



Location
214 South Marquette Street

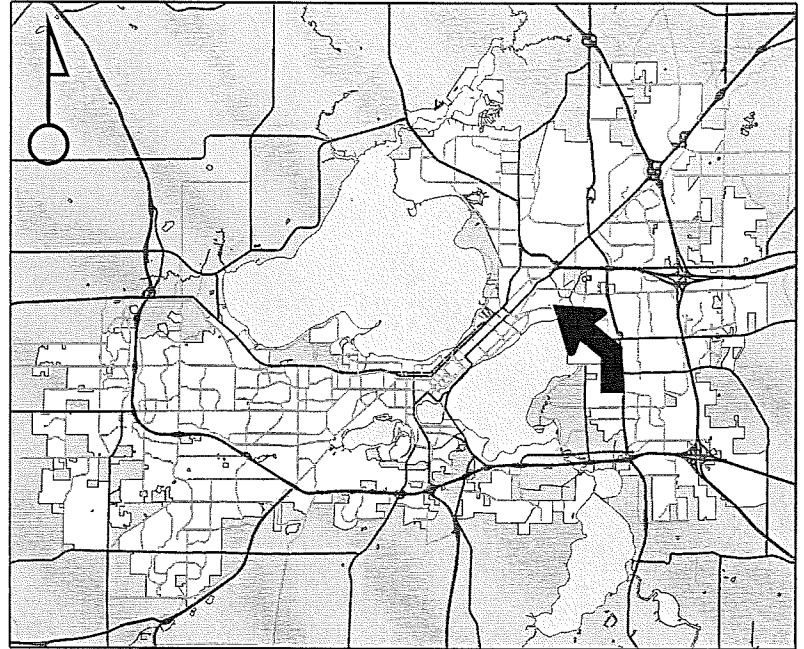
Project Name
Amdahl Demolition

Applicant
Richard Amdahl/Lee Madden

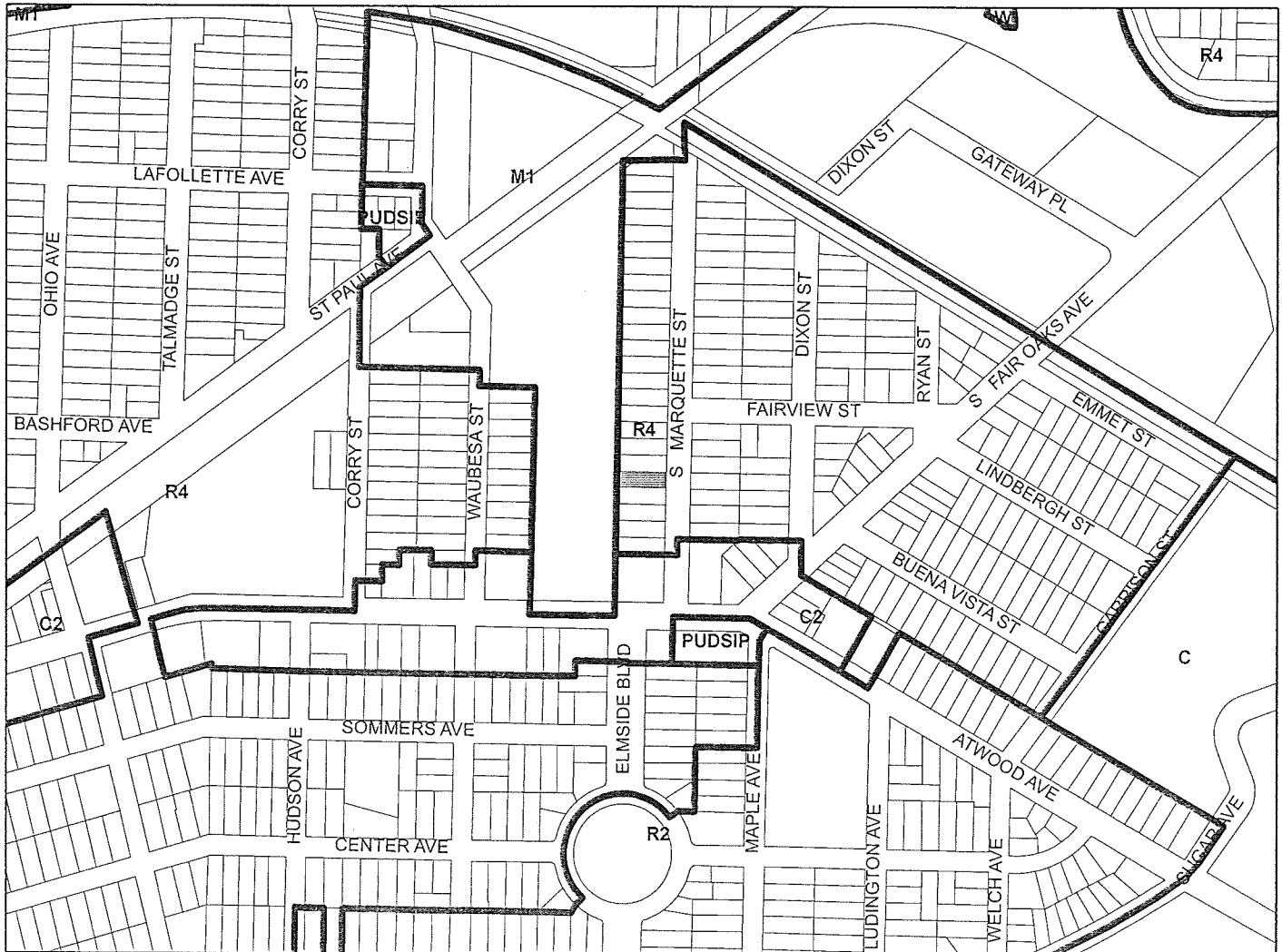
Existing Use
Two-family residence

Proposed Use
Demolish fire-damaged two-family residence with no proposed alternative use

Public Hearing Date
Plan Commission
09 April 2012



For Questions Contact: Kevin Firchow at: 267-1150 or kfirchow@cityofmadison.com or City Planning at 266-4635



Scale : 1" = 400'

City of Madison, Planning Division : RPJ : Date : 27 March 2012





LAND USE APPLICATION Madison Plan Commission

215 Martin Luther King Jr. Blvd; Room LL-100
PO Box 2985; Madison, Wisconsin 53701-2985
Phone: 608.266.4635 | Facsimile: 608.267.8739

- The following information is required for all applications for Plan Commission review except subdivisions or land divisions, which should be filed with the Subdivision Application.
- Before filing your application, please review the information regarding the **LOBBYING ORDINANCE** on the first page.
- Please read all pages of the application completely and fill in all required fields.
- This application form may also be completed online at www.cityofmadison.com/planning/plan.html
- All Land Use Applications should be filed directly with the Zoning Administrator.

FOR OFFICE USE ONLY:	
Amt. Paid _____	Receipt No. _____
Date Received <u>2/21/12</u>	
Received By <u>JLK</u>	
Parcel No. <u>0710-053-0819-5</u>	
Aldermanic District <u>6 - Marsha Runnel</u>	
GQ <u>OK</u>	
Zoning District <u>R4</u>	
For Complete Submittal	
Application _____	Letter of Intent <input checked="" type="checkbox"/>
IDUP <u>NA</u>	Legal Descript. <input checked="" type="checkbox"/>
Plan Sets <input checked="" type="checkbox"/>	Zoning Text <u>NA</u>
Alder Notification <input checked="" type="checkbox"/>	Waiver _____
Ngrbrhd. Assn Not. <input checked="" type="checkbox"/>	Waiver _____
Date Sign Issued _____	

1. **Project Address:** 214 S. Marquette Street **Project Area in Acres:** .11

Project Title (if any): Demolition of Damaged Structure

2. **This is an application for:**

Zoning Map Amendment (check the appropriate box(es) in only one of the columns below)

<input type="checkbox"/> Rezoning to a Non-PUD or PCD Zoning Dist.: Existing Zoning: _____ to _____ Proposed Zoning (ex: R1, R2T, C3): _____	<input type="checkbox"/> Rezoning to or Amendment of a PUD or PCD District: <input type="checkbox"/> Ex. Zoning: _____ to PUD/PCD-GDP <input type="checkbox"/> Ex. Zoning: _____ to PUD/PCD-SIP <input type="checkbox"/> Amended Gen. Dev. <input type="checkbox"/> Amended Spec. Imp. Plan
<input type="checkbox"/> Conditional Use	<input checked="" type="checkbox"/> Demolition Permit
<input type="checkbox"/> Other Requests (Specify): _____	

3. **Applicant, Agent & Property Owner Information:**

Applicant's Name: Lee Madden Company: _____
 Street Address: PO Box 620434 City/State: Middleton, WI Zip: 53562
 Telephone: (608) 345-3998 Fax: () Email: leehmadden@yahoo.com

Project Contact Person: Lee Madden Company: _____
 Street Address: PO Box 620434 City/State: Middleton, WI Zip: 53562
 Telephone: (608) 345-3998 Fax: () Email: leehmadden@yahoo.com

Property Owner (if not applicant): Richard Amdahl
 Street Address: 1 Cherokee Circle #103 City/State: Madison, WI Zip: 53704

4. **Project Information:**

Provide a brief description of the project and all proposed uses of the site: _____
Remove 2 story wood frame 2 unit building damaged by explosion on September 21, 2010

Development Schedule: Commencement May 1, 2012 Completion June 1, 2012

5. Required Submittals:

- Plans** submitted as follows below and depicts all lot lines; existing, altered, demolished or proposed buildings; parking areas and driveways; sidewalks; location of any new signs; existing and proposed utility locations; building elevations and floor plans; landscaping, and a development schedule describing pertinent project details:
 - **7 copies** of a full-sized plan set drawn to a scale of one inch equals 20 feet (collated and folded)
 - **7 copies** of the plan set reduced to fit onto 11 inch by 17 inch paper (collated, stapled and folded)
 - **1 copy** of the plan set reduced to fit onto 8 1/2 inch by 11 inch paper
- Letter of Intent (12 copies):** describing this application in detail including, but not limited to: existing conditions and uses of the property; development schedule for the project; names of persons involved (contractor, architect, landscaper, business manager, etc.); types of businesses; number of employees; hours of operation; square footage or acreage of the site; number of dwelling units; sale or rental price range for dwelling units; gross square footage of building(s); number of parking stalls, etc.
- Legal Description of Property:** Lot(s) of record or metes and bounds description prepared by a land surveyor. For any application for rezoning, the description must be submitted as an electronic word document via CD or e-mail. For applications proposing rezoning to more than one district, a separate description of each district shall be submitted.
- Filing Fee:** \$ 500 See the fee schedule on the application cover page. Make checks payable to: *City Treasurer*.
- Electronic Submittal:** All applicants are required to submit copies of all items submitted in hard copy with their application (including this application form, the letter of intent, complete plan sets and elevations, etc.) as Adobe Acrobat PDF files on a non-returnable CD to be included with their application materials, or in an e-mail sent to pcaapplications@cityofmadison.com. The e-mail shall include the name of the project and applicant. Applicants unable to provide the materials electronically should contact the Planning Division at (608) 266-4635 for assistance.

