administrator's conditional approval of the site plan for a semi-trailer storage and staging facility at 2495 Kasota Avenue. She reported that there were 8 letters in support of the appeal, and 1 letter in opposition. Wes Saunders-Pearce, Water Resource Coordinator for the City of Saint Paul, presented staff report information on environmental considerations and stormwater management.

In response to Commissioner Ochs, Mr. Saunders-Pearce said the Minnesota Pollution Control Agency's (MPCA) responsibility for contaminated sites such as this is to review information provided by the applicant that evaluates the level of contamination on the site and to provide technical assistance and liability assurances based on a proposed Response Action Plan from the developer. The MPCA has provided the developer a "no association letter" as well as approval of the Response Action Plan to prevent release of contaminants during construction. There is also a Minnesota Department of Health letter indicating that they have reviewed the information and believes that, with proper soil management during construction, it does not pose a public health hazard. He doesn't believe any further action is necessary by the MPCA.

In response to Commissioner Rangel Morales, Ms. Smith said historically there was a site plan in the late 1990's that was approved by the Planning Commission and denied by the City Council on appeal. She said there have been no other developer proposals that she is aware of for this property.

Mr. Torstenson said there was site plan approved for semi-trailer storage in the 1980's that was never built. There was an Amoco proposal that was approved in 1998 by the Zoning Administrator and appealed to the Planning Commission, which denied the appeal and unanimously approved the site plan. That approval was appealed to the City Council, which granted the appeal.

In response to Commissioner Lindeke, Mr. Saunders-Pearce said that environmentally sensitive areas, mentioned in Finding 3, is a broad term to reflect any areas that are undeveloped that may harbor wildlife, may hold water resources, or may have unique or rare features.

In response to Commissioner Grill, Mr. Saunders-Pearce said that the applicant voluntarily enrolled in MPCA's Brownfield Program.

Kathryn Murray, Executive Director of Saint Anthony Park Community Council, said that as staff for the District Council it is her job to work toward building a vision for the community as put forth by the representatives. She went over the grounds for the Saint Anthony Park Community Council appeal of the conditional approval of the site plan by the Zoning Administrator and submitted a petition with 548 signatures opposing development on this site.

Karlyn Eckman, 973 Raymond Avenue, Saint Paul, MN, said she is a researcher and University of Minnesota faculty member in Forestry and Water Resources. She is also a former Commissioner of the Mississippi Watershed Management Organization. She has been studying the ponds on Kasota Avenue for three decades and is very familiar with the general area. This site has a long history. A century ago it was part of a wetland system that flowed to the Mississippi River. Over many decades this area was used as a dump filled with partially incinerated ash, hospital waste, debris, and garbage. Over the years the wetland was drained and filled by railroads and developers as Saint Paul and Minneapolis grew. Today only four fragmented ponds remain and the proposed development site is right in the middle of those four ponds. The smallest pond is at the southwest corner of this development. These ponds are gems in an otherwise fully developed urban core and are part of the Mississippi Flyway and used heavily during migration periods. The smallest pond has the highest insect diversity despite working as a stormwater detention pond. These ponds have lost many species in the last 20 years. A Cornell study released this year documents a 30% decline in bird species in the US since 1970 due to development and pesticides, and this has happened at the Kasota Ponds too. For thirty years residents have volunteered to preserve this habitat with annual cleanups, installing nesting boxes, doing turtle counts, removing buckthorn, and other measures. They partner with the Mississippi Watershed Management Organization to monitor water quality with the DNR, Saint Anthony Park Foundation, Tree Trust and many others for habitat inventories and improvements. There has been considerable public investment all around this site and you cannot separate this site from its larger environmental and watershed characteristics. In her professional opinion, the proposed development would harm the remaining pond habitat through noise, nighttime light pollution, runoff, worsening water quality and traffic.

