

ADDENDUM 2

PLANNING DIVISION REPORT DEPARTMENT OF PLANNING AND COMMUNITY AND ECONOMIC DEVELOPMENT January 23, 2009

RE: ID#12463, Demolition Permit – 902 Dempsey Road and 510 Cottage Grove Road

1. Requested Action: Approval of a demolition permit for multiple buildings and structures on two parcels of land located at 902 Dempsey Road in the M2 General Manufacturing District, and at 510 Cottage Grove Road primarily in the M2 General Manufacturing District, with small portions of the parcel in the M1 Limited Manufacturing, and C3 Highway Commercial Districts.
2. Applicable Regulations: Section 28.12(12) provides the guidelines and regulations for the approval of demolition permits.
3. Report Prepared by: Michael Waidelich, Principal Planner and Heather Stouder, AICP, Planner

PREVIOUS ACTIONS

On November 3, 2008, the Plan Commission referred the decision on whether or not to approve a permit for the partial demolition of buildings and other structures on the former Royster-Clark fertilizer plant site at 902 Dempsey Road and 510 Cottage Grove Road. The case was rescheduled for the December 1, 2008 Plan Commission meeting, but was referred again at the request of the applicant, who was unable to attend the meeting due to weather-related travel delays.

PROJECT UPDATE

Consideration of the demolition permit was referred on November 3, 2008 to allow more time for City and State of Wisconsin staff to review the applicant's proposal to "fill and cap" the large pit in the granulation building; and for the applicant to demonstrate significant progress in responding to outstanding Official Notices on the property from the Building Inspection Division.

As noted in the November 24, 2008 Addendum to the Planning Division Report, the applicant's environmental consultants, BT2, have continued to work with the Wisconsin Department of Agriculture Trade and Consumer Protection (DATCP) to refine the plans for the proposed "cap," and to provide additional detail plans and other information required by DATCP. Very recently, Planning Staff have been advised by the applicant that soil samples from the granulation building pit have been "very positive," and that this proposal may be significantly revised. Planning staff believe that the recommended conditions of approval for the permit adequately address the need to ensure that there are no adverse impacts from the proposed demolition, and require approval of any necessary mitigation measures by State and City agencies before the permit can be issued. The proposed "fill and cap" solution was never the City's preferred approach to dealing with the pit, and alternative approaches that can meet the conditions defined in Condition Nos. 5 and 6 would likely be consistent with the intent of those conditions, and would be similarly subject to final approval by the designated State and City agencies.

In regard to the outstanding Official Notices on the property, all of the shorter-term notices to repair and secure the perimeter fence, adequately secure all the buildings, and paint over all visible exterior

graffiti have been complied with; and Building Inspection has signed off on the project. If the buildings are not removed in the reasonably near future, compliance with longer-term orders to repair the buildings may be required. This decision will be made by the Building Inspection Division.

During the time since the last Plan Commission referral, Planning staff have had several discussions with the applicant regarding Agrium's concerns with some of the recommended conditions of approval on the demolition permit. The status of these discussions is summarized below.

ANALYSIS AND CONCLUSION

Agrium Concerns with the Original Recommended Conditions of Approval

In comments submitted for the November 3rd and December 1st Plan Commission meetings, and expanded in subsequent communications with staff, the applicant has expressed concerns with several of the recommended conditions of approval in the October 28, 2008 and November 24, 2008 Planning Division Reports, and in particular, has stated that Condition No. 8 and Condition No. 12 were considered unacceptable to Agrium as written and could not be met.

Condition No. 8. Condition No. 8 establishes a series of deadlines by which actions must be completed or the demolition permit becomes null and void. Agrium's primary concern is that the time allowed to complete all the steps and demolish the building was too short---particularly since this has become a very complex partial demolition project and the clock would start ticking once the Plan Commission approved the permit. The applicant is concerned that due to the complexity of the detailed plans and other materials that must be submitted before the permit can be issued (which, in this case, must be reviewed and approved by the Department of Agriculture, Trade, and Consumer Protection and the Department of Natural Resources as well as City staff) and uncertainty regarding exactly what will be required, there is no guarantee that approval can be granted quickly. In addition, Agrium indicated that they will still need to weigh the costs and benefits and make a final business decision as to whether or not to proceed with the partial demolition once final approval by staff has been granted---and presumably might conclude that a partial demolition does not make sense to pursue prior to sale of the property. Agrium has indicated that approximately 180 days to complete the partial demolition after obtaining the permit was a realistic timeline, but were concerned that they might not be able to complete the steps needed to obtain the permit within the time frame provided by the condition.

