

**Excerpt from the
CITY PLANNING COMMISSION MINUTES
Minneapolis Community Planning & Economic Development (CPED)
Planning Division**

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MEMORANDUM

DATE: May 17, 2012

TO: Steve Poor, Planning Supervisor – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Hilary Dvorak, Interim Planning Manager, Community Planning & Economic Development - Planning Division, Development Services

CC: Jason Wittenberg, Interim Planning Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of April 23, 2012

The following actions were taken by the Planning Commission on April 23, 2012. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

Commissioners present: President Motzenbecker, Cohen, Huynh, Kronzer, Luepke-Pier, Mammen, Schiff, Tucker and Wielinski – 8

Committee Clerk: Lisa Baldwin (612) 673-3710

6. A Mill Artist Lofts (BZZ-5522 and PL-263, Ward: 3), 100 3rd Ave SE, 300 2nd St SE and 400 2nd St SE (aka 301 Main St SE) ([Jim Voll](#)).

A. Conditional Use Permit: Application by Minneapolis Leased Housing Associates IV, Limited Partnership, for a conditional use permit for a Planned Unit Development with 252 residential units for property located at 100 3rd Ave SE, 300 2nd St SE, and 400 2nd St SE (also know as 301 Main St SE).

Action: The City Planning Commission adopted the findings and **approved** the conditional use permit for a planned unit development with 252 dwelling units for property located 100 3rd Ave SE, 300 2nd St SE, and 400 2nd St SE (also known as 301 Main St SE) subject to the following conditions:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
2. As required by Section 527.120 of the zoning code, the development shall comply with the standards for some combination of the following amenities from Table 527-1, Amenities, totaling a minimum of 25 points; historic preservation, public right-of-way dedication, and conservation of the built environment.
3. The “grand staircase” on the southwest side of the parking structure, which is part of the conservation of the built environment amenity, be revised to make it more open with wider stairs and landings and improved lighting.
4. If Lot 3 is to be sold to anyone other than Minneapolis Leased Housing Associates IV, Limited Partnership, planning staff shall be notified before the sale to determine that the proposed sale will not place the site out of conformance with the required zoning code, subdivision ordinance, CPC, and HPC requirements before the sale proceeds. A sale of the lot may not place the Lot 3 or the White Elevators out of conformance with the zoning code, subdivision ordinance, or CPC and HPC approvals.

B. Variance: Application by Minneapolis Leased Housing Associates IV, Limited Partnership, for a variance of the maximum allowable Floor Area Ratio for property located at 100 3rd Ave SE, 300 2nd St SE, and 400 2nd St SE (also know as 301 Main St SE).

Action: The City Planning Commission adopted the findings and **approved** the variance of the maximum allowable floor area ratio from 2.7 to approximately 3.6 for property located 100 3rd Ave SE, 300 2nd St SE, and 400 2nd St SE (also known as 301 Main St SE).

C. Variance: Application by Minneapolis Leased Housing Associates IV, Limited Partnership, for a variance of the screening requirement for mechanical equipment for property located at 100 3rd Ave SE, 300 2nd St SE, and 400 2nd St SE (also know as 301 Main St SE).

Action: The City Planning Commission adopted the findings and **approved** the variance of the mechanical screening requirements for property located 100 3rd Ave SE, 300 2nd St SE, and 400 2nd St SE (also known as 301 Main St SE) subject to the following conditions:

1. If the mechanical equipment is not located on a rail car as an historical interpretive feature, then it shall be screened as required by Section 535.70 of the zoning code. It is subject to HPC approval.

D. Site Plan Review: Application by Minneapolis Leased Housing Associates IV, Limited Partnership, for a site plan review for property located at 100 3rd Ave SE, 300 2nd St SE, and 400 2nd St SE (also know as 301 Main St SE).