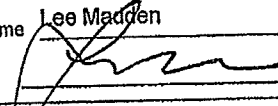
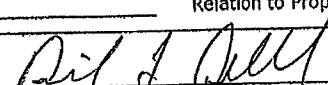
In Addition, The Following Items May Also Be Required With Your Application:

- For any applications proposing demolition or removal of existing buildings, the following items are required:
 - Prior to the filing of an application, the applicant or his/her agent is required to notify a list of interested persons registered with the City **30 or 60 days prior to filing** their application using the online notification tool found at: <https://www.cityofmadison.com/developmentCenter/demolitionNotification/>
 - A photo array (6-12 photos) of the **interior and exterior** of the building(s) to be demolished or removed. A written assessment of the condition of the building(s) to be demolished or removed is highly recommended.
 - Note: A Reuse and Recycling Plan approved by the City's Recycling Coordinator is required prior to issuance of wrecking permits and the start of construction.
- Zoning Text (12 copies):** must accompany Planned Community or Planned Unit Development (PCD/PUD) submittals.

6. Applicant Declarations:

- Conformance with adopted City plans:** Applications shall be in accordance with all adopted City of Madison plans:
 - The site is located within the limits of Starkweather Creek Master Plan (2004) Plan, which recommends: continued R-4 usage for this property.
- Pre-application Notification:** Section 28.12 of the Zoning Code requires that the applicant notify the district alder and any nearby neighborhood & business associations in writing no later than **30 days** prior to filing this request:
 - List below the Alderperson, Neighborhood Association(s), Business Association(s) AND dates you sent the notices:
Marsha Rummel-District 6, Lou-Host Jablonski & Brad Hinkfuss SAYA September 9, 2011 by e-mail
 - NOTE: If the alder has granted a waiver to this requirement, please attach any such correspondence to this form.
- Pre-application Meeting with staff:** Prior to preparation of this application, the applicant is required to discuss the proposed development and review process with Zoning and Planning Division staff; note staff persons and date.
 - Planning Staff: _____ Date: _____ Zoning Staff: Matt Tucker Date: 9-1-11
- Check here if this project will be receiving a public subsidy.** If so, indicate type in your Letter of Intent.

The signer attests that this form is accurately completed and all required materials are submitted:

Printed Name Lee Madden Date 2-17-12
 Signature  Relation to Property Owner Agent for Owner
 Authorizing Signature of Property Owner  Date 2-20-2012

Effective May 1, 2009

LETTER OF INTENT

PROJECT: Demolition of Damaged Structure
214 S. Marquette Street
Madison, WI 53704

APPLICATION FOR: Demolition Permit

DESCRIPTION:

Removal of a two story wood frame 2 unit building damaged by an explosion on September 21, 2010.

The structural frame of the building was severely damaged by the explosion and by order of the City of Madison Building Inspector has been unoccupied since the date of the event. Repair costs exceed replacement cost of this wood frame structure which was constructed in 1914.

The first step in the reconstruction is to cap utilities 1' from the lot line or per specific utility requirements Then to remove the house and detached garage using "deconstructive " techniques to reclaim salvageable components and salvageable metals. A Reuse and Recycling Plan will be prepared for approval by the City of Madison Recycling Coordinator prior to the start of removal of the structures.

Activities will include the removal and recycling of the concrete private sidewalks, stone foundations and concrete footings and floor slabs, placement of clean compacted backfill with a 4" cover of topsoil. The finish elevation of the demolition area will be 4" higher at the center of the former buildings and be pitched outward to the existing grass yard to provide positive drainage. The grass yard and perimeter wood and chain link fencing at the rear yard are to remain. No soils are to be removed from the property.

The existing gravel drive way is to serve as the work platform for the removal activities and shall be top dressed at the project completion. Silt fencing will be installed along the front sidewalk and along the first 25' of the sides of the front yard. The silt fence will be maintained until the grass seed has been established.

RECONSTRUCTION

Presently there is ongoing litigation to obtain final settlement of insurance funds necessary to undertake the reconstruction. The proposed reconstruction would be a 2 story wood frame building at the same location as the original building—set to the north side of the lot with a driveway on the south side. The character of the structure would be traditional and consistent with that of those structures on S. Marquette Street. The front yard setback for the new structure would be equal to the average of the adjacent buildings and conformance to the rear setbacks and the side yard on the south side. A minor variance may be requested for the northern side yard. The current northern side yard is 5' on this 40' wide lot. If a side yard variance is desired, a separate and appropriate application/requests will be

made. No variances are being made with this application. A detached garage would be located in the rear yard. There would be no change in the parking. Attached **PROPOSED CONCEPT** is an illustration of the character of the replacement building.

- Site size:** 40' x 120' 4,800 sf .11 acres
- Proposed Use:** 2 unit rental with two (2) one (1) bedroom units 1,050 sf each
- Proposed Construction:** Concrete foundation (basement) 2 story wood frame with composite siding with asphalt roof singles
- Accessory Building:** Single story slab on grade wood frame garage with composite siding and asphalt roof shingles containing 400 sf

The timing of the reconstruction is dependent on the outcome of the litigation with the building insurer and with the 3rd party contractor that caused the explosion. The insurance proceeds issued to date have been paid against the first mortgage on the property and are not available toward the reconstruction.

Reconstruction is not only dependent on receipt of insurance proceeds, but also the ability to obtain mortgage financing. The recent disclosures regarding PCE soil contamination that appears to be related to Madison Kipp have eliminated the ability to obtain mortgage funding for a property that is the area of contamination. This property is 3 houses to the south from the 5 houses that have had remediation systems installed on their property due to PCE vapor intrusion in the homes. See attached December 21, 2011 Wisconsin State Journal article written by Ron Seeley titled "Disturbing soil test results near Madison-Kipp prompt DNR to warn neighboring homeowners". Until the full extent of the contamination is determined and appropriate remedial actions taken; the ability to obtain the necessary financing is severely restricted or likely to be impossible. Due to these hardships, there can be no definite timeline for reconstruction.

BUILDING ASSESSMENT:

Location: 412 S. Marquette Street
Madison, WI 53704

Year of Original Construction: 1914

Description of Building:

- Wood frame, two story, 2 unit apartment each with one bedroom and one full bathroom
- Stone foundation with 3' exposed above grade
- Concrete basement floor
- Wood framed construction with 2 x 4's @ 16" OC; balloon framed walls; floor joist 2 x 8 @ 16" centers with 12' span
- Exterior wall finish is 1 x 6 sheathing covered with 1 x 4 cedar beveled siding; covered by asphalt covered mineral board, covered by ½" extruded styrene insulation covered by vinyl siding. Stud cavities have been filled with vermiculite insulation.
- Interior walls are constructed of lath and plaster
- Alterations/Additions: 10' x 14' single story addition on rear supported on concrete block piers
- Roof: 2 x 4 @ 16" centers, 1 x 6 wood sheathing, asphalt shingles installed 1989

Extent of Damage from September 2010 Explosion:

Source of explosion was likely the pilot light of the water heater in basement igniting extremely flammable vapors dispensed by a contractor working in the bathroom in the center of the house on the first floor. The heavier than air vapors filled the ductwork on the first floor and ultimately descended and flowed out of the furnace reaching the pilot light of the adjacent water heater. The explosion resulted in the following damages:

- 50% of exterior bearing walls were moved off of the foundation up to 2-3/4"
- 75% of exterior bearing walls separated from 2nd floor joists by up to 2-1/2"
- 25% of first floor heaved up by up to 1-3/16"
- Bay window on south side separated at header by 3/4"
- 2 windows were blown out
- One wall of the first floor bathroom was flattened.
- The main wood stair to the second floor (directly over the bathroom) was extensively damaged.
- 3 interior doors were shattered
- All of the HVAC ductwork was "expanded" by the explosion.
- The extensive amount of movement of the walls and floors have stressed the plumbing lines and electric wiring.
- The second floor of the house was moved and interior walls racked as evidenced by out of square door openings.

Immediately following the explosion:

- All essential utilities (gas, electric and water) were disconnected .
- The Building inspector posed the building "Unfit for Occupancy"

Investigation activity by insurance companies has stripped the structure:

- Furnace was removed
- Water heater was removed
- All plumbing fixtures have been removed
- All kitchen cabinets and counter tops have been removed
- Decorative wood stair from 1st floor to 2nd floor is removed
- 80% of exterior plaster and trim removed at 1st floor
- 30% of exterior plaster and trim removed at 2nd floor
- 25% of ceiling of 1st floor has been removed
- 70% of exterior bearing being provided by interior shoring
- Basement ceiling finish removed