Condition No. 12. Condition No. 12 requires the demolition and site remediation to be completed if a redevelopment plan for the site has not been approved and implementation has not begun within 24 months of issuing the partial demolition permit. Agrium has indicated that 24 months is an unreasonable time period to expect a sale of the property and an approved redevelopment plan for the site, especially under current market conditions. Further, they believe that language requiring any future purchaser of the property to also have a redevelopment plan approved within this same time frame or complete the demolition and remediation creates an unacceptable constraint on the sale of the property. Agrium has consistently expressed their intent to sell the site to a buyer, who will presumably take on the responsibility of the full demolition, remediation and redevelopment of the site; and they continue to point out the advantages of coordinating the full demolition and remediation with an approved redevelopment plan.

Planning Division Response and Proposed Alternative Conditions of Approval

The applicant has indicated that if the permit were approved under the original recommended conditions of approval, Agrium would be unlikely to pursue the partial demolition in the foreseeable future; and the buildings and other structures on the property might remain indefinitely. Given this, and in response Agrium's other comments regarding the conditions of approval, Planning Division staff have worked with the applicant to see if the conditions could be revised to address their primary concerns, while still protecting the interests of the City and surrounding neighborhoods. These revised conditions of approval are proposed as an alternative (Alternative B, below) that the Plan Commission may consider when reaching a decision on the partial demolition request, and are briefly described below:

Condition No. 8. Planning staff believe that a revised timeline for accomplishing the partial demolition, with more time allowed to complete the many technical aspects of required environmental reviews and Agrium's own final decision-making, may be a reasonable request. The alternative Condition No. 8 proposes a new timeline for completion of the partial demolition which addresses Agrium's concern with the uncertain length of time that might be required to receive final staff approval, but which still would have partial demolition completed within 360 days of Plan Commission approval, assuming that the staff review of final plans is accomplished within 60 days.

Condition No. 12. The alternative Condition No. 12 would remove the requirement that a future property owner must complete full demolition and remediation by a date certain. In addition, the time by which Agrium must complete the demolition and remediation if the property is not sold has been lengthened to 48 months after the partial demolition permit is issued, with potential for the Plan Commission to grant extensions (which existed, in any case) specified.

Condition No. 6. An addition to Condition No. 6 specifies that the "fill and cap" solution for the pit in the granulation is temporary, and will not be approved as part of a full remediation plan for the site. This is proposed to make it clear that despite any extended design life that may be required for the "cap" as a result of the extended time frames for Condition Nos. 8 and 12 this is not acceptable as a permanent feature.

Condition No. 13. A new Condition No. 13 specifies that a full demolition consistent with MGO Sec. 28.12(12) and a full site remediation must be completed prior to any future use of the property. This is proposed to make it clear that although there is no time-certain by which a future owner must complete the demolition and remediation, the property cannot be used or redeveloped until these are completed.

It is noted that the applicant has indicated that these potential alternative conditions of approval still may not be acceptable to Agrium.

RECOMMENDATION

The Planning Division recommendation is unchanged from the October 28, 2008 staff report prepared for the November 3, 2008 Plan Commission meeting. However, in response to concerns expressed by the applicant, an alternative list of recommended conditions has been prepared for consideration along with the conditions of approval in the previous staff reports. This list is presented below, and includes revisions to Condition Nos. 6, 8, 9, 10, 11, and 12; and an added

Condition No. 13. As with all conditions of approval, it is the agencies cited that must determine that the conditions have been met. It is important to note that City as well as State agencies must all find that a condition has been met when several agencies are cited. As part of meeting the conditions of approval, the applicant and appropriate review staff may agree on the details of how the condition is met, and may consider modifications to the specifics of the stated condition that substantially meet the intent of the condition.