Action: The City Planning Commission adopted the findings and **approved** the site plan review application for property located 100 3rd Ave SE, 300 2nd St SE, and 400 2nd St SE (also known as 301 Main St SE) subject to the following conditions:

1. CPED Planning staff review and approval of the final elevations and site and landscaping plans before permits may be issued.
2. All site improvements for Phase I shall be completed by April 23, 2014, unless extended by the Zoning Administrator or the permit may be revoked for noncompliance. Phase II, for the Machine Shop, will require additional HPC and possibly CPC review at which time a compliance deadline will be set.
3. Compliance with the HPC conditions of approval.
4. Approval of the historic parking variance. If the historic variance is not approved the project shall comply with parking regulations of the zoning code as allowed by the zoning code and any other applicable city ordinances.
5. Compliance with the applicable standards of the SH Shoreland Overlay District and the MR Mississippi River Overlay District.
6. Provision of a sidewalk easement, running east-west, that allows public access be provided along the north side of the vacated 5th Ave SE right-of-way. The easement area shall contain a built sidewalk, to provide access though the site. This easement and sidewalk shall be reviewed by Public Works and shall be coordinated, to the extent possible, with the adjacent redevelopment of the Mill and Main site by Doran Construction. The applicant shall work with staff to make the walkway as pedestrian friendly as possible.

E. Plat: Application by Minneapolis Leased Housing Associates IV, Limited Partnership, for a preliminary plat for property located at 100 3rd Ave SE, 300 2nd St SE, and 400 2nd St SE (also know as 301 Main St SE).

Action: The City Planning Commission **approved** the preliminary subdivision plat for property located at 100 3rd Ave SE, 300 2nd St SE, and 400 2nd St SE (also known as 301 Main St SE).

President Motzenbecker: I will be handing things over to Commissioner Tucker as I will recuse myself from item six. I believe Commissioner Huynh will be as well.

Staff Voll presented the staff report.

Commissioner Schiff: Is the HPC finished with all their deliberations?

Staff Voll: The actions are in the staff report and there are some items where they will have to go back to the HPC and that's true of the Mill and Main Phase one where I believe some corridor treatments has to go back and some window items but I'd have to go back and look through the actions to identify exactly what all of those things were but they basically approved everything, but said some things would need to come back.

Commissioner Schiff: With the variance on the screening, I don't want to approve something if the HPC then doesn't allow it and then it sends them in a loop they can't get out of City approvals trying to figure out which board to listen to.

Staff Voll: I hope the way we wrote the condition addresses that. The idea was that that variance is granted and if the HPC says it's ok, then it's ok. If it's not granted then they would require

screening as would be required of any project. It wasn't that they'd have to keep going back and forth to every commissioner.

Commissioner Wielinski: Could you explain, under the conditional use permit, number four about lot three?

Staff Voll: There's a separate lot created for the white elevators and the HPC required a maintenance plan for that elevator. It is part of the overall planned unit development and is a very large structure. The concern was that if one creates a separate lot, it could be sold off to somebody else without those things being addressed. The code allows this lot to be created, but since it's such a big structure and since there was the outstanding issue of the maintenance plan, this condition was put in say that the applicant has to notify staff so we can work through those issues. They have to do that anyway but the purpose of it is that when there's a condition it gets put in the conditional use permit document and gets recorded and then whenever somebody buys it they do the title search and see it. This way, it puts any future buyer on notice so they can't say they didn't know.

Commissioner Wielinski: So basically what it does is it creates a need for that to be maintained so it just can't fall into such disrepair that it can't be saved?

Staff Voll: I don't know that it's quite to that level. Even if it was part of their site, I guess they could let it fall apart. I'm not going to promise that somebody won't let the building fall apart and that this condition will stop that, but what it will do is put any buyer on notice that they're subject to a maintenance plan for that building.

Commissioner Kronzer: Can you explain how the FAR was calculated for the white elevators and maybe why?

Staff Voll: The zoning code says for grain elevators, the floor area ratio is...the buildings are assumed to have a floor every 14 feet so you basically take the height of the building and draw a floor every 14 feet and figure the floor plate for each floor and add them all up and that's the FAR.

Commissioner Kronzer: So that's specifically for grain elevators?