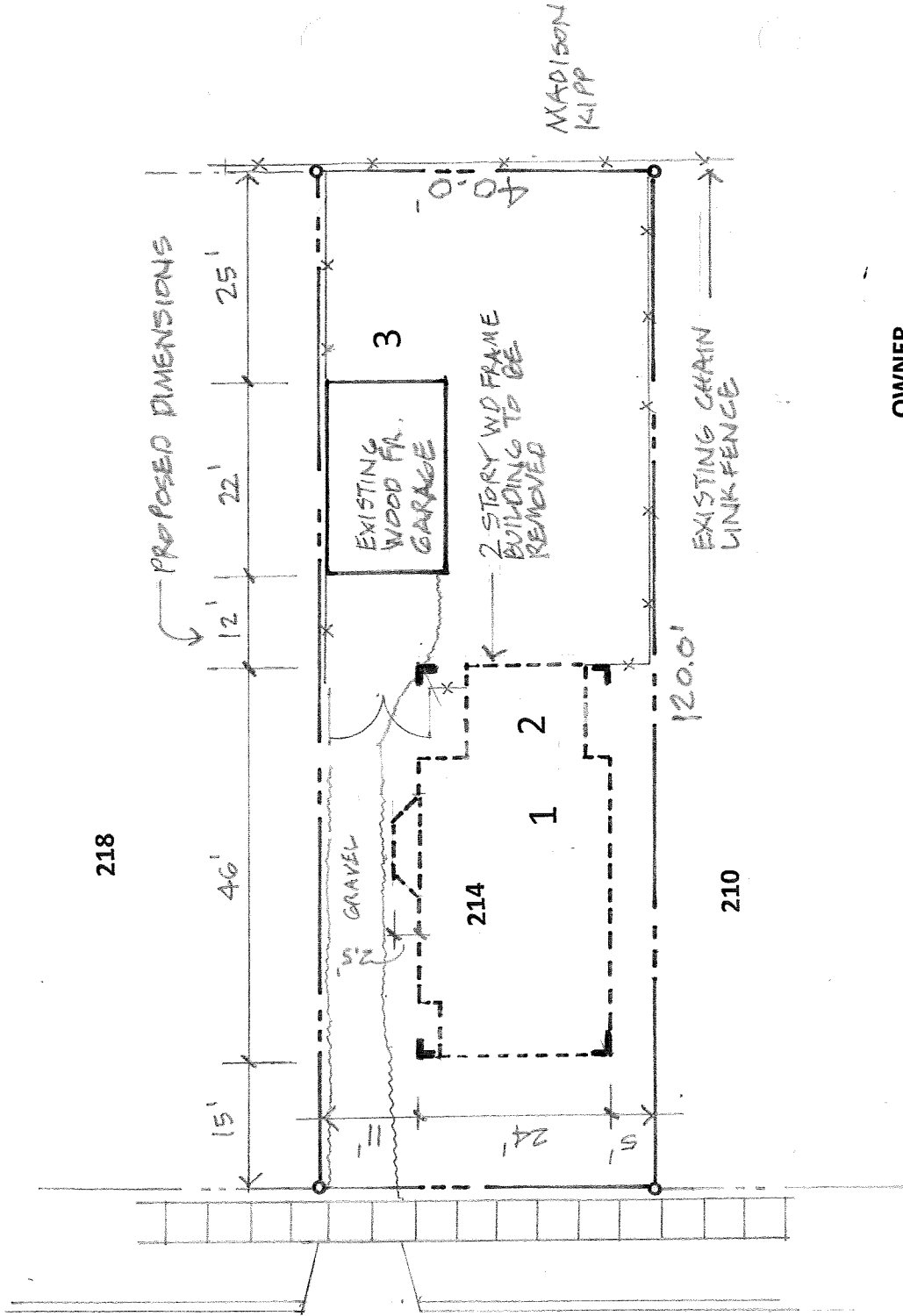
Refer to attached plans titled: **FIELD CONDITIONS on June 20, 2011** indicating location of the above conditions and the extent of necessary reconstruction/repair.

Removal of plaster finishes has revealed knob and tube wiring and incomplete plumbing system. The presence mold and mildew at basement area due to unoccupied conditions has been observed.

Conclusion:

The cost of repairs exceeds the cost of removal and reconstruction.

Prepared by: Lee Madden, AIA, ALA, ASLA
Architect



SITE PLAN

1" = 20'

PROJECT DESCRIPTION

- 1 Remove existing 2 unit, 2 story wood frame building damaged by explosion
- 2 Remove basement and backfill with clean fill, spread topsoil 4" and seed/mulch.
- 3 Remove wood frame garage and sidewalks at front and side of house

OWNER

Richard L. Amdahl
 1 Cherokee Circle 103
 Madison, WI 53704

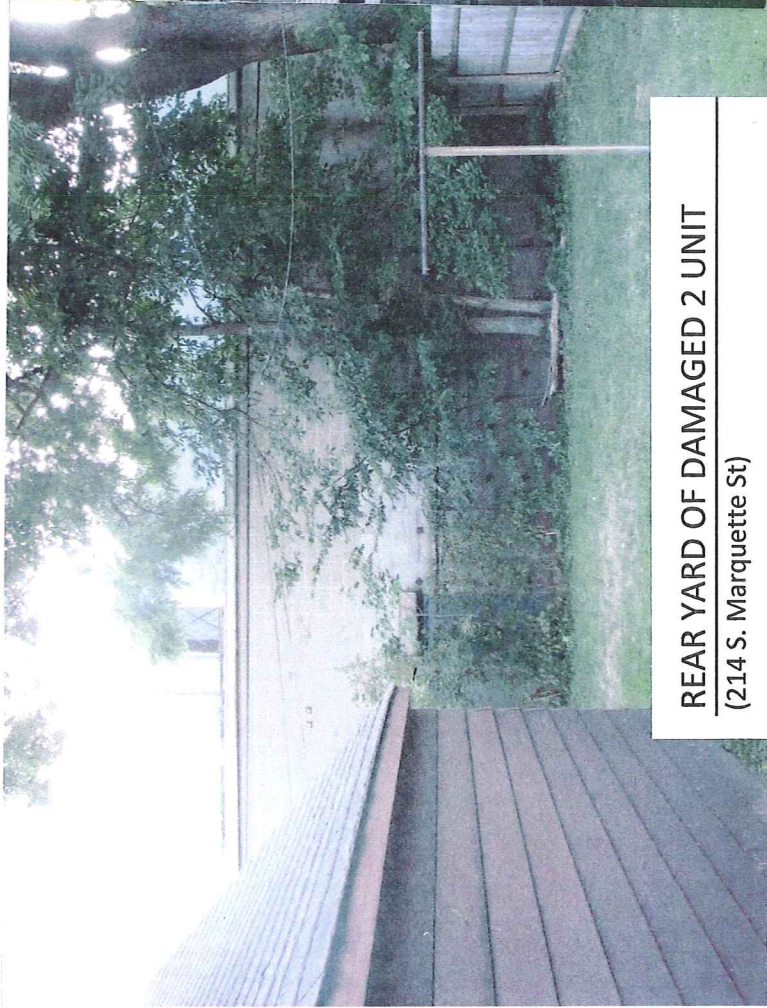
PROJECT REPRESENTATIVE

Lee Madden
 PO Box 620434
 Middleton, WI 53562
 608-345-3998

PROJECT

AMDAHL PROPERTY
 214 S. Marquette Street
 Madison, WI 53704

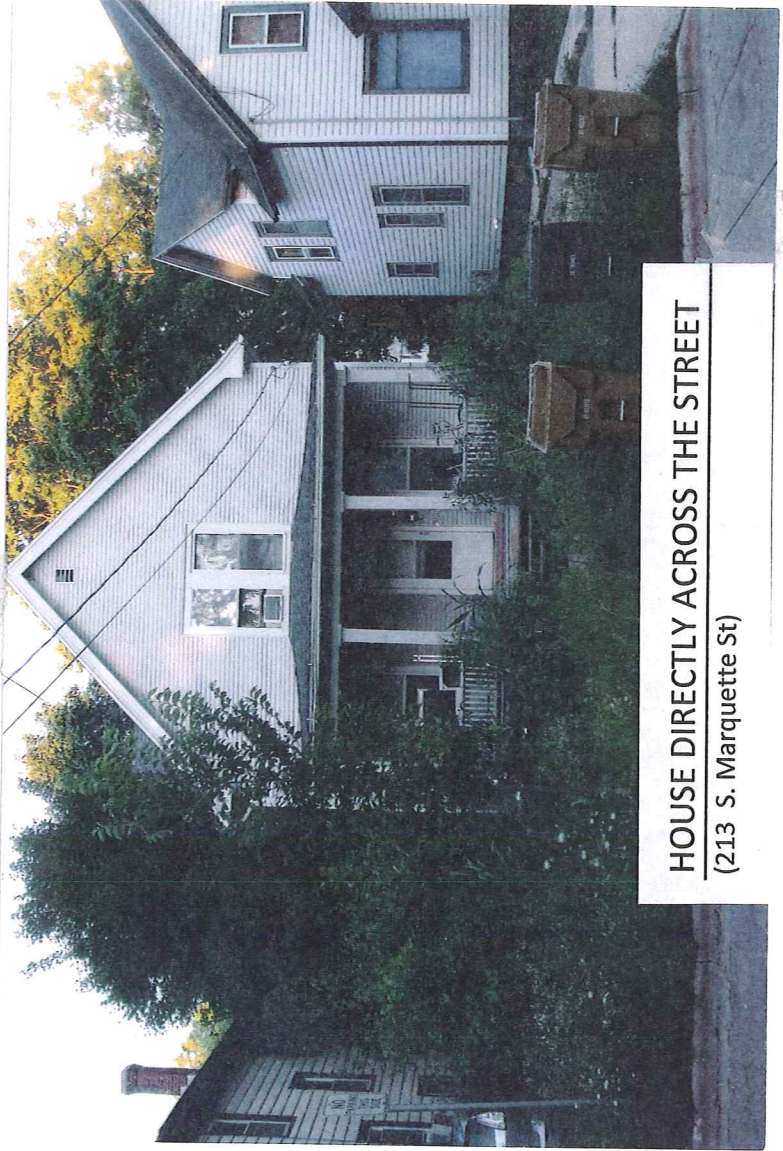
15



REAR YARD OF DAMAGED 2 UNIT
(214 S. Marquette St)