If, after considering the comments of reviewing agencies and other materials in the Plan Commission packet, and hearing the testimony at the public hearing, the Plan Commission concludes that the concerns expressed regarding the proposed partial demolition on the Royster-Clark site can be satisfactorily addressed, the Planning Division recommends that the Plan Commission find that the demolition standards can be met and **approve** requested partial demolition of the buildings and other above-grade structures located at 902 Dempsey Road and 510 Cottage Grove Road, subject to input at the public hearing and one of the following sets of conditions:

Alternative A: The Conditions of Approval in the November 24, 2008 Planning Division Report Addendum 1.

Alternative B: The alternative revised Conditions of Approval listed below. (Changes from the November 24, 2008 recommended conditions of approval are indicated by over-struck and underlined text. Unchanged conditions are labeled “No Changes”),

1. Comments from reviewing agencies.

[NO CHANGES]

2. Final demolition site plans that clearly indicate existing and post-demolition conditions shall be submitted for Planning Division staff approval prior to the issuance of a demolition permit. These plans must reflect the intent to remove all elevated non-concrete structures not specified in the permit application that would create a potential safety hazard if they remain on the site. These structures include, but may not be limited to:

- The large propane tank located near the main granulation building
- The overhead conveyor apparatus located between the granulation building and the storage domes

[NO CHANGES]

3. Prior to the issuance of a demolition permit, the applicant shall prepare a detailed plan for review by Wisconsin Department of Natural Resources staff ensuring that the demolition process will meet all applicable air quality regulations and standards related to asbestos, lead paint, and fertilizer residues that may be present in the buildings. At least ten days prior to any demolition activity, the applicant shall submit to the Wisconsin DNR staff a Notification of Demolition and/or Renovation form (Form 4500-113). This form can be found at the following link: <http://dnr.wi.gov/air/compenf/asbestos/asbes8a.htm>

[NO CHANGES]

4. Prior to issuance of a demolition permit, the applicant shall provide access to the site and

buildings to Wisconsin Department of Natural Resources Air Management Program staff so that they may assess the presence and location of asbestos, fertilizer dusts, and buildup of pollutants in the smoke stack and ensure that all applicable regulations related to air and solid waste can be met during demolition.

[NO CHANGES]

5. The applicant shall submit a specific work plan to address the concerns identified by the Wisconsin Department of Agriculture, Trade and Consumer Protection and the Wisconsin Department of Natural Resources regarding the potential percolation of water through potentially contaminated soils beneath the existing structures. The work plan shall include, but may not be limited to, one or more of the following approaches:
 - A. The applicant shall complete the soil borings and testing of soil beneath all building floors that will be exposed to the weather by the demolition as required to determine the exact location and extent of any contamination beneath the buildings. This is the preferred option, as it would make the future full remediation of the site more efficient, and would also address Wisconsin Department of Natural Resources requirements to investigate the potential for contamination beneath existing structures before the State would assume liability for the site.
 - i. Prior to beginning the soil borings, the applicant must first submit a soil boring work plan and timeline for approval by Wisconsin Department of Natural Resources and Wisconsin Department of Agriculture, Trade and Consumer Protection staff.
 - ii. Where it is determined that no contamination (or an acceptable level of contamination) exists beneath the building, those floors may be left unprotected from the weather following the demolition of the building.
 - iii. For buildings beneath which unacceptable levels of contamination are found in the soils, the applicant shall, with the approval of the Wisconsin Department of Agriculture, Trade and Consumer Protection and Wisconsin Department of Natural Resources, either:
 - a. Remove all, or necessary portions of, the concrete building floors and all contaminated soil from the building site, fill the area with clean soil, and seed the area. This is the preferred option. Or
 - b. The applicant shall identify and effectively seal all cracks and fissures in concrete building floors through which rain water or melting snow could enter the soil beneath the building to ensure that infiltration cannot occur.
 - B. If the location and extent of soil contamination under existing buildings remains unknown, the applicant shall identify and effectively seal all cracks and fissures in the concrete building floors of all buildings to be demolished beneath which any extent of soil contamination is either known to exist or reasonably-suspected based on available information.
 - C. The applicant may propose an acceptable alternative strategy to eliminate the potential that water may percolate through building floors and carry contaminants

present in the soil beneath deeper toward the groundwater.