Staff Voll: That's correct, yes.

Commissioner Kronzer: Is that for vacant grain elevators as well as functioning grain elevators?

Staff Voll: That's the Zoning Administrator and staff's interpretation is that it's for any grain elevator functioning or otherwise.

Commissioner Tucker: How is the sign on top of the red tile elevator protected?

Staff Voll: We didn't address it in these approvals but it's subject to the HPC review.

Commissioner Tucker: Does a mid-block rail corridor that's discussed in these approvals extend to 6th Ave or just to where 5th Ave would go through?

Staff Voll: This may be something that I'd want the applicant to talk about, but if you look at the line between the two properties, the mid-block rail corridor runs from 3rd to 5th as a part of their proposal ... or the vacated 5th, but you can see from the southerly boundary of their development all the way to 5th there is half of the right of way that will be owned by Doran and that part will be their responsibility when they come, if and when they come through.

Commissioner Tucker: So that will set the pattern for the rest of it when that happens.

Staff Voll: Yes, that's the goal is that when they come through they would match that pattern and design and I believe that would be the staff recommendation.

Commissioner Tucker opened the public hearing.

Owen Metz: I'm with Dominion Development and Acquisition, the developer for this project. We're very pleased with the feedback we've gotten from the Committee of the Whole to help guide where we today in our application. It has taken a long time to get here, but we're happy to be here and happy with the approvals we've gotten from HPC and Zoning and Planning for the parking variance. We worked very hard with the neighborhood, including the Soap Factory and the Marcy Holmes Neighborhood Association in order to help steer what is in front of you that's resulted in support of the Marcy Holmes Neighborhood Association. They've supported the site plan, the parking variance and everything along the way so we're very excited that we've been able to work closely with them. We're ok with all of the recommendations tonight except for two. The first one is regarding the CUP, number four. We'd like to add "anyone other than an affiliate of" before "Minneapolis Leased Housing Associates" to allow flexibility. It will actually be a separate related entity purchasing that lot. Lastly, this is where I'll go into some drawings. On the site plan review, recommendation number six, we'd like to strike the last sentence discussing the parking bay and I'll show you why. The area referenced that's being asked to add green is right in here. These are referenced as parking stalls in the staff report. In the drawings it's not striped as parking stalls. What that is is a loading and unloading area, there's a garage door and the residence for those 43 apartments. That's where they have to move in and out of their apartments. That's specifically going to be hashed as a loading and unloading area, not as a parking area. Given the slope of that street and the requirement to have a pedestrian sidewalk and then ramp to our new entrance, there's not enough room to fit additional green space without losing our loading and unloading area. I know that hurts the landscape side of this and the green side of this, but that is a simple request we're hoping to keep in there in order to allow residents to move in and out of that building. This is really hard to see, but it does show the footprint of the new parking structure. This is the only drawing of the new staircase, but there will be a staircase built into the hill right in this location. Todd Novak with BKV can describe its width, but it's about three levels of a staircase so there's little landings every 10 treads or so and it's a wider staircase, it's probably six or eight feet wide so it'd be a large grand staircase coming down between the parking structure and the white concrete silos.

Commissioner Tucker: Is the walkway from 2nd St to the staircase wider than...

Owen Metz: It is. We moved the parking in this location closer to the machine shop and left about equal room on both sides so it looks like there's a six foot sidewalk and four foot buffer and a little room by the silos; approximately ten feet of walkway going to approximately...

Commissioner Tucker: There used to be staircase at the corner of that parking lot by the machine shop by 2nd, has that been relocated?

Owen Metz: Yes, it has. You can see the overlay of the parking structure underground. We're trying to avoid the shoring that would be required if we had to dig about 40 feet below ground there and actually shore up that entire street. We thought doing that in the corridor all of our parking would be the best scenario and being sensitive to those historic foundations so there's no longer an egress out of a structure in that location.

Commissioner Tucker: An improvement I think.

Owen Metz: With that, I'm available for questions. With those two, hopefully small, requests of the findings, I guess I will close my testimony.