Michael Russelle, 2265 Luther Place, Saint Paul, MN, a Soil Scientist, said that lead is a potent neurotoxin, and at this site there is evidence of very high concentrations of lead. He said too few samples have been collected at this site to characterize where the lead is located, and this applies to several other toxic metals and other compounds. Sample analysis has been inadequate to understand the risks that the lead could have for humans and the ecosystem. Mr. Russelle explained that dumps are random and there are no patterns, so a lot of sampling is required, especially with a variation of contaminant levels. The distance between safe and hazardous lead concentrations is eight feet. The sampling was done at 50 feet or larger intervals across the site. There could be many potential high concentrations that were missed. He said the MPCA requires that the contractors excavating the site stop their work if they see any evidence of contamination. You can't see or smell lead so it is impossible for them to see it. There is a real risk and he doesn't feel that the Committee or MPCA has the information to call

this site safe to be disrupted. It is a safety issue to workers at the site, to residents, and the ecosystem.

Stephen Mastey, a landscape architect, 2350 Bayless Place, Saint Paul, MN, said he is co-chair of the St. Anthony Community Council Environment Committee. Mr. Mastey said the issues involved with their appeal that he is going to address are traffic and design. He has 20 years of wide ranging public and private sector experience as a landscape architect. He said as the site is currently designed the semi-trucks leaving the site wouldn't be able to see oncoming traffic from the west and would be a public safety risk. He is glad to hear that is being redesigned. Mr. Mastey said that smaller sites that have less traffic have been required by the Department of Safety and Inspection to do traffic studies. He was surprised to see this application only required a traffic memo. A traffic study would have shown where trucks go to and from. He also finds it shortsighted to look at only this current owner and what they are proposing at the site. Mr. Mastey said that he doesn't believe the site is meeting the minimum landscape setback. There are safety issues with adequate circulation within the site and externally to and from the site.

Pat Thompson, 1496 Raymond Avenue, Saint Paul, MN, said she is the co-chair of the District 12 Transportation Committee. She said inadequate is how she would describe many aspects of the 2495 Kasota project process. She said there is inadequate sampling and no one really has any idea of what is in there and the workers will not be able to tell if something is toxic when they dig it up. There are other types of inadequacy, primarily communication. The Council's objections were omitted from the conditional approval. Rohn Industries, has provided a traffic narrative about planned vehicle movements and they haven't seen it yet. They only recently learned through written testimony that Rohn plans to move 20 semi-trailers per day to and from the proposed parking lot with its 25 spots. If they are moving that many trailers per day do they still intend to store the trailers for the 5-day minimum, which is the requirement for it to be considered storage. She said two other documents were placed on the public document archive without them receiving notice that they were posted. One was 52 pages on construction contingency planning and one was 274 pages on storm water management. They happened to see them while finalizing their written comments and did not have time to fully explore the documents for a response. 2495 Kasota Avenue is a site with a lot of complex issues and while they support Rohn Industries, they believe there are still too many variables that are unknown on this site for there to be conditional approval.

In response to Commissioner Ochs, Ms. Thompson said they have not received a copy of the traffic narrative. She said they saw a summary of the traffic narrative that was included in an email.

Ms. Smith said the formal Rohn Traffic Narrative is part of the official packet that has been posted online. The reference that she memorialized in a status memo update was not a formal narrative statement. That was email communications going back and forth between Public Works Transportation and Safety Engineers and MnDOT Engineers. To be transparent she took some of that information and memorialized it into a site plan review status memo update to inform people of the last-minute changes. The traffic narrative was posted online Friday, October 18.

In response to Commissioner Rangel Morales, Ms. Murray said Change.org was used as a facilitation tool for the petition and they didn't promote it outside of Saint Anthony Park and nearby neighborhoods. She said that nearby neighborhoods could also be affected by groundwater contamination.

In response to Commissioner Grill, Mr. Mastey said as they understand it there is 6 to 12 inches of overburden over the ash dump. As per construction practices, they may be excavating 3 or 4 feet where the primary pavement sections will be located to build adequate subsurface. The ash there is not very stable and they may have to go deeper. They will be working in very light material that is easily mobilized through the air, wind, and rainstorms. If there is a 2-inch rainfall and there is a very fine material that has chemicals attached to it, it can very quickly make its way into the other Kasota ponds and the Mississippi River. He said if they cap part of it and then use the rest of the site as an infiltration system it'll push water back into the dump area and there are already sediment plumes leaving the site that have unsafe materials moving with them. Mr. Mastey said there are airborne, surface flow, and subsurface flow issues. They believe you either need to be committed to fully remediate the site correctly or leave it alone.