The work plan shall include a specific schedule to ensure that there will be a minimum time lag during which building floors will be exposed to the weather, but effective steps as described above to prevent water infiltration have not been implemented. If partial demolition is required in order to provide access to building interiors for soil boring equipment, it is recommended that this demolition not include portions of the roof to the extent feasible.

The work plan shall be approved by staff of the City Planning Division and Building Inspection Division, the Wisconsin Department of Agriculture, Trade and Consumer Protection, and the Wisconsin Department of Natural Resources prior to the issuance of a demolition permit.

[NO CHANGES]

6. Regardless of the approaches selected to meet Condition No. 5 as applied to the other building floors, soil conditions beneath the large below-grade pit in the main building shall be thoroughly tested to determine the extent of possible contamination. If there is soil contamination beneath or in near proximity to the pit, the proposed solution of cracking the concrete floor of the pit to allow water to drain out shall not be implemented; and in no case shall water be allowed to accumulate in the pit. The pit is an attractive nuisance that will become more accessible when the building is removed regardless of the intended additional fencing, and staff consider the removal of the pit structure entirely, removal of any contaminated soils, and filling the hole to be the best approach.

Alternatively, the applicant shall provide another solution that prevents unauthorized access to the pit, prevents water from accumulating in the pit, and prevents water from percolating through the floor of the pit into any soils that have not been determined to be free of unacceptable contamination. The plan for dealing with the pit shall also be approved by staff of the City Planning Division and Building Inspection Division, the Wisconsin Department of Agriculture, Trade and Consumer Protection, and the Wisconsin Department of Natural Resources prior to issuance of a demolition permit.

- a. The general plan proposed by Agrium and BT2 to fill and “cap” the pit in the former granulation building with a clay cover is an acceptable temporary solution, but in order to be approved, a more detailed plan addressing specific requirements identified by the Department of Agriculture Trade and Consumer Protection will be required, and must be submitted to the above agencies for their approval.
 - b. The “fill and cap” solution to preventing water infiltration through the pit shall be a temporary solution only, and will not be acceptable as part of the final remediation plan for the site. Subject to Department of Agriculture Trade and Consumer Protection approval, there is no specific time set for removal of the temporary cap except as specified by this and other conditions of approval.
7. A Reuse and Recycling Plan shall be reviewed by Planning Division staff and approved by the City of Madison Recycling Coordinator prior to the issuance of a demolition permit.
 8. If the plans as required in Condition Nos. 2, 5, 6, and 7 are not submitted within ~~90~~ 60 days of Plan Commission approval of the demolition permit, or the demolition permit is not

obtained within ~~120~~ 60 days of final staff approval, or the requested partial demolition is not completed within 180 days of ~~Plan Commission approval of obtaining the demolition permit, this approval of the demolition permit shall be null and void.~~

9. ~~Outstanding notices from the City of Madison Building Inspection Division to repair and secure the existing fence around the property and secure all buildings to prevent unauthorized access shall be completed and approved prior to issuance of a demolition permit, and before December 1, 2008 in any case. The repairs are intended both to secure the site and to present an attractive appearance by replacing or repairing loose or damaged fence components (fence fabric, posts, rails, gates, etc.). This fence shall be maintained in a sound and attractive condition and building security shall be maintained until such time as the site is redeveloped and/or the demolition is completed and the site restored. The existing fence around the property shall be maintained in a sound and attractive condition to prevent unauthorized access to the property until such time as the site is redeveloped and/or the demolition is completed and the site restored. All buildings shall be secured to prevent unauthorized access until they are demolished.~~
10. The applicant shall designate a local property manager for the site who will be responsible for maintaining the site and responding in a timely manner to complaints or citations regarding site conditions from City staff. This requirement is in response to difficulties with representatives of the current property owner ensuring timely response to day-to-day management issues when no one close to the site has authority to take the necessary actions. An alternative arrangement that assures timely response to complaints or citations regarding site conditions may be approved by the Building Inspection Division.
11. A second demolition permit will be required at a future time for the removal of concrete building floors, foundations and other above-grade structures, surface parking lots and other pavement, the rail spurs, and other infrastructure remaining on the site after the present partial demolition, including the temporary cap proposed over the pit in the main granulation building. The second permit application will be reviewed for consistency with all the requirements of Section 28.12(12).
12. ~~If an application for rezoning and/or subdivision approval to implement a redevelopment plan for the former Royster-Clark site has not been approved by the City of Madison within 24 months of the issuance of the first partial demolition permit, the applicant (or future property owner) Agrium Incorporated shall make reasonable commercial efforts to market the property for sale to prospective buyers upon issuance of the partial demolition permit. If the property is not sold to an entity not related to Agrium within 36 months from the date of issuance of the partial demolition permit, Agrium shall obtain the necessary permits and remove all remaining building floors, foundations and other above-grade structures, surface parking lots and other pavement, the rail spurs and other infrastructure remaining on the site, complete the remediation, and restore the site as required to adequately prevent erosion and maintain an attractive appearance until such time as redevelopment occurs. Full demolition, remediation and site restoration shall be completed not later than 48 months from the date the first partial demolition permit is issued. Extensions of the deadlines established in this condition may be granted by the Plan Commission, following a recommendation from the Department of Agriculture Trade and Consumer Protection regarding the presumed~~