Rod Krass (220 S 6th St): I'm with the Malkerson Gunn law firm. I have a couple of questions because some of the information we've received I'm finding to be a bit confusing. Can someone tell me what the FAR variance is, from what to what? There are two different numbers set forth in various reports we've received including the one that was on the table when we came in here. Those two differences are from 2.3 to 3.6 and 2.7 to 3.6, they're kind of even. The 2.3 is mentioned twice and the 2.7 mentioned twice. Each of the variances in that regard are pretty significant, one is 33 and one is 57. I think that makes a difference to the variance request as to how significant it is and I think it's difficult for the public to try and figure out and discern what this variance request is when we keep getting documents that have different numbers in them. I think that the public needs and has a right to know what that variance is before it is granted. There are several other issues I would like to point out that are causing me some confusion. I understand that the parking variance is not before you, despite its inclusion on the various memos, but I did not understand that last Thursday the Zoning and Planning Committee approved a variance. I understood the motion to be a denial of a parking variance and I'm wondering if I could get that clarified. I thought that was Mr. Schiff's motion, to deny the variance.

Commissioner Schiff: For the residential properties.

Rod Krass: There seems to be some real confusion in that. The memorandum that was on the table outside tonight said that the Zoning and Planning Committee recommended approval of the variance from 290 to 260 and that's somewhat confusing I think for members of the public. That issue, it strikes me, hasn't been fully explored. We don't know what the new plan is. Jim mentioned some revised drawings but none were produced at the meeting on Thursday and I saw one tonight for the first time and it's a little unsettling that that issue seems to be in flux and in play and nobody seems to be sure what exactly happened and it strikes me that this is consistent with the speed with which the developer is trying to get this done without things being certain and without drawings being complete and available for the public and things like detailed site plan. We don't know. I haven't seen any documents where access points are going to be on this property, how they're going to intersect with pedestrian traffic and bike traffic and automobile traffic. None of that seems to be known. We've got an issue that I've perceived with respect to the variance requests being based upon the fact that Dominion has no control and had no control over the creation of the square footage in this site and therefore should be granted a variance since it's not their responsibility but Dominion and Doran were the two who developed this together, met together, met with some of you together, met with staff together and jointly decided who was going to buy what from the bank and Dominion doesn't buy enough land and Doran gets the excess land so now we're saying Dominion had no part in that and is not in a position to take responsibility for that and therefore should be granted variances based on that. That doesn't feel like it's conforming at least with the intent and purpose of the variance requirement. The

pieces to this puzzle seem to be moving and they're hard to pin down. They move from meeting to meeting as the developer makes changes to try and anticipate questions and the public finds out at hearings like this what the latest proposal of the developer is and that's a problem because if we don't have that kind of information ahead of time, I don't know how we're going to get informed public opinion and response to projects like this. Until all the pieces come together, until everyone including the public knows precisely what's on the table and exactly what this plan is and you see things like appropriate traffic studies...they did a traffic study if you recall that was done on November 21 when pedestrians utilized this area and much more than they do in a month like the end of November. It strikes me that there ought to have been a requirement for some study of how this is really going to impact the neighborhood when the heaviest use occurs. That's going to require taking a look at it in warm weather and that hasn't been done. How do the contrasts and conflicts between traffic as it is determined to really be in the summer months and the turns and conflicts with pedestrians and with bicycle traffic, how is that going to work out? We don't have any idea at this point. Nobody has looked at that. We don't even know where the curb cuts are. Consequently, it is our suggestion that this matter be tabled until we know precisely what is being asked of the City by the developer and not being shown things at hearing times at the last minute when the public in general is not going to understand what the project is because if they go on your website and look at these documents, they'll think this project is something other than you've heard described tonight.

Commissioner Tucker: Can you summarize please?

Rod Krass: That isn't right or fair to the public. Consequently, I am asking that you continue this and get a full plan of everything that's going to occur on this project for people to look at and respond to. Thank you.