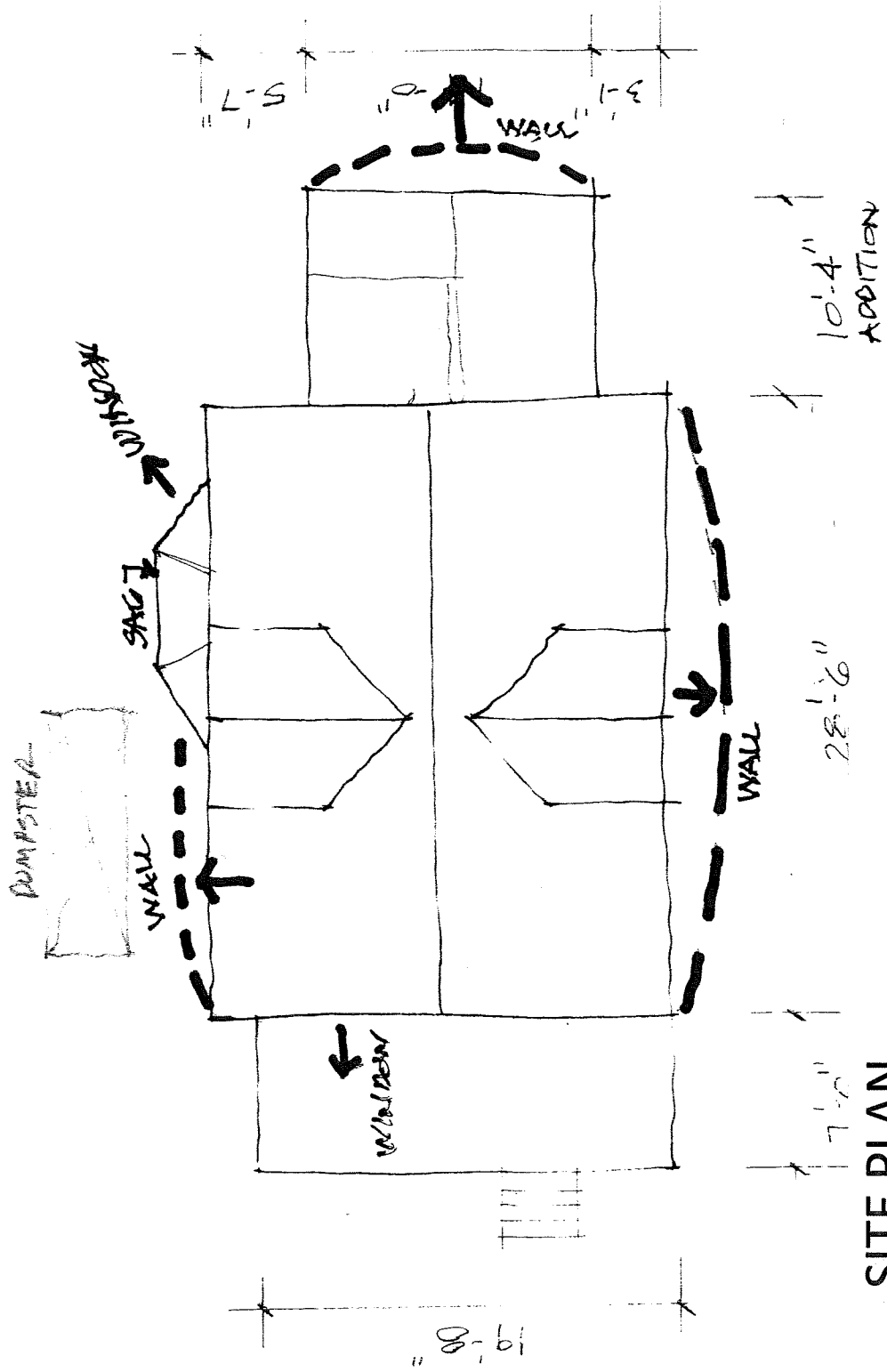


REAR ELEVATION OF DAMAGED 2 UNIT
(214 S. Marquette St)



HOUSE DIRECTLY ACROSS THE STREET
(213 S. Marquette St)

 MOVEMENT OF WALLS FROM EXPLOSION
 DIRECTION OF WALL MOVEMENT



SITE PLAN

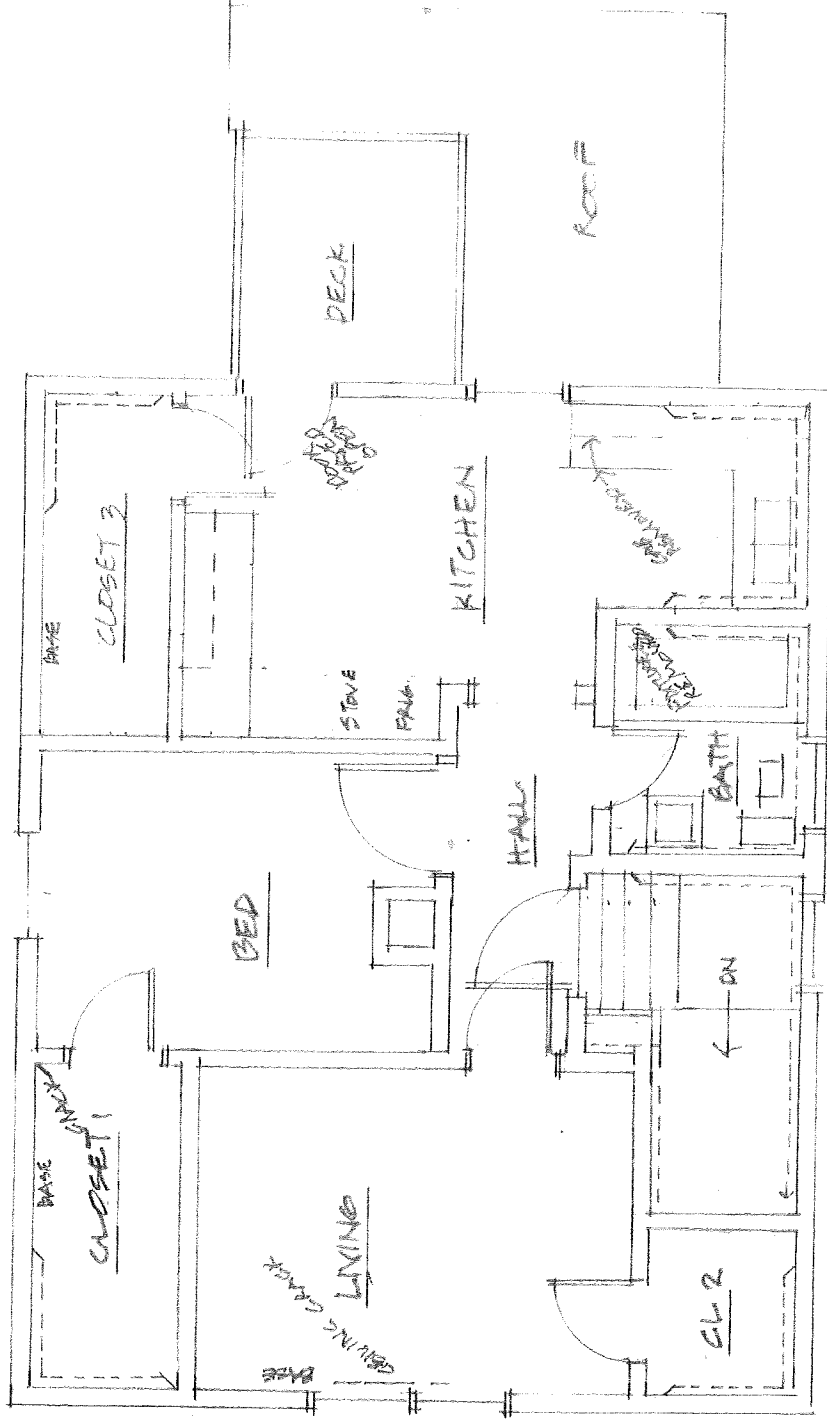
1/8" = 1'-0"

FIELD CONDITIONS on June 20, 2011

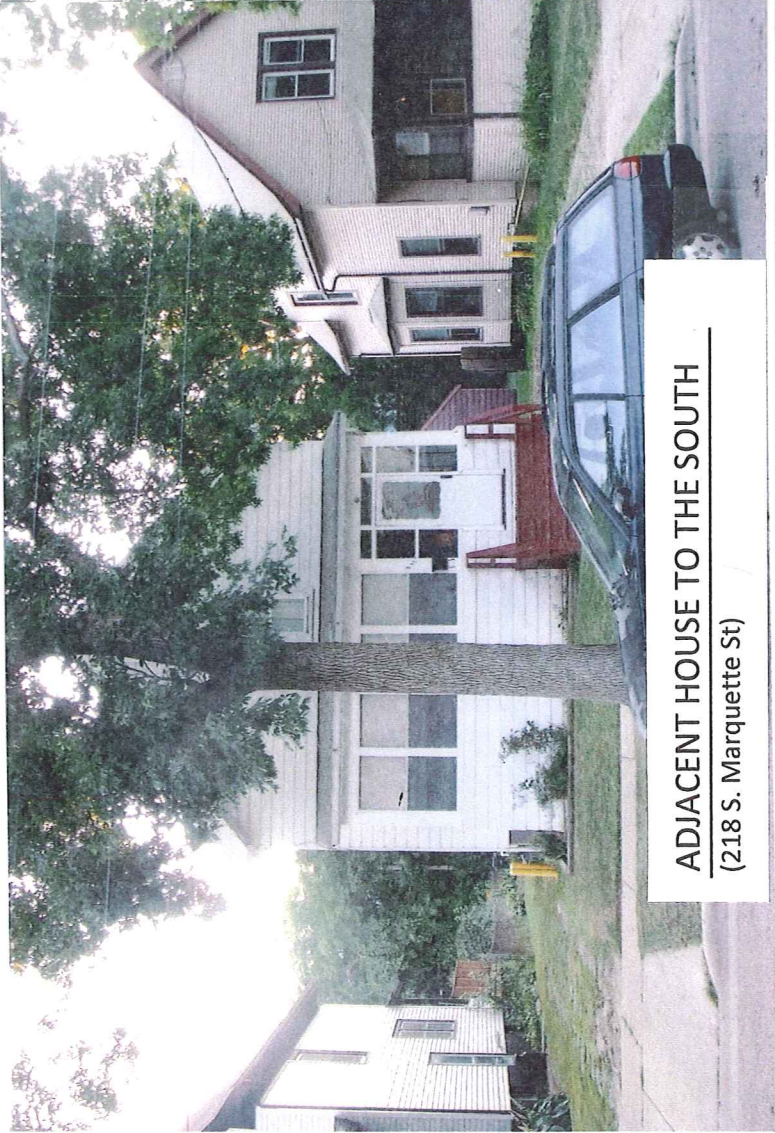
AMDAHL PROPERTY

214 S. Marquette Street

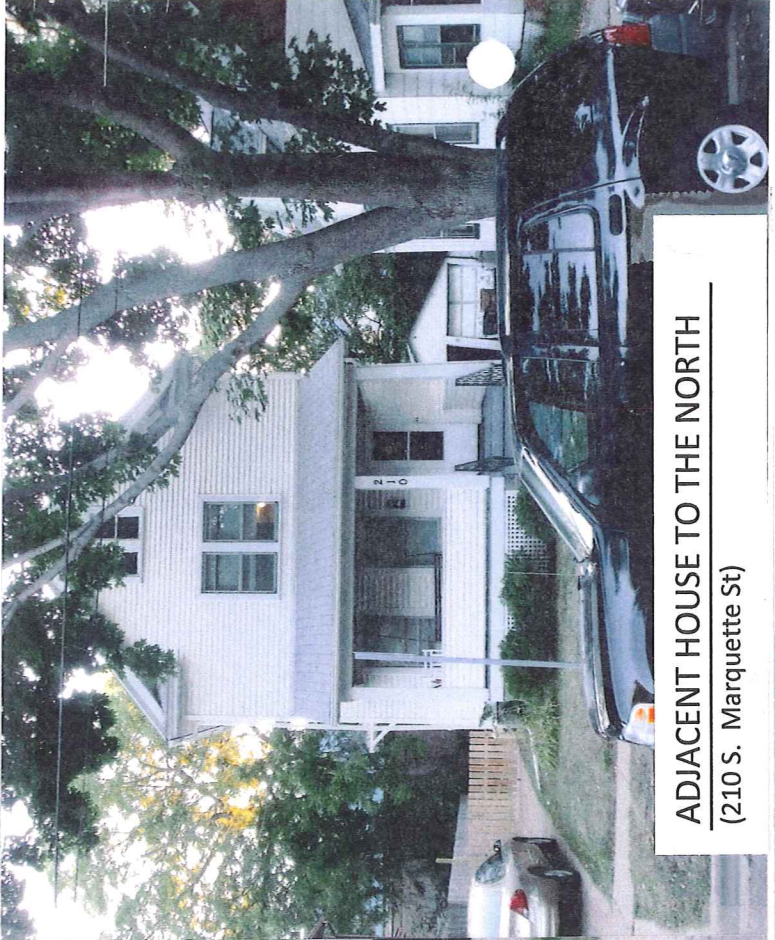
Madison, WI 53704



SECOND FLOOR
FIELD CONDITIONS on June 20, 2011
 AMDAHL PROPERTY
 214 S. Marquette Street
 Madison, WI 53704