corresponding extension of the temporary cap over the pit in the main granulation building.
The second demolition permit application will be reviewed for consistency with all the requirements of Section 28.12(12).

13. Demolition and full site remediation must be completed prior to any further use or development on the property.

Stouder, Heather

From: Daren Couture [dcouture@agrium.com]
Sent: Tuesday, January 20, 2009 8:23 PM
To: Waidelich, Michael
Cc: Lisa Parker; Stouder, Heather
Subject: Re: Possible Revised Conditions of Approval for Royster-Clark Demolition

Hi Michael

I am planning to be in Madison on Jan 26. I have meetings planned for earlier in the day. I would not be available Feb 9.

Please read the below. You can decide if the Plan commission meeting should include our project. There will likely be some valuable information regarding the "Capping Plan" available on this day which the planning commission may need.

There is a recent development with the findings of the pit samples which will likely change our position on the Capping of the Pit.

Given the "very positive" results found in the samples in the PIT we are going to review this requirement with BT2 and DATCP. Once reviewed we will be looking at both condition 5 & 6. I expect there may be a significant change on these two conditions. My expectations are that this will likely not be resolved by the Plan Commission on Jan 26 as we will have initial discussions with DATCP that afternoon.

Also I will pass on your revisions of Article 8 & 12 to our legal for review.

I do have an issue with a few things on both of the above articles.

You have changed article 8:

1. If the plans as required in Condition Nos. 2, 5, 6, and 7 are not submitted within ~~90~~ 60 days of Plan Commission approval of the demolition permit, or the demolition permit is not obtained within ~~120~~ 60 days of final staff approval, or the requested partial demolition is not completed within 180 days of Plan Commission approval of obtaining the demolition permit, ~~this approval of the demolition permit shall be null and void.~~

What is the definition of "final staff approval"?

As I indicated during our conference call Jan 12. The new year "2009" creates a new requirement for internal approval for Agrium to proceed. This may require Agrium more time to get approval to move with the demolition (not less). You have reduced the time frame for me to execute the process of approval, contract with the demo contractor and obtain the permit.

Under the current economic environment we may ask for an extension in time from this.

Also you make reference to 180 days to complete or the approval of the permit will be null and void. What does this mean if the project is 95% complete in 180 days?

Article 9:

1. . The existing fence around the property shall be maintained in a sound and attractive condition

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to prevent unauthorized access to the property until such time as the site is redeveloped and/or the demolition is completed and the site restored. All buildings shall be secured to prevent unauthorized access until they are demolished. *These conditions run with the land, and continued compliance is the responsibility of the property owner.*

As we indicated previously, Agrium will be responsible for the property until it is sold. Once sold it becomes the responsibility of the Owner. Given the current City ordinances in place should address any conditions with any owner. having us impede 3rd party conditions to a buyer as part of condition of sale are not applicable. The last sentence should be removed.

Article 11:

1. A second demolition permit will be required at a future time for the removal of concrete building floors, foundations and other above-grade structures, surface parking lots and other pavement, the rail spurs, and other infrastructure remaining on the site after the present partial demolition, including the temporary cap proposed over the pit in the main granulation building. The second permit application will be reviewed for consistency with all the requirements of Section 28.12 (12).