Kathleen Flynn Peterson (222 2nd St SE): I'm here to express concerns to the commission tonight about the process that has led to your meeting here today. As you know from the municipal code, the Minneapolis government exists to serve the people of Minneapolis. In order to do so, the people must have confidence and trust in the integrity of their city government. They deserve elected and appointed officials who maintain the highest ethical principals and avoid any conflicts of interest whether apparent or real. That is what our effective democracy requires. This city has adopted an ethical code for purposes of promoting high ethical standards and conduct. The project before you comes with recommendations from the Heritage Preservation Commission and also other meetings that have been chaired by Mr. Motzenbecker. Robert Mack is a member of the Heritage Preservation Council and is also an associated principal of MacDonald and Mack Architects who have an interest in this project and have been hired by Dominion as I understand. Mr. Motzenbecker, who is president of this City Planning Commission, while I respect that he has recused himself from this discussion here tonight, that is not what we as citizens have witnessed in the months leading to this. Mr. Motzenbecker has been the principle presenter at meetings throughout the city when this project has been discussed. Indeed at multiple meetings in this meeting itself, he has been the presenter for this project. We witnessed him sitting and presiding as president at a meeting right here in this building and then shifting to the other side of the table and making a presentation on behalf of Dominion. As I understand, as late as last week at the Planning Commission of the City Council, he wished to speak but was not allowed to do so.

Commissioner Tucker: Ok. I wonder if you would address the applications that are in front of us.

Kathleen Flynn Peterson: I will because it's the process that you are considering here and these municipal codes apply to this process and the work that you are doing and I urge you to consider this apparent conflict of interest. A conflict of interest under the city code exists... I'm almost through if you would just give me one minute.

Commissioner Schiff: I just want to give you some advice. If you want to file an ethics complaint, the City has an ethics officer and you call 311 and file an ethics complaint, but tonight we are not voting on process and can't take up any of the matters that you have spoken about so far.

Kathleen Flynn Peterson: I would request that you report this to the ethical practice board because you have witnessed it, that you table this discussion and that you send this project back for consideration when anyone with a conflict of interest will not participate.

Rob Stanek (222 2nd St SE #501): This project is not about affordable housing for me personally, it is about the extreme cost, the public cost, of direct and indirect public money that goes into this project. No one is addressing that tonight.

Commissioner Tucker: The reason is that we're not discussing finance; the items in front of us are the PUD, floor area ratio, screening variance, site plan review and replatting. That's what we can decide on tonight as a planning commission.

Rob Stanek: I'm suggesting that I ask you to deny all those applications based on the cost of the entire project. This project costs \$101 million, it's building 252 units which is an average cost per unit of affordable housing of \$400k. The project is not about affordable housing. If we wanted to build affordable housing we could do it for about \$120k to \$130k per unit in the Twin Cities area. To spend \$400k doesn't even make sense. It's not about affordable housing despite what you might hear and why the Phoenix on the River's home owner's association is objecting to the project. To put it in context, at \$400k per unit, you could build about 600 more affordable housing units with that money. That's how inefficient this project is for affordable housing. Really, the question becomes, at what cost do we save the A-Mill? I think we all want the A-Mill saved, but I don't want to save it at \$101 million, 99% of which is tax payer money either directly or indirectly.

Commissioner Tucker: Can you relate your comments to our applications that we have to decide upon?

Rob Stanek: I sure will. Based on that, I will urge you to deny all the issues in front of you tonight based on the extreme public cost.

