

Council member Nicoll introduced the following resolution and moved for its adoption:

RESOLUTION # 47-13

A RESOLUTION APPROVING FINDINGS OF FACT RELATING TO AN INTERIM USE PERMIT FOR THE DEMOLITION OF PORTIONS OF THE FORMER VERSO PAPER MILL

WHEREAS, AIM Development LLC, has submitted an Interim Use Permit (IUP) application for review under 10-7B-3.5 of the Sartell City Code, for the demolition of a portion of the former Verso Paper Mill (Benton County) property located at 100 East Sartell Street "the Site" (PIN 18.0000.100, 18.0000.140, 18.0003.800); and

WHEREAS, the Planning Commission, on July 1, 2013, reviewed the IUP application in accordance with the requirements of 10-14.5 of the Sartell City; and

WHEREAS, on July 8, 2013 the City Council conducted the public hearing for the request for an interim use permit.

WHEREAS, in July 2013 the City entered into a contract with the St. Paul Port Authority whom provided technical environmental expertise to the Council as it relates to the IUP application and proposal.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SARTELL, AS FOLLOWS:

1. That the Sartell Comprehensive Land Use Plan identifies the Verso property as a mix of heavy and light industrial with some commercial uses (Future Land Use map). Demolition of the previous use on the property that will prepare the site for redevelopment is consistent with its land use designation and may be consistent with the St. Cloud Urban Area Mississippi River Corridor Plan (2011) objective of providing opportunities in the river corridor to create connections to the river (page 23). Demolition of current specified structures will facilitate this process and position the site for redevelopment. Removal of the structures will be followed by measures to control erosion and manage storm water.
2. That since the IUP does not include any new development, many of the typical standards for site plan review do not apply. The IUP will meet City standards related to the rate of storm water run-off and erosion/sediment control.

3. That Minnesota local government units have broad authority to condition or deny special use permits in order to protect public health, safety and welfare. When enacting the Municipal Planning Act ("MPA") in 1965, the Legislature found that "municipalities are faced with mounting problems in providing means of guiding future development of land so as to insure a safer, more pleasant and more economical environment for residential, commercial, industrial and public activities." So long as there is a rational basis for a zoning or land use decision by a local unit of government, the courts have affirmed the broad discretion local governments have in developing land use and zoning regulations and will not disturb a decision unless it is unsupported.
4. That the Sartell Planning Commission, together with and in addition to staff and consultants and the City Council, made the appropriate findings as required under the provisions of the City's Comprehensive Plan and Sartell City Code 10-7B-6 and under the authority of Minn. Stat. 462.3597, which governs and provides the authorization of cities to permit interim uses and appropriate performance standards and conditions.
5. That under Minn. Stat. 462.3597, Cities may grant permission for an interim use of property if, among other things, the permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future. This grants the City the ability to set conditions or requirements for the IUP as deemed appropriate and includes potential conditions that would better ensure the costs of demolition completion and to ensure that costs of environmental contamination would not flow through to the public.
6. That the Interim use will not be injurious to the use and enjoyment of other property owners in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the immediate vicinity and is compatible with the existing neighborhood. Protection of adjacent and neighboring properties through reasonable provisions for such matters as surface and storm water, landscaping, air sound and sight monitoring.
 - a. The IUP proposal and SWPPP requires all disturbed areas on the site to be seeded with MnDOT low-maintenance seed mixes to establish ground cover. Ground cover and any other landscaping must be established as shown on the site plan and maintained in good condition per Sartell Code. Any grass or grassy vegetation may not exceed 10 inches in height. All noxious weeds shall be eliminated within the site or within the boulevard areas. All existing trees and shrubs shall be maintained.
 - b. The concrete crushing operation will be located in multiple locations within the site throughout the duration of the demolition. Noise will be measured on any property line of the zoning lot on which the operation is located. Noise will be muffled so as not to become objectionable due to intermittence, beat frequency, shrillness or intensity. The sound pressure level of noise in an octave band frequency radiated continuously from a facility shall not exceed the noise area classification (NAC) established by the MPCA and as amended, exempted or granted a variance from those standards as directed and approved by the MPCA. This requirement does not apply to snow removal activities, noise as a result of safety equipment or the noise created from truck and waste traffic entering or exiting the site. AIM Development will provide, as requested, noise readings to the Planning Director. The wood barricades along the easterly side of the property (along Benton Drive) will be kept up as long as possible so that it can act as a sound and sight buffer.