Based on the new information of the PIT area soil samples. We will be looking at options excluding "Capping" of the PIT as it may not be required.

Article 12:

1. Agrium Incorporated shall make reasonable commercial efforts to market the property for sale to prospective buyers upon issuance of the partial demolition permit. If the property is not sold to an entity not related to Agrium within 36 months from the date of issuance of the partial demolition permit, Agrium shall obtain the necessary permits and remove all remaining building floors, foundations and other above-grade structures, surface parking lots and other pavement, the rail spurs and other infrastructure remaining on the site, complete the remediation, and restore the site as required to adequately prevent erosion and maintain an attractive appearance until such time as redevelopment occurs. Full demolition, remediation and site restoration shall be completed not later than 48 months from the date the first, partial, demolition permit is issued. Extensions of the deadlines established in this condition may be granted by the Plan Commission, following a recommendation from the Department of Agriculture Trade and Consumer Protection regarding the presumed corresponding extension of the temporary cap over the pit in the main granulation building. The second demolition permit application will be reviewed for consistency with all the requirements of Section 28.12(12).

Several potential areas of discussion here.

- 1) I do expect that the definitive time frame of 36 months to sell will be an issue. As we have indicated to the City. We will sell the Property but current market conditions and other external factors may impede are ability to sell in this time frame. My input to the business would be not to proceed under this condition.
- 2) 48 months to complete remediation & demolition from issuance of first Partial demo permit is unreasonable. from a Project Management perspective we would be looking at 18 months minimum from the 36 months starting point. This does not allow for contingency.

Article 13:

1. Demolition and full site remediation must be completed prior to any further use or development

on the property.

As we indicated previously, Agrium will be responsible for the property until it is sold. Once sold it becomes the responsibility of the Owner. We can not accept this condition on behalf of the buyer. Having us impede 3rd party conditions to a buyer as part of condition of sale are not applicable.

I do feel there is a possibility we will not be able to proceed with this demolition based on all the information. I have discussed this situation with the leadership team here. Being able to sell this project given the conditions, and impact of the conditions will not be easy. I can't sell it to myself right now.

Daren

>>> "Waidelich, Michael" <MWaidelich@cityofmadison.com> 1/16/2009 3:22 PM >>>
Hello Daren,

Attached is a draft of revised conditions of approval that put the ideas we discussed Monday into standard language for these types of conditions. Note that this only covers the Planning Division conditions, but those are the important ones that the Plan Commission will pay most attention to. You are already working with other agencies to clarify what will actually be required for staff approval and sign-off on meeting their conditions, but they won't be revising the wording of the conditions, in any case. The changes are indicated in red type (I hope you see the color), but this is not a "tracking" draft—I just colored those parts.

As we discussed, our intent is to provide these (or some mutually-acceptable revision of them) to the Plan Commission as alternative conditions that were prepared to address concerns raised by Agrium regarding the original conditions of approval recommended by Planning staff. The Commission will have to decide whether they want to consider the alternatives or not, given Agrium's statement that they wouldn't proceed with the demolition under the original conditions. The attachment includes the whole set of Planning Division conditions, but we might present only those with changes when we give them to the Plan Commission. I think these draft conditions have internal staff support as an acceptable alternative, but it's unknown how the Plan Commission, Alderman, or neighborhood folks might respond to them. As always, the conditions of approval can also be modified by the Plan Commission based on their deliberations and input at the hearing.

Please let me know if you have questions and/or comments about these draft revised conditions, and, particularly, if you think they seem to adequately address the concerns you've expressed and that we discussed on Monday.

After you've had a chance to look these over, we do need to know if Agrium wants to have the Plan Commission consider the demolition permit request next Monday, January 26th, as currently scheduled, or if you'd like more time to review and discuss them internally, or to discuss them further with us. Either way is fine with us, just please let me know. If you decide to reschedule, the next Plan Commission meeting is February 9th. Monday is a holiday here, but I'll get back to you first thing Tuesday if you leave a message. Thanks.

Enjoy the weekend.

Michael Waidelich
Principal Planner
City of Madison

Information from ESET NOD32 Antivirus, version of virus signature database 2740 (20071221)

The message was checked by ESET NOD32 Antivirus.

1/21/2009