In response to Commissioner Rangel Morales, Mr. Mastey said that there hasn't been any remediation. The only remediation that is being proposed is if it is required. They haven't done adequate sampling to identify where hotspots might be located.

In response to Commissioner Rangel Morales, Mr. Russelle said there isn't a standard that he is aware of for the distance between sampling points. MPCA does have recommended minimum numbers of samples depending on the size of the area. He doesn't believe that really applies on a situation where you know that it is highly variable at relatively small distances. To characterize a site, you are missing out on a lot of information if you only use 8 samples. Mr. Russelle said the District Council hasn't discussed a possible remediation proposal that they would agree upon. He said typically a site like this would be remediated by removing everything or leave it in place. There might be some way in between, but he would want to see an intense approach to sampling before anything was discussed.

Rachel Fang, 2348 Hillside Avenue, Saint Paul, MN in support of the appeal. She has lived there for 10 years and she has seen a lot of changes. Traffic and industrial activity has increased substantially in the area. She has concerns with pollution, traffic, and quality of life issues with this development. The wetlands are beautiful and they benefit a lot from them and they are disappearing.

Maria Karpinski, 8 Ludlow Avenue, Saint Paul, in support of the appeal. She said there is a bicycle path that connects their neighborhood that runs past this pond area. Her main concern is with environmental pollution that's been documented by a doctor and established in an autopsy that was performed by the Mayo Hospital. Her wife who was 67 years old and healthy died from environmental pollution from the fracking trains that run by their house. OSHA has this sited on their website. Congress has deregulated the State's ability to take this into their own hands. Her wife died within five months of having chest pains and she was in perfect health and all tests for genetics were ruled out. She does not want more toxins to be in the area.

Stephen Sage, 2367 Commonwealth Avenue, Saint Paul, in support of the appeal. Mr. Sage said he is very concerned with additional traffic in the area. Since 2009, there was the shale boom that brought all the trains in, and the collapse of Highway 35W bridge which necessitated a lot more traffic on Highway 280. With the increase of traffic and the addition of this truck hub it will magnify their problems and a traffic study would be in order.

Craig Mandery, Rohn Industries, 24741 Southern Oaks Circle, Lakeville, MN provided background on Rohn Industries and long-term business operations in Saint Paul. They have been in business for 36 years at the same site on Hersey Street for 31 years. They have grown from one pickup truck to 85 employees today. They have their own transportation department with five truck drivers and five trucks that will be accessing the site. They are familiar with the area. They travel on that street on a regular basis so he doesn't believe they'll be adding any significant traffic to the area. They are primarily a recycling processing company and trailers will have paper to be recycled and empty trailers on the site. They collect paper from the printing and graphic arts community and sort it and resell to paper to papermills which re-pulp it into other paper materials.

In response to Commissioner Reveal, Mr. Mandery said they expect many of the trailers will be onsite for more than five days. They currently have 3 or 4 parking spots that they lease from the Urban Growler restaurant and they don't disturb their business because the trailers aren't moved that often. They need the ability to store the paper until the paper mills are ready for delivery. That is their limiting factor to growth in the area because they are running out of space to store the material.

Randy Rauwerdink, Venture Pass Partners, 14955 Jeffers Pass NW, Prior Lake, MN said that while investigating uses for this site they came across Rohn Industries. Venture Pass Partners has a long history with a large local developer, CSM Corporation. They did extensive development in the Midway. They did about 1,750,000 square feet of industrial developments that spans from Westgate at 280 and University Avenue, University Avenue Industrial Park and Kastota Business Center. This is a process and neighborhood that is familiar to them. They have a long history in brownfield development. They have seen this site vacant for 35 years. They are aware of the contamination at the site, which makes development difficult. The prospect of developing structures or occupied buildings that would involve deep excavations for foundations would be very difficult. The Rohn Industries development would have very minimal disturbance to the site. They have worked with their engineers along with Landmark Environmental, Braun Intertec, and Sambatek to analyze how to use this site for Rohn Industries and create minimal disturbance. The grading plans show that 90% of the parking lot falls within a foot of the existing grades. They are not doing overcorrections under the pavement areas, but instead they have worked out pavement details with their geotech that are significantly heavier, but allow them to work over existing soils. They have engaged staff very carefully, complied with watershed standards, and submitted their Voluntary Investigation Cleanup (VIC) enrollment with MPCA on July 2, and have received approval. They have created a project provides the least disturbance, caps the site, and at the same time it is very low intensity. He feels this has been vetted by respected professionals in the industry and should be approved.