Sue Denuccio (222 2nd St SE): With respect to the CUP, I want to address public safety, existing conditions and traffic flow. I got this package before I walked in and went through it. Even though parking isn't included as an item, the Traffic Demand Management Plan is included. However, this is dated March 21, 2012. The package that we had previously that I based my observations on was dated January 5, 2012. Mr. Voll, sparing you the overload of extra pages, took out four pertinent pages that I'd like to make sure you have. They include the observations of traffic flow that even though they have a picture of so called current conditions on the back of your package, this is Main St looking north, this is your package that you got tonight, in the Traffic Demand flow, Main St was never included on any traffic study and that's what it says in Mr. Spack's report of January 5, 2012. Main St., there is no traffic count. I think both

businesses, pedestrians, baby strollers and dogs would be interested in the extra traffic that's going to be flowing through Main St. If you'd like to see what's omitted from your package, I brought my copy and I can hand it to you. I live right on the top of the A-Mill and I face south. The traffic study was done on November 3. I went back and looked at the temperature. The average temperature on Thursday, November 3, was 20 degrees. The sun rose at 8:15 and I don't know what time it set. I did my own study, even though all I had to do was count on two Sunday mornings between 8:00 a.m. and 10:00 a.m. and my counts on cars making left turns where there's no traffic control was double their count. That's two Sundays. One Sunday was Easter and one was the Sunday after the St. Patrick's Day. I'd be happy to save the City money and do a count this weekend. I don't wish to cause you extra burden, but I do think that in order to decide whether you have a safety issue and traffic flow issue you need to take into account that you have a traffic management plan that was conducted on one day. I think you have an abbreviated application and you're missing one key factor which is the impact on the current conditions and I don't think they've adequately been studied or made public. Thank you.

Shelly Stoner (222 2nd St SE): I would like to say that through this process, which I've attended many meetings, I've been looking for an opportunity to not talk about building but to talk about people. I understand that people is not in the purview here either so I will try to stick to buildings. I'd like to say that this is a national historic site. It's attracting national historic dollars, state dollars, city is being requested. I don't believe we're treating this with the comprehensive view that we should. It's a hundred million in public subsidy, the site deserves critical thinking, needs to be comprehensive, we don't know what the demise of the machine shed would be, the silos or the sign. These are all part of the overall site and they're not being addressed at a national historic level.

Jo Radzwill (507 2nd Ave SE): I am on the board of the Marcy Holmes Neighborhood Association. I am also a co-chair of the land use association. This project began more than 10 years ago and I have been working on it and attending meetings on it for at least the last nine years. I would like to reiterate our neighborhood's support. We have worked through this entire development back with the first developer and we achieved many things that were in our master plan such as opening up the street grids for passage, we've insisted on this being a very accessible site as it should be. The HPC has also worked with this. I find no fault with the process as it is set up to be. I would also like to say that I have been at many of the meetings about this development with different developers and I have not seen anyone that didn't recuse themselves at the appropriate time. We are very concerned about the interpretation of the historic site and we're very pleased with what Dominion is doing with that and particularly access. We do believe, even though the final plans of the corridor are between the two sides, have not totally been completed, but one of the things that the HPC asked for as to have a coordinated plan. We are very confident that will come. I would just like to continue to voice our neighborhood support. Thank you.

Hugh Norsted (222 2nd St SE): I'd like to speak to the conditional use permit. What's appalling is that we have a large historic parcel that's going to be 100% residential. Looking at your staff report and the background information there, this site is part of the East Hennepin activity center, which has particular definitions saying that it should have a mixed use of residential and commercial. It's addressed in the Marcy Holmes Master Plan. When you look at that, it specifically identifies the property from University Ave over to the river and calls for mixed use. You let the Doran project pass through 100% residential and this is an even larger parcel with many buildings involved. It flies in the face of these earlier plans. What's the sense of making

master plans if you don't hold the developer to them? Send this plan back to them, reject the conditional use permit and have it go back to the drawing board.

Commissioner Tucker closed the public hearing.

Commissioner Tucker: I think before we proceed with discussion I will ask Ms. Dvorak to discuss confusion about FAR and either she or Commissioner Schiff can speak about the action that Zoning and Planning took.