- c. Vibration must not be discernible at any adjoining property line to the human sense of feeling for three (3) minutes or more in duration in any one (1) hour. AIM Development shall submit pre-demolition vibration readings. AIM Development will provide, upon request by the City, vibration readings to the Planning Director.
- d. Metal will be cut and hauled off site by rail or truck. If materials need to be temporarily (less than 72 hours) stored outside of a contained building or structure, it must be completely screened from all public roadways and public waterways.
- e. All wastes containing any hazardous or toxic constituents must be managed in the manner prescribed by the Health Department and/or the MPCA. All handling and disposal of construction and demolition debris should be done in accordance with all federal, state and local laws and ordinances.
- f. AIM Development will submit an escrow fund of \$34,000, with an additional \$10,000 towards inspection services needed for evaluating the property for Redevelopment TIF District qualification, for the redevelopment and repurposing plan prior to the issuance of the demolition permit. Within 30 days of the approval of the IUP, the City and AIM Development will jointly agree upon the consultant or consultants who will provide redevelopment planning services which may include community engagement, market studies, site review and repurposing research, and any other services deemed necessary to develop preliminary repurposing plans for the Subject Property, and that the Escrow Fund may be used to pay all expenses incurred as a part of such services. Preliminary cost estimates received by the City for these services are \$57,000, and the Developer agrees to pay any costs incurred over and above the escrowed amount based upon invoices from the agreed upon consultant for redevelopment planning.
- g. If it is determined that the site would benefit or be eligible for state or federal grants for the redevelopment and repurposing of the site, the City may act as the sponsor of those grants and AIM Development will be responsible for the costs associated with the grant application and management.
- h. 10-7B-6 (F) of the Sartell City Code, gives the City the authority to require a Security Agreement to ensure that the performance standards are completed as provided in the approved IUP. AIM Development must submit a Security Agreement in the form of a Performance Bond in the amount of \$2 Million to complete the first phase of demolition as determined by the demolition timeline and schedule prior to the issuance of the building permit. Upon completion of the first phase of demolition, AIM Development must submit a Security Agreement in the form of a Performance Bond in the amount of \$3.16 Million to complete the second phase of demolition work according to the demolition timeline and schedule. Combined, \$5.16 million is 100% of the estimated costs for demolition of work included in all phases of the decommissioning and demolition activities referenced under the IUP documents and Storm water Pollution Prevention Plan as amended.
- i. All decommissioning related activity must be limited to the hours of 7:00 AM to 8:00 PM. Truck traffic entering or exiting the site must be limited to 8:00 AM to 8:00 PM. Because the amount of limited truck traffic (approximately 25 daily) is significantly less than the previous mill operations and the trucks will maintain the route north on Benton Drive to the Highway 10 interchange, decommissioning related activity may occur on Saturday and Sunday. Hours of operation must be posted on the site and at all entrances and exits, along with site contact information. Occasional truck traffic will need to enter the site at 7:00 AM.
- j. All approved fire safety provisions shall be adhered to during the duration of the demolition.

7. Traffic. That proper facilities are provided which would eliminate any traffic congestion or traffic hazard, which may result from the proposed use. Approximately 60% of the demolition debris will be removed by truck, 40% by rail. That equates to approximately 25 trucks and 25 other cars and personal vehicles a day coming to the site. This is less traffic than what the Verso plant generated when it was in operation. (At that time up to 80 trucks and 250 cars accessed the site every day. Of these, the 80 trucks used Benton Drive to the north to the Highway 10 interchange).
 - a. All demolition and debris truck traffic into and out of the site will use the northerly most existing entrance/exit along Benton Drive.
 - b. Trucks would use Benton Drive north to the Highway 10 interchange. Use of County Road 29 or 2nd Street South is not allowed to ensure the long term integrity of the road.
 - c. Workers will park within the existing parking lot located adjacent to Benton Drive. The site is accessible in accordance with the provisions of the Americans with Disabilities Act (ADA), including parking spaces, passenger loading zones and accessible routes where applicable. All adjacent public sidewalks and/or rights-of-way (Benton Drive, 2nd Street Bridge) around the site will be maintained to provide a continuous route for vehicles and pedestrians, including the disabled and bicyclists.
 - d. AIM Development LLC will be responsible for repairing any damage to Benton Drive and adjacent streets, sidewalks, curbs and driveways caused by trucks or equipment from the demolition and restoration.
 - e. Any overweight/size vehicles using Stearns or Benton County highways would need to obtain a moving permit from the respective jurisdictions.
 - f. Initially, the water will be terminated at the meter pit. During demolition, water lines that are no longer needed will be abandoned, capped and cut off 10 feet from the Service Tee. The Hydro –electric facility shall be serviced with an appropriately sized water service that shall be hydrostatically tested in accordance with the CEAM specification to insure no water leakage will occur.
 - g. The site plan will maintain the current storm water conveyance system and will enhance with additional storm drainage systems. The site is currently almost entirely paved. The site plan is consistent with this finding. The site plan includes a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP call (and figure 5) for:
 - i. Temporary storm water quality measures, including silt fence, inlet protection, dust control, and multiple rock construction entrance.
 - ii. Permanent storm water management system. Additional ponds/basins are being constructed on the site to manage storm water prior to discharging or overflowing into the Mississippi River. The IUP/Demolition project shall create a better storm water management system than what currently exists on the property.
 - h. Prior to the start of demolition, the main service point shall be plugged to ensure no debris enters the city main line. During demolition, all lines must be televised from the tracks to the river to verify the number of sanitary sewer services if needed. Sanitary sewers that are no longer needed will be abandoned, capped and cut off 10 feet from the Service Tee. The Hydro-electric facility shall be serviced with an appropriately sized sewer service that shall be air tested in accordance with the CEAM specification to insure no sewer leakage will occur.