In response to Commissioner Rangel Morales, Mr. Rauerdink said that when the MPCA grants them an approved Response Action Plan, that doesn't mean they just begin excavating. They have an implementation proposal in place with Landmark Environmental that requires the engineers to be on site during grading activities. They log export off the site and do visual operations and testing as needed. They direct if material needs to be stockpiled or placed on plastic or sealed. It is not left to the contractor's discretion. It is a significant and costly process. It is an implementation plan that is required as part of their application approval.

In response to Commissioner Edgerton, Mr. Rauerdink said there will be very minimal excavation, which, should take 2 to 4 weeks. The site will be capped with a heavy pavement structure. It is a biograde fabric underneath 8 inches of aggregate and 6 inches of asphalt or 8 inches of aggregate and six inches of concrete. They are proposing to go forward with a full concrete parking surface that will cap more than an acre of the site. The total duration of construction should be about 8 or 9 weeks. Dust control is addressed in the Response Action Plan and Construction Contingency Plan. There is a very clear erosion control plan on this project, and erosion control measure must be inspected prior to the commencement of any activity.

David Carland, President of Venture Pass Partners, 19620 Waterford Ct., Shorewood, MN explained how Rohn Industries decided on this site. They hired an industrial broker because they had a need for trailer storage and this site was ideal for them. It is zoned for the use and they could deliver a product that complies with all the City standards. The site is owned by Koch Industries, and they have a purchase agreement. In the early 1980's he did a lot of development along Kasota and University Avenue and Westgate. These sites all had soil contamination issues and none of the projects had any controversy. Most of the projects were done through VIC, and MPCA is one of the most respected agencies in the country. There is a very vigorous Response Action Plan from MPCA for this project. They will do their best to ensure the safety, health, and welfare of residents. The objective is to disturb as little as possible. Once this site is encapsulated and they have proper stormwater management, the ability for stuff to leech off the site is going to be improved over the current status of the property.

The public hearing was closed.

In response to Commissioner Rangel Morales, Mr. Saunders-Pearce said he believes the environmentally sensitive area context in Finding 3 refers to naturally occurring features including wetlands or steep slopes. He doesn't believe areas impacted by human influence factors meet the intent of the definition of environmentally sensitive areas. Mr. Saunders-Pearce said that questions about sampling standards are difficult for him to respond to because as he is not an expert in administering the Brownfield Program. He can say there are numerous sites in the City that have undergone redevelopment in the VIC Brownfield Program, and they have successfully been able to transform sites into redevelopment areas without negative environmental impacts.

Commissioner Lindeke said that at first glance this land seems like a marginal piece of property, but if you peel back the surface there is a lot underneath. The item he takes issue with pertaining to Finding 3 is the idea that there is a naturally occurring wetland or environmental area versus something that is manmade. Being a historian, he thinks about the long-term way

that this part of the city has developed. He noted a map from 1895, an Army Corps of Engineers survey that depicts this area as being a wetland. That is also supported by the testimony from the St. Anthony Park group, and they have demonstrated they are very knowledgeable about the land and history. He doesn't agree with the judgement that this is an incidental wetland. This is part of a larger wetland that has unique historically significant characteristics and is environmentally sensitive.

Commissioner Edgerton asked Mr. Saunders-Pearce to explain the basis and process for that determination that the wetland on the site is an incidental wetland.