ADJACENT HOUSE TO THE SOUTH
(218 S. Marquette St)



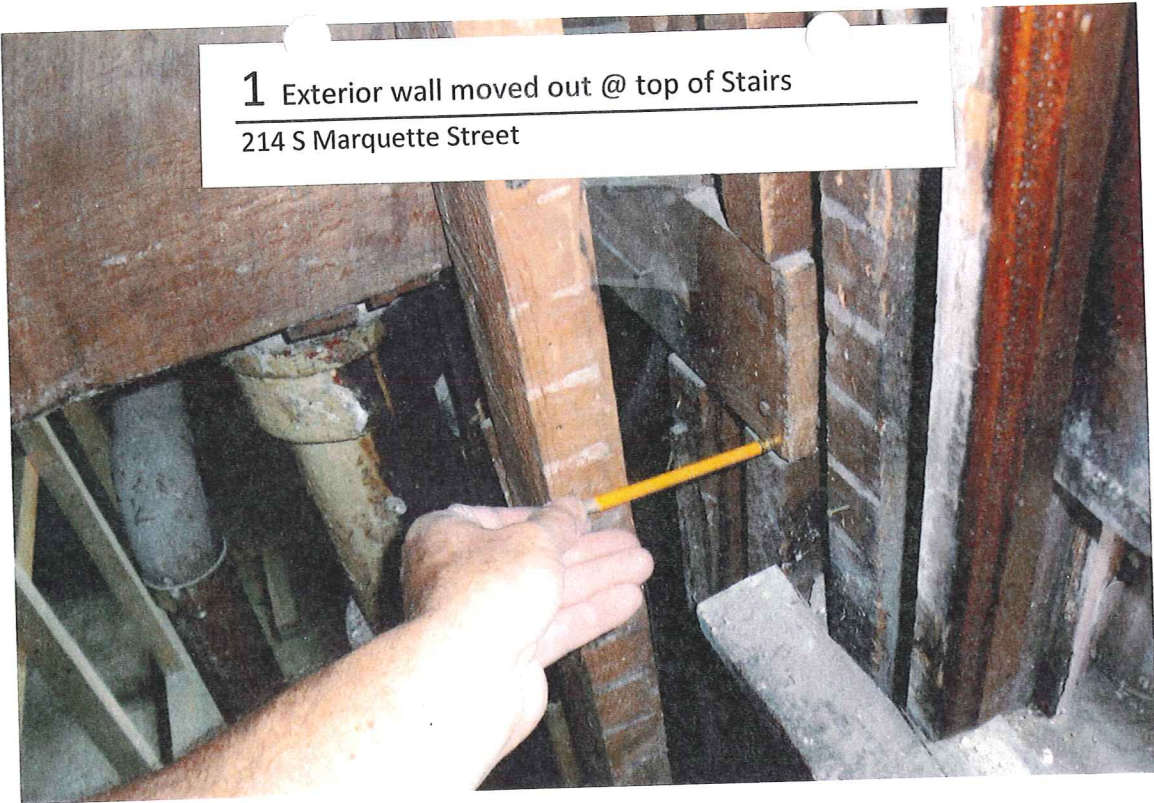
ADJACENT HOUSE TO THE NORTH
(210 S. Marquette St)



DAMAGED 2 UNIT
(214 S. Marquette St)