8. Potential environmental Contamination Impacting Future Land Use. Sartell City Code 10-7B-6 provides for the requirement of performance standards and conditions to ensure that such performance standards are met. The Sartell City Code 10-7B-6(G) specifically provides for regulatory oversight by the MPCA on matters related to environmental investigation and cleanup. As a result, AIM should be required to enter the Site into the MPCA-Voluntary Investigation Cleanup ("VIC") program before a City Building Permit is issued for the demolition work, with the purpose of entering the VIC program to begin the process of site characterization, Response Action Plan (RAP) development and ultimately securing a No Action ("NA") determination or a No Further Action ("NFA") determination from MPCA for any soil, soil vapor, and/or groundwater contamination at the Site. AIM must also, before issuance of the Building Permit, enter the Site into the MPCA Petroleum Brownfields program with the purpose of obtaining a RAP approval letter for petroleum response actions and securing Site File Closure letters from MPCA for all Leak Site numbers established at the Site. The basis for these requirements is that:

- a. The site has operated as a paper mill since 1905 which is a strong indication for potential environmental impacts to the property associated with normal industrial use. According to an interview with Andrew Nichols, MPCA VIC Program, the Site's long industrial history makes it likely that soil and groundwater have been impacted by contamination associated with the paper mill operations. Mr. Nichols also indicated that the MPCA has previously had regulatory (Resource Conservation and Recovery Act) interaction with the paper mill operation.
- b. That the Phase 1 identifies that the Site involved a significant amount of chemical storage capacity, including 172 registered above ground storage tanks containing products such as diesel, petroleum products, lubricants, acids, caustics and other chemical products. Tanks are also known to leak. Leaking tanks can go undetected without a subsurface environmental investigation. Because of existing storage tanks and historic storage tanks that were removed and/or replaced during the history of the paper mill operations, it is possible that there are undetected soil contamination and soil vapor impacts, which exist below the ground surface.
- c. The Phase I indicated there were 18 spills, that have been documented at the Site. The Phase 1 identified the past spills as an historic Recognized Environmental Condition "REC" with no current environmental concern because the spills were reported as closed by the MPCA. Closure means no need for additional investigation or cleanup under the existing use of the property. The extent of investigation and/or cleanup conducted for the spills, if any, is unknown. Redevelopment of the property may warrant the need for additional investigation and/or cleanup.
- d. The Phase 1 determined that a former gas station was located in an area of the Site that is currently covered by the facility's employee parking lot. There is no documentation (reports, notes, photographs, etc.) indicating that there were no releases from the underground or above ground storage tanks associated with the use of the property. There's no information on observations made during the removal of any pump islands or distribution piping. Furthermore, if activities at the gas station included vehicle maintenance, such maintenance activities often result in both petroleum and nonpetroleum contamination at the Site.
- e. That future uses of the Site will likely include redevelopment and construction activities. Both immediate and future uses have a high probability of interacting with soils and groundwater, which results in the soils and groundwater being disturbed. Obtaining regulatory closure (No Further Action Determination and/or Petroleum Site Closure) will require an updated Phase I ESA site characterization,

development of a Response Action Plan to remediate environmental impacts and implementation of the RAP. The MPCA VIC and PB oversight should continue through cleanup and redevelopment of the property.