Mr. Saunders-Pearce said that the official process to appeal a staff decision on the Wetland Conservation Act is a separate process from the site plan review that is being considered today. He said there was not a Wetland Conservation Act appeal according to the state statute process. Mr. Saunders-Pearce explained that the area broadly, not specific to this parcel, and not specific to the graded pond in the southwest corner of the site, certainly has wetland characteristics. When we make decisions whether an area that shows wetland characteristics is within the scope of the Wetland Conservation Act or not, they are limited to a specific area that is being defined in the field. That is the area of investigation. The series of aerial photos submitted by Sambetek clearly show a point in time, between 1976-1980, where the whole site was mass graded. The whole site had been transformed and that predates the Wetland Conservation Act. The grading plan that came forward after that, which was part of a site plan review in 1986, clearly demonstrates new contours that were to be excavated for the purposes of controlling storm water from the site. There was a pond that was engineered and graded, and the pond itself has taken on wetland characteristics, but it is not reflective of the historic wetland in the area in general. He wants to be clear about the area in general because in looking at the aerial photos, for the area in question, it is clear there could have been some wetland features within the parcel, but within the site where the storm water pond is, it is not conclusive based on an examination of aeriels even prior to the mass grading that there was a wetland signature in that corner. Mr. Saunders-Pearce noted that the Board of Water and Soil Resources concurred with the decision that was made by the City based on the evidence that was provided.

Commissioner Grill asked if the Minnesota Department of Health, The Mississippi Watershed Management Organization, and the Board of Water and Soil Resources have all signed off on the plan.

Mr. Saunders Pearce said that the Mississippi Watershed Management Organization (MWMO) has standards to which the development must comply, but the City is the responsible government unit to approve those plans. The MWMO doesn't specifically have a sign off procedure. The project has satisfied the City's requirements for storm water rate control and with MWMO standards for water quality control.

In response to Commissioner Edgerton, Mr. Saunders-Pearce explained what is being done to address dust and sediment during construction. He said the applicant has provided engineering plans that are in conformance with the requirements for erosion and sediment control. These requirements are both through the MCPA construction program as well as the City's program, which is our local ordinance Chapter 52. They have engineering plans and narrative that demonstrate how they intend to control erosion and sediment on the site. Water erosion

protections are shown on the plan and wind erosion is addressed by narrative that expresses timeframes for stabilization of exposed soil, as well as other narrative provisions that direct the contractor for controlling dust and wind erosion. The elements within their engineering document for the site plan are in conformance with State and Local standards for erosion control, both water and wind.

Commissioner Rangel Morales said he understands it meets the standards, but his concern is whether those standards are in consideration that this is a polluted site.

Mr. Saunders-Pearce responded by saying that yes, they are. The standards for erosion control are performance based standards, and the engineer of record is responsible to put forth a plan of best management practices based on all the conditions of the site. That would include slopes, erodible soils, and any other pollution related considerations. Mr. Saunders-Pearce explained the VIC Brownfield Program. He said the responsible party provides information to MPCA documenting the level of environmental risk and the steps that they intend to take in addressing and mitigating those risks and making sure there is no further environmental harm because of their activity. It is specific to the construction activity for managing soil.

In response to Commissioner Edgerton, Mr. Torstenson said that cars, trucks, trailers and other vehicles not used for more than 5 days were added to the general definition of storage to tighten restrictions on vehicles parked/left for long periods of time. There are more standards and restrictions that apply to storage than to parking. The purpose was not to require that once parked a truck or trailer can't be moved for 5 days which wouldn't make sense.

In response to Commissioner Ochs, Mr. Warner said he is not aware of any process violations. Mr. Torstenson noted that the deadline for action is December 7.

Commissioner Reveal stated that this is a difficult case. This was once an environment that should have been preserved, but it wasn't. All the technical requirements and standards for the site plan appear to have been met, there are controls going forward with the MPCA overseeing the process. We are seeing more and more every day that what we haven't done to protect the environment is having consequences that were unimaginable within our own recent lifetime. She doesn't know how to solve that in this case except to be vigilant.