1 Exterior wall moved out @ top of Stairs

214 S Marquette Street

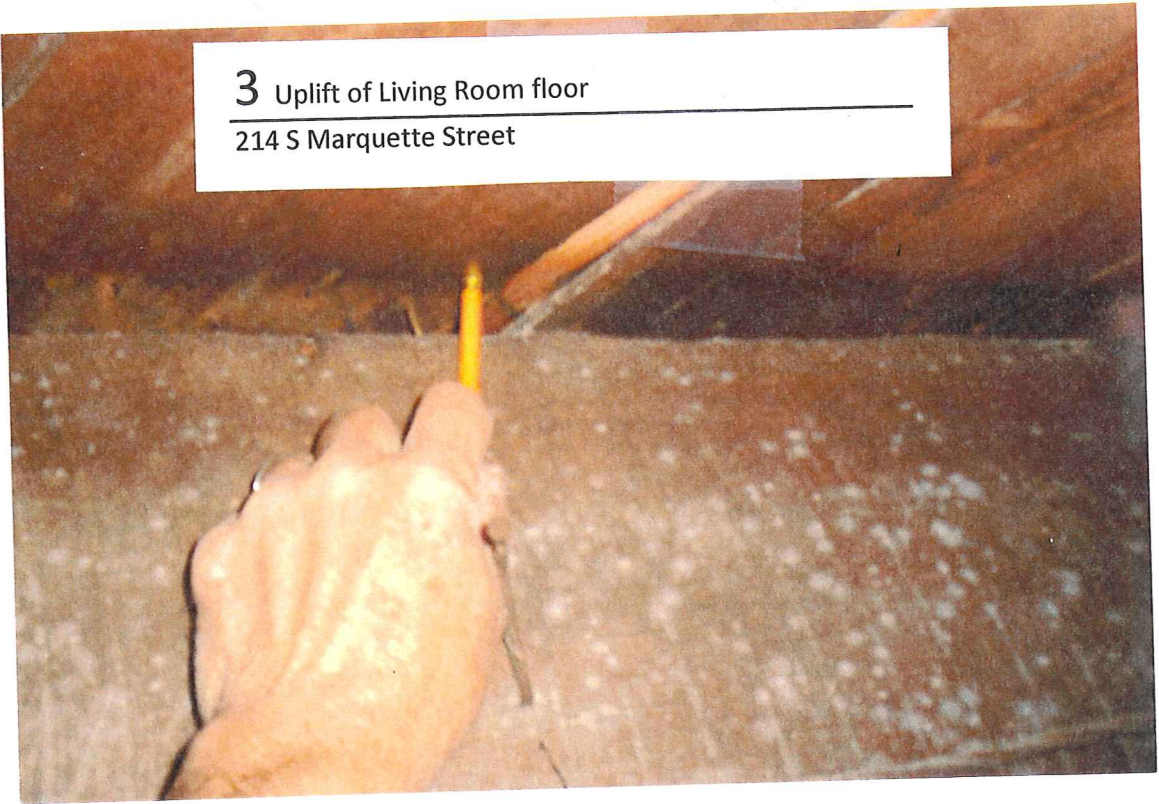


2 Interior NE corner wall separation @ 1st Floor

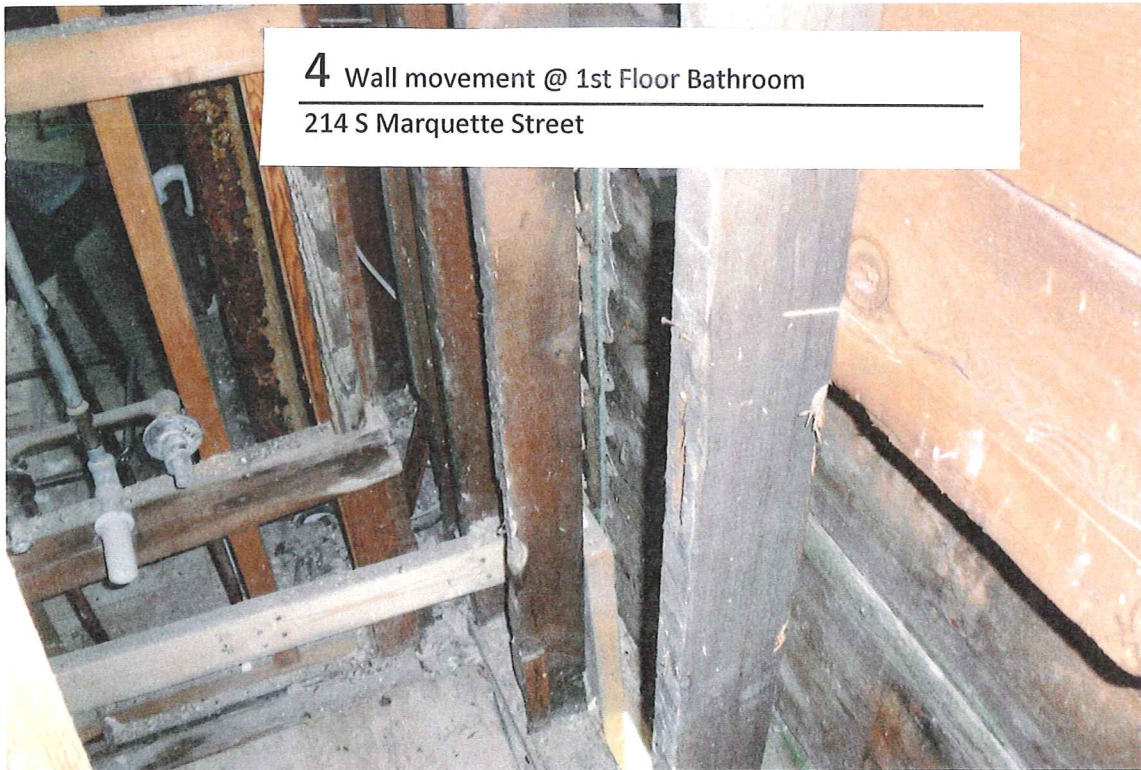
214 S Marquette Street

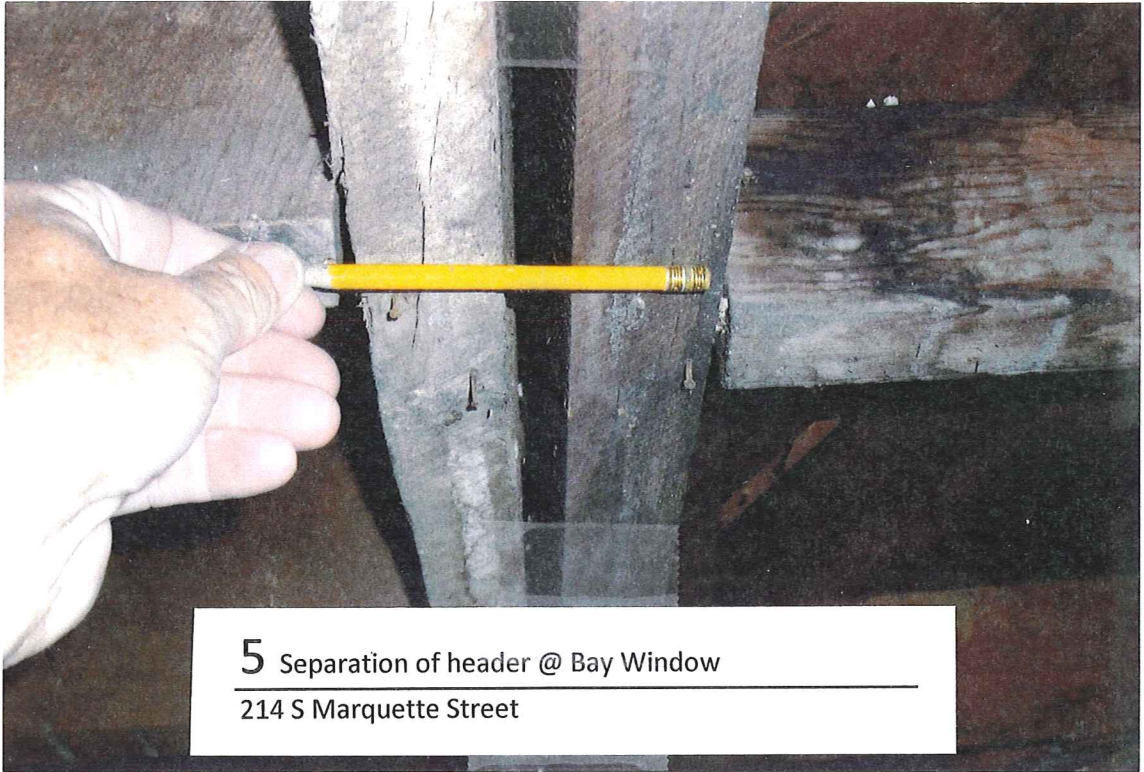


3 Uplift of Living Room floor
214 S Marquette Street



4 Wall movement @ 1st Floor Bathroom
214 S Marquette Street





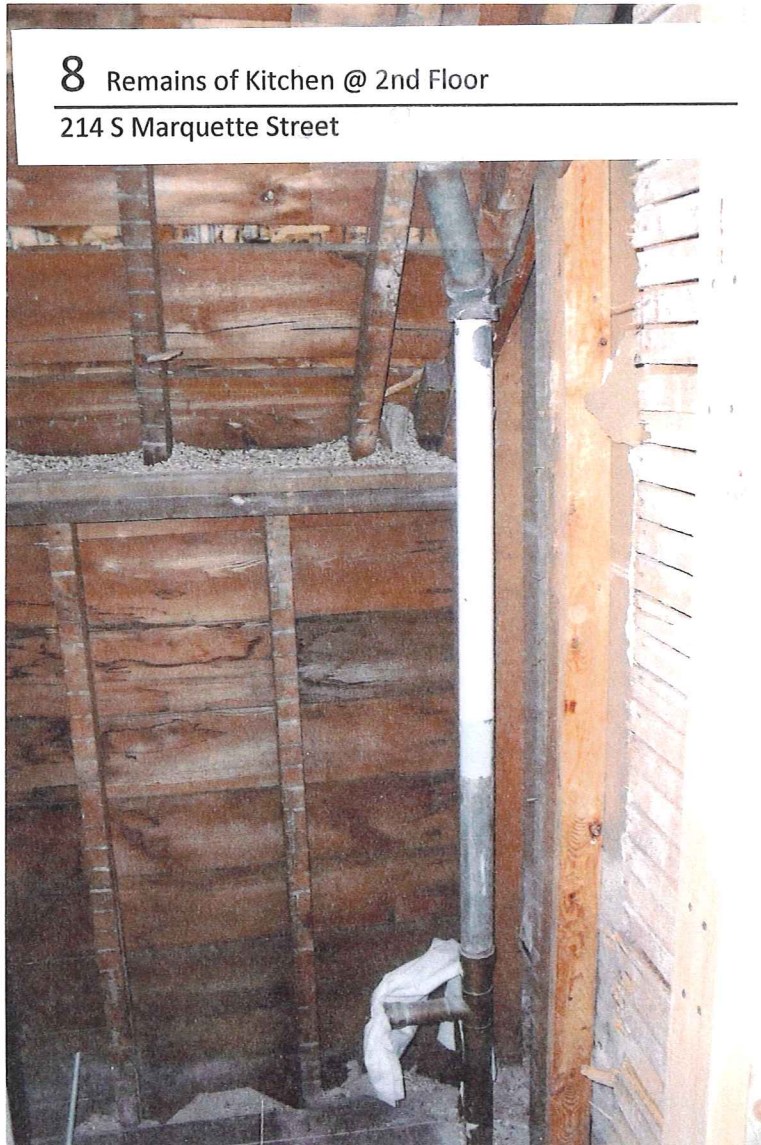
5 Separation of header @ Bay Window
214 S Marquette Street



6 Broken Wall Stud & wall movement @ 1st Floor
214 S Marquette Street



7 Temporary Shoring & removed finishes @ 1st Floor
214 S Marquette Street



8 Remains of Kitchen @ 2nd Floor
214 S Marquette Street

PROPOSED CONCEPT

214 S. Marquette Street
Madison, WI 53704

What's the Future of Home Building?



Despite the recent blow to the housing market, to most of these industry insiders, the future looks bright

INTERVIEWS BY FERNANDO PAGÉS RUIZ

It turns out that trying to predict the future is actually a good way to understand what is happening in the present. To get a clearer picture of how to navigate these uncertain times, I asked a handful of influential builders, architects, and scholars to peer into the crystal ball and share their visions for the future of home building. These folks have opinions that will shape the near- and long-term future of housing. Their opinions may differ from yours and mine, but the opinions are important to consider either way.

Fernando Pagés Ruiz, a builder in Boulder, Colo., is the author of *Affordable Remodel* (The Taunton Press, 2007).



Families file suit against Madison-Kipp over chemicals

STORY | MORE (2)

Font Size:

RON SEELY | rseely@madison.com | 608-252-6131 | @RSeely | Posted: Friday, October 21, 2011 4:45 am

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Steve Apps/Wisconsin State Journal
Neighbors of Madison Kipp Corporation's Atwood Avenue plant, shown here, filed suit in federal court Thursday seeking clean-up of contaminants and property damages.

Seven families on Madison's East Side filed a federal lawsuit Thursday against Madison-Kipp Corp., charging that chemicals from the company have contaminated their homes.

The families also charged that the company has failed for more than 15 years to adequately investigate and clean up the contaminants, including a human carcinogen called tetrachloroethylene, or PCE.

Madison-Kipp operates a plant at 201 Waubesa St. that manufactures precision-machined parts for vehicles, such as crankcases.

Mark Meunier, vice president of human resources for Kipp, said Thursday that the company's actions "pose no imminent or substantial endangerment to the community." He said Kipp has been working since 1994 on what he called a "comprehensive soil and groundwater remediation program."

Meunier also said the chemicals in question have not been used at the company since 1987.

"I can say that we are looking forward to vigorously defending our actions," Meunier added.

Company officials attended a meeting on the issue Saturday, at which a cleanup plan was outlined. That plan calls for excavating and backfilling the top 12 inches of topsoil in the yards of at least two homes that back up to the plant. Residents at the meeting, however, argued that the plan did not go far enough to clean up the contaminants.

The state Department of Natural Resources has referred the matter to the state Department of Justice for possible enforcement if Kipp does not meet deadlines for cleaning up the pollution.

The lawsuit filed Thursday in federal court in Madison charges that releases of PCE and other chemicals from Kipp have poisoned the groundwater beneath neighborhood homes and that the contaminants have seeped in vapor form up through the soil and into the houses.

The families are seeking an investigation and a more thorough cleanup of the contaminants. They also ask for compensation for property damage as well as punitive damages, claiming that Kipp has known about the contamination for years but has failed to clean up the pollutants.

Related Stories

Madison-Kipp outlines cleanup; neighbors plan to file suit over soil contamination

Wells to test water near Kipp

Neighborhood meeting set for Wednesday

WHAT: Neighborhood meeting on latest developments in Madison-Kipp Corp. chemical cleanup.

WHEN: 6:30 p.m. on Wednesday. State and city officials will be available for individual resident questions for the first 30 minutes, with a presentation beginning at 7.

WHERE: Plymouth Congregational United Church of Christ, 2401 Atwood Ave.

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Walker: Press for passage of mining bill

Assembly mining bill will be tough sell in Senate

Senate passes new wetland protocols in early morning session

State Senate passes bill to relax air pollution regulations

PROVIDED BY APPLICANT 15



Disturbing soil test results near Madison-Kipp prompt DNR to warn neighboring homeowners

STORY | DISCUSSION | IMAGE (4) | MORE

Font Size:

RON SEELY | Wisconsin State Journal | rseely@madison.com | 608-252-6131 | (17) Comments | Posted: Wednesday, December 21, 2011 7:00 am

Recommend 32 people recommend this.

5 retweet



JOHN HART — State Journal

Neighbors of Madison-Kipp Corp. on the city's east side want the federal courts to permit a class action lawsuit. They claim that the metal fabricator was negligent in failing to warn them that vapors from an industrial solvent once used at the factory were seeping underground to their properties.

Testing has revealed more contamination in the neighborhood around the Madison-Kipp plant on Madison's East Side, including seven homes where soil in the backyards showed concentrations of an industrial carcinogen in vapor form above recommended health guidelines.

In at least one case, soil from the backyard of a home immediately adjacent to the plant had vapor levels of tetrachloroethylene, an industrial solvent once used at Kipp, that measured 4,620 parts per billion, far above the federal health guideline of 6 ppb.