9. Because of the potential for environmental contamination at the property, AIM Development is required to submit a performance bond, in form and substance satisfactory to the City, within 30 days of the issuance of the Interim Use Permit to assure the actions and work necessary to obtain the NFA letters and Site File Closure letters. The City shall be the sole obligee under the bond and no other party shall be intended to be benefited by the provisions of the bond. The submittal of the redevelopment bond shall occur within 30 days of the issuance of the IUP approval. If the redevelopment bond is not received within 30 days of the issuance of the IUP, this shall be grounds for the immediate revocation of the interim use permit and demolition permit and a stop work order being issued requiring all activity on the site under this permit to cease until received.

An initial required amount of \$3.75 million is based on \$1.30 per square foot and is derived by using the amount required by the City of St. Paul for environmental investigation and remediation costs arising in the demolition and redevelopment of the former Ford Plant in that city. A key difference between the Ford plant site and the Site is that the Ford site has already received significant Phase II investigation work. Thus, costs for further investigation and cleanup are more accurate. Because the Site has not received a Phase II investigation, nor has an MPCA approved Response Action Plan which will dictate the scope and therefore the actual costs of any remediation been completed, the amount of the Performance Bond may be adjusted (increased or decreased), at the sole discretion of the City, to reflect 100 percent of the estimated cost to complete all steps and work necessary to obtain the NA(s) or NFA(s) and Site File Closure letter(s) after the MPCA has approved any Response Action Plan(s) or petroleum corrective action plan(s). The submitted bond shall be retained to ensure adequate progress is being made in accordance with the submitted schedule of work to complete the VIC/PB work as identified in the Demolition and Regulatory Timeline/Schedule. The bond amount may be reduced by 25%, to \$2,812,500, after the completion of a Phase II investigation, satisfactory to the MPCA VIC/PB programs, and submittal of the Phase II report(s) to said programs. The bond amount may be additionally increased or decreased, at the sole discretion of the City, at such a time that the MPCA approves a Response Action Plan and the costs of implementing said plan are provided to City, and reviewed and agreed upon by the City. Upon the completion of all work and steps as identified in the Demolition and Regulatory Timeline/Schedule, the Bond may be released.

10. Historical Buildings and Endangered Species. None of the buildings slated for demolition are historically designated or eligible properties and buildings. (See email dated July 3, 2013 from Thomas Cinadr of the Minnesota State Historic Preservation Office and email dated August 15, 2013 from Murray Mack of hma Architects). AIM Development has identified certain elements of the original structure to be removed and saved for reuse on site. A secured location will be identified for a location of the dismantled brick. As determined by the submitted Stormwater Pollution Prevention Plan, no federally-listed threatened or endangered species or their designated critical habitats are likely to occur in the action/demolition area. (See MnDNR on determination dated June 3, 2013). Any change in the determination by the state or federal agencies regarding the designation or eligibility of these properties or buildings for historical significance will nullify this IUP.

11. Term of Permit. The site work is expected to start in August 2013 and take 15 months to complete. The approval of this permit is valid for 12 months (to August 22, 2014) because of the lack of detail concerning the process and timeline for demolition and environmental investigation and clean up within the submitted IUP. If upon receipt of a staff approved, detailed regulatory and demolition timeline and schedule and all conditions of the permit are satisfactorily completed according to the performance standards, the Permit will be automatically reissued for an additional 12 months without further Planning Commission or Council Action. If conditions of the permit are not being performed according to the approved standards, AIM Development shall appear before the Planning Commission and Council prior to the expiration of the Permit to discuss permit renewal. Otherwise, operations on the Site will terminate upon permit expiration or revocation.

The issuance of the demolition building permit may not occur until AIM Development submits the detailed regulatory and demolition timeline/schedule, enters the MPCA's VIC and PB programs.

The motion for the adoption of the foregoing resolution was duly seconded by Council member Braig-Lindstrom, and upon vote being taken thereon, the following voted in favor thereof:

Mayor Perske, Council members: Braig-Lindstrom, Nicoll, Peterson

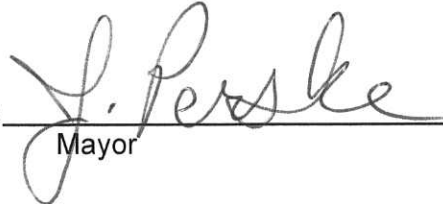
and the following voted against the same: None

and the following abstained: None

and the following were absent: Member Hennes

Whereupon said resolution was declared duly passed and adopted by the Sartell City Council the 22 day of August, 2013.

CITY OF SARTELL:

By: 
Mayor

By: 
City Administrator