Commissioner Edgerton said he finds this less difficult, maybe because he works on these kinds of projects. This project has gone through the proper process. This has been reviewed at State level as well as the Local level. MPCA has reviewed this and signed off, and they have standards that are not easy standards. The Department of Health has made the determination that it doesn't pose a health risk. The City made the determination on the wetland following standard procedures that are laid out. The Wetland Conservation Act is meant to protect wetlands and their needs to be a technical basis for determining if an area is a wetland. The Board of Water and Soil Resources also weighed in and said the proper process was followed. These agencies do not have an interest in if this site is developed. Their job is to make sure the plan is done properly according to their requirements and standards. This site plan has gone through all the proper reviews and procedures and met the requirements. He has not seen any factual evidence presented that would show otherwise, so he would not feel confident in voting to grant the appeal.

Commissioner Ochs said he is impressed with both parties and the information provided. He agreed that this project follows the rules well. He wished there was a mechanism for wetland creation and that we had the tools in place to say that this has a high potential of being a wetland area and needs a cleanup, but those aren't there yet. He said that this developer is clearly knowledgeable in handling contaminated sites like this.

Commissioner Rangel Morales said the only question lingering for him is whether the State has a standard for a contaminated site that is different than for a noncontaminated site. For instance, are they drilling and checking at a greater frequency for an area that is polluted versus an area that is not polluted? What are the differences between a polluted site and a non-polluted site in terms of the levels of control?

Commissioner Edgerton said the review by the State was done with the knowledge that this is a contaminated site. It is in the MPCA's Brownfield Program because it is a contaminated site, and the Brownfield Program has special requirements for dust control, erosion control, etc. that overlay standard requirements. He asked Mr. Saunders Pearce to discuss that again.

Mr. Saunders-Pearce said he has reviewed several site plans for brownfields, including the Ford site. He referenced a phrase from the guidance document on the MPCA website for the VIC program that in order to receive a no association letter, which the applicant has received, it says, "the environmental conditions at the property will need to be characterized comprehensively enough to identify any conditions to be included in the determination to assure cooperation with future response actions and avoidance of actions contributing to the release." There are several sets of documents that have been prepared and submitted by the applicant that show levels of metals and organic compounds. There is no metric that shows how many samples are needed.

In response to Commissioner Rangel Morales, Mr. Saunders-Pearce said that at the Site Plan Committee they verify that due diligence is done and confirm that documents have been received. The no association letter requires that the property will have an environmental covenant put on it prohibiting any activities that would expose or disturb the contaminated subsurface after development. The Response Action Plan, and Construction Contingency Plan that are approved provide for an appropriate process an response actions if there are unforeseen circumstances or new information that comes forward during the course of the shallow grading.

Commissioner Edgerton read from the MPCA's determination letter that "the parties shall cooperate with the MPCA, its employees, contractors, and others acting at the MPCA's direction, in the event that the MPCA takes, or directs others to take, response actions at the Site to address the Identified Release or any other as yet unidentified release or threatened release of a hazardous substance, pollutant, or contaminant, including, but not limited to, granting access to the Site so that response actions can be taken."

Commissioner Lindeke moved approval of the appeal. He said he disagrees that Finding 3 is met. He believes that this parcel fits the definition of an environmentally sensitive area and it should be preserved. He also does not agree that Finding 4 is met. He has doubts about the

plan not having substantial effects on neighboring land, water and air. Commissioner Rangel Morales seconded the motion.

A roll call vote was taken.

Commissioner Rangel Morales said he is voting in favor of the appeal based on Finding 4 not being met. He doesn't believe the site plan has provided enough information to address the concerns of whether there is adequate protection of neighbors and their property, specifically to their air and possible contaminants that could come from excavating the site.

Commissioner Ochs said he is voting in favor of the appeal for the same reasons as Commissioner Rangel Morales. He doesn't believe enough information has been provided.

Motion failed. Yeas - 3 Nays - 3 (Reveal, Grill, Edgerton) Abstained - 0

Commissioner Ochs said he would like to require further analysis by the Minnesota Pollution Control Agency.

Commissioner Reveal moved to send the matter to the Planning Commission with no committee recommendation, and a request to try to get more clarity from the Minnesota Pollution Control Agency. Commissioner Rangel Morales seconded the motion, and it passed unanimously.

Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Amanda Smith

Approved by:


Dan Edgerton
Chair