"What we're seeing in that soil is pretty concerning," said John Hausbeck, environmental health services supervisor with Public Health Madison and Dane County. Hausbeck cautioned that finding the vapors in soil does not necessarily mean that vapor levels are also high in the homes where soil was tested. And he added that the health guideline of 6 ppb is intended as a level to follow for indoor spaces.



(1) More Photos

Even so, the test results spurred a flurry of activity by the state Department of Natural Resources. Employees with the agency knocked on doors in the neighborhood Monday night to inform residents of the test results and left printed information on the doors of homes where residents were not home.

Also, the DNR says it plans to ramp up testing at homes around the plant. Mike Schmoller, who is overseeing the Kipp testing for the DNR, said the agency will conduct further testing for soil vapors at 30 homes on Waubesa and Marquette streets and will test the soil directly beneath 11 homes on Marquette. He said results are expected by the end of January.

Map



Related Stories

Families file suit against Madison-Kipp over chemicals

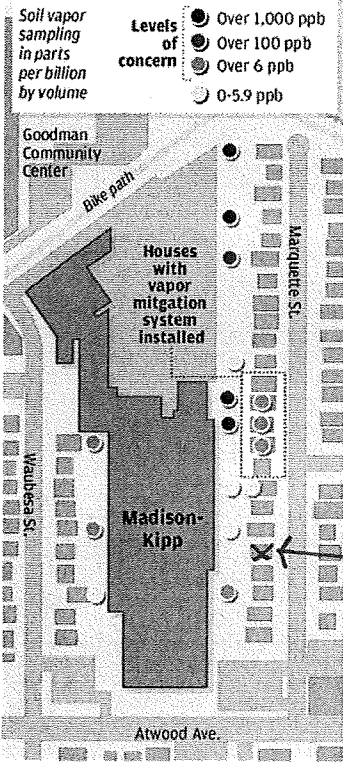
Areas of concern

The testing is the most recent development in a long-running battle over contaminants between neighbors and Madison-Kipp Corp., 201 Waubesa St., which manufactures precision-machined parts for vehicles. Seven families filed a federal lawsuit against the company in October charging that the plant has released chemicals that contaminated their homes and that a cleanup plan proposed by Kipp does not go far enough. The company has proposed excavating and replacing soil from beneath two homes.

The compounds that turned up in recent testing are no longer in use at the plant. But Hausbeck said the recent test results are unsettling because they may show there is an unknown source of contamination.

PROVIDED BY APPLICANT 15

Tetrachloroethylene vapor levels around Madison-Kipp



NOTE: Figures are based on the most recent test results for each site. Actual dates may differ.
SOURCE: Wisconsin Department of Health Services
State Journal

He said the DNR has traced three known sources on the Kipp property for the industrial solvents but said that all of those are probably too far removed from the homes shown most recently to have contaminants.

Mark Meunier, vice president of human resources for Kipp, said the company performed the recent tests voluntarily and continues to work with the DNR on a cleanup plan. He said the DNR has not yet talked to the company about future testing based on the most recent test results.

Also, Meunier added, Kipp has installed vapor mitigation systems on five Marquette Street homes that previously tested positive for TCE and other contaminants.

"Those should take away any threat," Meunier said.

Hausbeck said that the vapors in backyard soil pose little health threat and that testing soil directly beneath the homes will help determine next steps, including possible installation of vapor mitigation systems.

But for some residents, Tuesday's test results just heightened concerns.

"It's a very nagging worry," said Sharon Helmus, 72, who has lived her entire life at 166 Marquette St. Even though her home has not been tested, Kipp installed a mitigation device to vent any vapors.

"And I don't like it because of all the young kids around here," Helmus said. "The parents now don't like them to play in the basements because of fumes. They don't like for them to play in the yard because of contaminants. And I have another friend who I allow to garden in my backyard but they're afraid to eat the stuff because of the soil. That's sad."

214
SITE

More from this section

Northern Wisconsin Chippewa tribes might use treaties to halt or slow proposed mine

Critics of proposed mining legislation sound off in raucous committee hearing

Walker: Press for passage of mining bill

Assembly mining bill will be tough sell in Senate

Senate passes new wetland protocols in early morning session

More...

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Posted in Environment, Business on Wednesday, December 21, 2011 7:00 am Updated: 5:57 pm. Environment, Department Of Natural Resources, John Hausbeck, Madison-kipp Corp., Pollution, Soil Test, Madison-kipp Plant, Mark Meunier, Mike Schmolter, Released Chemicals, Sharon Helmus, Vapor Mitigation Systems

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How neighbors' frustration with Madison-Kipp erupted into major lawsuit

STORY DISCUSSION

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MIKE DEVRIES — The Capital Times buy this photo
Kathleen McHugh and Eric Fuller first learned that chemical vapors had been detected under their Marquette Street home last spring. Now they wonder how it might affect their health and that of their two daughters, Piper (rear) and Avry (front).

Leslie Bellais can recall a big community meeting on pollution from Madison-Kipp Corp. more than a decade ago. She joined more than 100 of her neighbors — some complaining that they already were sick from whatever it was the metal parts fabricator was putting out of its smokestacks — who gathered at nearby Olbrich Botanical Gardens to voice their opposition to Kipp's application for a state permit to emit more pollutants into the air.

Bellais recalls leaving that Dec. 21, 1999, meeting with the feeling that the Department of Natural Resources, which controlled the air emissions permit, was not convinced that Kipp, located off Atwood Avenue on Madison's east side, was making the neighbors sick. For its part, "Kipp was sort of arrogant about it all, as if the neighborhood was overreacting," says Bellais, who bought her house on South Marquette Street in 1992.

No one seems to have mentioned it that night at the public hearing at Olbrich Gardens, but as neighbors fretted over what pollutants Kipp might be putting into the air, the company and state regulators knew that the grounds of the factory were tainted with a toxic chemical and that Kipp officials were under an order to clean up their site.

The DNR, in fact, sent a letter dated the day of the hearing to owners of properties in the vicinity of Kipp, informing them that the soil and groundwater on the factory site were contaminated with tetrachloroethylene, also called perchloroethylene or PCE. Familiar to most people as dry-cleaning fluid, the solvent also has been used widely in industrial settings to remove grease from metal. It has been linked to cancer as well as neurological and other health problems with long-term exposure.

The letter to Kipp neighbors reported that the extent of soil contamination on the factory site had been determined, and that of groundwater contamination, mostly so. It reassured residents that their risk of exposure to the chemical was small because soil contamination was limited to an area behind the Kipp factory and that city drinking water was pumped from aquifers much deeper than the plume of PCE contamination in groundwater at Kipp.

Bellais today does not recall receiving the letter. And as a public, sometimes heated, controversy over air emission permits for Kipp played out over the next several years, she was more concerned about the growing level of noise from the factory, she recalls. Bellais was unaware of any reason to

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worry about groundwater and soil contamination, and she certainly didn't realize that PCE was moving from Kipp's property as vapor through the soil, seeping into the backyards of its neighbors.

It wasn't until last spring, when Bellais read news accounts of how the detection of PCE vapors in the soil beneath several homes down the block prompted the DNR to have Kipp install suction systems under the houses' basements, that she started to learn about what scientists call "vapor intrusion."

Then on Dec. 19, public health and DNR workers came knocking on Marquette Street doors after receiving the results of the latest soil vapor tests. Soil in Bellais' backyard at the north end of the street, nearer the Kipp corporate offices than the current production plant, showed a PCE concentration of 4,620 parts per billion. That is 770 times the level that DNR and public health officials now say — if found beneath a basement — warrants installation of one of the suction systems.

It was the highest PCE reading on Marquette Street

so far.

"I was taken off guard," says Bellais, a curator at the Wisconsin Historical Society. "I felt kind of safe being at the end of the street — I thought it wasn't my problem. Obviously that was a mistake," she says with a rueful laugh.

Not only was the DNR's early analysis of the risk to neighbors from soil contamination off the mark, but nearly two decades after the PCE contamination in the area first was detected, its extent in groundwater is still unknown. State and city officials are becoming concerned that PCE from Kipp could contaminate city drinking water, if the city goes ahead with plans to increase pumping at a nearby municipal well, causing it to draw water from a larger area.

The recent revelations about the spread of PCE and fears about where it might migrate next sent the Kipp neighbors to the federal courts, has city officials pressing for action and the local neighborhood association demanding "meaningful enforcement" from the DNR.

"This is a matter that seriously impacts the health and property of a wide community," says Lou Host-Jablonski, chairman of the neighborhood association council.

The founders of Madison-Kipp could not have imagined such a turn of events when they opened the doors of the factory on Waubesa Street in 1902. The neighborhood that eventually grew up around it had modest homes and blue-collar residents, some of whom worked for Kipp. But as the neighborhood turned white-collar over the past two decades, the company has been beset by complaints over noise, air emissions and now PCE contamination. In each case, company officials insist, they have done what the law requires.

There is now a long record of interaction with authorities regarding PCE. The company stopped using the solvent in 1989, but in 1994 the DNR notified Kipp that it was legally responsible to investigate and clean up PCE groundwater contamination on its site and warned that "the longer contamination is left in the environment, the farther it can spread and the more difficult and costly it becomes to clean up," according to a July 18 memo.

An examination of some of the stacks of reports and communications between the DNR and Kipp since then show the company intermittently asking to have the cleanup declared complete followed by the DNR pushing for more investigation and occasionally threatening harsher action.

While DNR officials say the potential for chemical vapors to move through soil was not widely understood at the time the investigation of contamination at Kipp began, a state health official recommended in September 2003 that testing be done at the site to determine if vapor was migrating toward neighboring residential properties. Kipp's consultant asked permission to stop vapor testing on adjacent properties in February 2009, but after the DNR asked for deeper probes beneath the houses, PCE was detected beneath three of them in November 2010.

Despite warnings over the years, though, the DNR took no enforcement action against Kipp until the case was referred to the state Department of Justice on Oct. 10, 2011, nearly three months after Kipp neighbors filed a 90-day notice of intent to file a lawsuit. DNR officials say it was high levels of PCE found on neighboring residential properties — not the lawsuit — that prompted them to take stronger action.

"With the information that had come to light regarding the significant impacts on the surrounding area, we determined it was important to have an enforcement schedule," says DNR enforcement officer Steve Sisbach.

Kipp officials are saying very little now about the PCE on the factory's grounds in light of the lawsuit, but

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Mike Schmoller, the current DNR project manager for the Kipp site, says enforcement actions usually are reserved for cases where the party responsible for environmental contamination flat out won't do what the DNR tells it to. As for Kipp's compliance with DNR demands over the years, he says: "They're middle of the road. Some are better, some are a lot worse."

Even before they moved into their house in 2006, Kathleen McHugh and Eric Fuller knew what life was like on South Marquette Street, backing up to Kipp, one of the few operating factories left in Madison. When they got the chance, they moved out of their apartment and bought the house next door. "We loved this neighborhood so much, even with the factory behind us," McHugh says. "The noise, the bumping of forklifts all night long ... we dealt with it."

McHugh, a pre-school teacher, and her husband, an arborist, heard last year about the neighbors who got suction systems to reduce the chance of PCE seeping into their houses through the basement floor. But it wasn't until fumes were detected under their house in the spring that they began absorbing what its presence might mean for the value of their home and how it might affect their health and that of their two school-age daughters.

While PCE was classified as a human carcinogen by the U.S. Environmental Protection Agency last fall, local health officials say it is not known if any Kipp neighbors have been exposed to PCE through soil vapors at concentrations sufficient to cause health problems.

Henry Nehls-Lowe, the state Department of Health Services epidemiologist who first flagged the need to test for seepage of PCE vapor near Kipp, says the intrusion is more widespread than initially thought. But he also says that the highest PCE air concentration measured so far inside a basement adjoining Kipp property is not known to cause measurable harmful effects. The measured level was .67 parts per billion, just over the .6 ppb level at which the EPA says action should be taken.

McHugh says the possibility that exposure to chemicals from Kipp will harm her children is always in the back of her mind. "I think about it all the time," she says. "I wonder about how even if we move next year or the year after that, the damage might already be done."

McHugh is painfully aware of the point of view that they should have known what they were in for, but like others who live near the plant, she says that she and her husband had no idea of what now seems may be the magnitude of risk posed by chemicals from Kipp. "I thought that if there were a problem, living on the environmentally conscious east side, we would have heard about it."

And moving is easier said than done. "We have a mortgage we're working hard to pay," McHugh says. "We all have marked houses now, and we can't afford to just leave."

Residents of Marquette Street tell about the neighbor who tried for a couple of years to sell his house — and found a buyer three times — only to have banks refuse to write a mortgage. And a local mortgage banker confirmed that industry practices would make it "very unlikely" a mortgage would be issued for a house in a neighborhood where chemical contamination was pushing down property values.

If residents of Marquette Street were frightened by the increasingly troubling news about Kipp, frustrated by the lack of forceful DNR action, and shaken by the emerging grim property value picture, all those things were brought into sharp relief when Shawn Collins entered their lives.

An aggressive Chicago-area attorney, Collins co-writes a blog called Pollution Law Watch where he last fall headlined a post: "You can shame your government into doing something about contamination in your neighborhood."

Collins says he was a business lawyer who got into the field by chance when an acquaintance couldn't find an experienced attorney to bring a claim involving the infiltration of contaminated water into his home. Eighteen months and a steep learning curve later, Collins got a \$10 million settlement for 200 families in a class-action lawsuit, he says.

Over the intervening 12 years, he's handled about a dozen pollution cases, many involving class actions and the Resource Conservation and Recovery Act. That 1976 federal law contains a provision allowing citizen lawsuits to enforce statutes when government agencies don't.

When articles about the installation of the basement suction systems in Marquette Street homes appeared last spring, Collins posted an online comment about a class-action lawsuit in Indiana where he represented 124 property owners whose houses were contaminated by vapor intrusion of PCE from the grounds of a neighborhood factory.

In June, Collins and his associate Norman Berger, invited by a neighborhood resident, attended a community meeting at a local church and met the Marquette Street homeowners. Armed with a newly minted \$8.1 million settlement in the Indiana case, the two lawyers impressed the Kipp neighbors with their knowledge of PCE contamination issues.

"We were so naively believing what DNR was telling us, it was surprising to hear of other similar cases, and that the issue could be much larger than what they were portraying," says Deanna Schneider.

Schneider, who works in technology services at UW-Extension and has lived in her house since 1997, recalls the controversy raised over Kipp air emissions by a neighborhood group called Clean Air Madison. But she never got involved. "I believed DNR was monitoring the air output. I didn't spend a whole lot of time researching it."

But Schneider says she's spent hours learning about PCE and vapor intrusion, and still is concerned about

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possible health risks in the home she shares with her 8-year-old son, despite two systems in the basement to prevent infiltration by PCE vapors.

"The DNR has been more concerned over how their decisions would affect Kipp than how they would affect the neighborhood — and they don't seem to understand the complexity of the issues," Schneider says.

In October, McHugh, Fuller and Schneider joined the owners of five other Marquette Street homes backing up to Kipp's property in filing a lawsuit. It asks the U.S. District Court of Western Wisconsin to order Kipp to determine the extent of PCE contamination and to clean it up. The lawsuit says Kipp was negligent in handling and abating hazardous waste, entitling its neighbors to compensation for lost property value. It also seeks punitive damages for what the litigants assert is the company's reckless indifference to their health and property.

In January, McHugh and Schneider became the lead litigants in a class-action suit, also in federal court, that could include the owners of all 34 residential properties on Marquette and Waubesa streets that adjoin Kipp property if the court certifies the class and the property owners opt to join.

Bringing the suit was not an easy decision, McHugh and Schneider say, both for the public attention it brings and the stress of being involved in a legal action. But their concerns over the environment and neighborhood property values won out.

"We felt we had to stand up and do something. We didn't feel the DNR was protecting us," says Schneider.

Prevailing in a class-action lawsuit would allow the court to order remediation at all the houses that adjoin Kipp property. "If what we wanted was money, we would have been better off staying just the original seven families," Schneider says, explaining that a greater number of plaintiffs likely means more diluted rewards if the suit is successful. "We hope to help all the families in the neighborhood."

The lawsuit names neither the state of Wisconsin nor the DNR as defendants, and Collins says that's because special laws make it particularly difficult to successfully sue the government, but his harshest public criticism to date seems to be reserved for the state.

"DNR blew it, DNR let people down, DNR hasn't done its job. That's why 34 families — and perhaps more — have the problem they do," says Collins, whose offices are in Naperville, a Chicago suburb.

To him, the Kipp neighbors are fighting a company that's been allowed to let cleanup required under the law stretch on for more than 17 years.

"That's unacceptable by any measure," says Collins. "DNR always had legal tools to force Madison-Kipp to obey the law. The only mystery is why DNR didn't put its foot down a long time ago."

Asked about the criticism by Collins and his clients, Schmoller wouldn't directly engage, but he did say he can see how neighbors, concerned about exposure to toxic chemicals, want action. "If you are on their side of the issue, nothing can happen fast enough."

Reflecting on the DNR's handling of the site, Schmoller says that initial response by Kipp came pretty quickly. "But the size of the problem kept expanding, and we were always playing catch-up with the site," he says.

The presence of the PCE on Kipp property previously was traced to the location of a former PCE storage tank and the area where exhaust from a vapor parts degreaser was vented, but the high concentration of the chemical found at the north end of Marquette Street, near Bellais' home, suggests a previously unidentified spot where it was spilled, or that contamination under the factory building has migrated, says Schmoller.

He says he knows of no records of day-to-day mishaps at the factory that might have spilled PCE elsewhere. And unlike some industrial sites where former employees have called DNR to tell of past dumping practices, "we don't have any hard evidence of intentional dumping of waste on the property anywhere," Schmoller says.

The Department of Justice continues to negotiate with Kipp on plans for future abatement work, the release of which has been long delayed, but officials of the state's legal arm aren't talking about the status of those talks.

Kipp spokesman Mark Meunier also won't talk about what the future work plan is likely to include. "We have done things voluntarily even before the DNR asked us to do them," Meunier stresses. We've been working with the DNR since 1994 and we will continue to do that."

Given the lawsuit, that's all he's willing to say.

Schmoller, however, says that many of the technical requirements of the proposed plan have been agreed to by Kipp, and that the company has agreed to voluntarily perform other work. For example, more probes to measure PCE soil vapors will be installed at properties on Marquette and Waubesa streets. And a pilot well already has been drilled on Kipp property to test the feasibility of a vapor extraction system that would pull PCE out of the soil before it migrates to neighboring properties. The company also has agreed to remove and replace a foot of soil on five Marquette Street properties.

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The company is resisting drilling a deep monitoring well — one of as many as five the DNR might eventually seek — to gauge the depth and direction of the groundwater contamination from the site, Schmoller says.

That's something that worries city officials, who want to ramp up pumping at nearby Well 8, which research says is vulnerable to shallow groundwater contamination. As Mayor Paul Soglin mentions in a letter to Kipp this fall, the PCE groundwater plume has been measured as deep as 171 feet, and headed down.

"The city is concerned that this contaminant plume will degrade the quality of the groundwater provided to Madison residents as drinking water," Soglin wrote, urging Kipp to continue to cooperate with the DNR.

Soglin reassured members of the Schenk-Atwood-Starkweather-Yahara Neighborhood Association at a recent forum that the city is actively advocating for cleanup in and around the Kipp site, but pointed out that it doesn't have legal authority over the issue.

He told them that the cost of relocating families whose property is contaminated should be explored. "It could be that we have to go that far," Soglin said. The city also should consider if the federal government can be brought in to compel the DNR to take enforcement action, he said.

The neighborhood association wants Kipp to remove contaminated soil, including under pavement and buildings, and demands "meaningful enforcement" to include an independent audit of compliance with environmental regulations to be paid for by Kipp.

The group also wants the DNR to order additional testing and monitoring, as well as to better inform the public by providing a map of existing contamination and guaranteeing open deliberations about future planning for the site.

"We insist that cleanup planning no longer be conducted behind closed doors," Host-Jablonski writes in a position statement by the group.

More information about the Kipp site is already coming out; the DNR has posted a website with many links and has been issuing periodic updates to neighborhood residents. The neighborhood association also has posted much information on its website.

Meanwhile, there's a whole new street of Kipp neighbors — the people living on Waubesa — who have been informed that their properties will be tested for PCE vapors and who will be invited to join the class-action lawsuit if the court certifies the class.

Among them is Anita Van Amber, who has not only tolerated her industrial neighbor, but says she likes the look of the old factory. "I don't want to say it's romantic, but there's something at night when the lights are on — it's kind of cool," she says.

But Van Amber also is concerned about what Kipp has been pumping into the atmosphere and putting into the ground. "I want to trust the DNR and the health department, and I'd like to believe that Kipp is doing its best to find out the extent of the problem and doing its best to resolve it and how it affects my property value and day-to-day living," she says.

"But if the lawsuit will push for information on what was spilled and how they're handling it — terrific."

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