Staff Dvorak: The FAR variance should be from 2.7 to approximately 3.6. I apologize for that oversight on the agenda. It is correct on the front page of your staff report. The maximum allowed in the C3A zoning district is 2.7. I can read over the actions from the Zoning and Planning Committee if they relate to parking. What occurred with the historic variance was the Zoning and Planning Committee approved the variance from 290 parking spaces, which was the total requirement for both the residential and commercial aspect of the project, to 260 spaces which was the revised number that was brought forward with the revised plans at Zoning and Planning Committee last Thursday. It initially had been a variance down to 204, but they increased the number of spaces within the development so that the amount of spaces that they now have on site is 260. That variance was approved with the conditions from the Zoning and Planning Committee members that all 260 spaces within the development be reserved for the residential aspect of the project. The spaces that were required for the machine shop and the museum, which is in the A-Mill building, were varied to zero. The requirement for the residential project was 252, they're providing 260, those eight additional spaces needed to be reserved for guest parking for the residential use. That is what happened at the Zoning and Planning Committee and that is the action that is moving forward to full City Council this Friday.

Commissioner Schiff: I just first want to address people who came here for this item. I know the City's regulatory process is difficult to understand, I know it's complicated for even policy makers so that confusion among residents is absolutely understandable. On top of that, land use law in Minnesota is also a whole other area that is very complicated and not many people have expertise in it. This group today, just to clarify, we can neither receive nor consider an ethics based complaint. We also may not consider financing of this project in any way in any of our actions and that's due to state land use law that says we cannot consider financing or financial hardship when discussing land use rights. We also cannot review or reject the transit demand plan; that power rests with the Public Works Department. We also cannot table the application due to the Minnesota state law that says applications must be reviewed and voted on within 60 days or the developer gets everything that they applied for, so we have to act today. Finally, unfortunately, we cannot mandate mixed use in the C3A district. This is something we've talked about. I think it'd be a good change to our zoning code, but at this point, our zoning code says that for any land that's zoned C3A, it may be commercial, it may be residential, it may be mixed, but there's no mandate for any of the above. That pretty much covers all the testimony that we heard today and there's just a lot of confusion about what the Planning Commission does and we don't review the historic stuff and we're also not considering the parking variance today. I just wanted to make that statement for everybody who is following the process. I will move approval for discussion and will need clarification on the problem the developer had with item number four (Cohen seconded).

Owen Metz: We're not asking for a separate entity to be approved, just any affiliate of that Dominion entity to be allowed to purchase the white silo. We're just asking for a separate entity,

other than the one that the housing project will have, so we need a separate owner for the grain silos than we have of the residential use.

Commissioner Schiff: Does staff have a suggested language change that would address that issue?

Staff Voll: No, I don't. The idea was that the developer is the leased housing partnership and even if they sold it to any other entity that they created, I guess, the idea is that we wanted to be notified. It's not saying they can't sell it, but we wanted to be notified to make sure that the maintenance plan and all that was taken care of. I guess I'll leave it up to you to determine if you think that's reasonable or not, but that was the goal behind the condition. If that creates some problem we're not aware of we can consider it, but otherwise I'd say the condition should stay the same.

Commissioner Schiff: I read it as just a notification. Ok.

Commissioner Cohen: I support the motion. This is a river city. For over a hundred years we've neglected the river, built junk yards along it, dumped our refuse in it, ignored it and turned our backs on it. Now we've got the opportunity with this proposal to preserve perhaps the most significant icon that exists in our city along the borders of this river and it's an honor and privilege to do that in my opinion because it will stand as a symbol for what we were [tape ended]...but the larger strategic significance of this cannot be ignored because it represents what we are, what we have become and how we respect what our past and our history has been.

Commissioner Tucker: The motion is staff recommendation. All those in favor of item A with the four conditions? Opposed?

The motion carried 5-0 (Luepke-Pier not present for the vote, Motzenbecker and Huynh recused).

Commissioner Schiff: I will move approval of item B and I'd like to speak to that (Cohen seconded). This is the variance of the maximum allowable floor area which then in turn triggers the number of units allowed in a building. Earlier in today's meeting we heard somebody testify asking us to deny a similar variance in order to reduce to the number of units in the building. This is more of a product of the housing market than it is the zoning code. The types of units that people desire to live in change all the time and the Planning Commission has never tried to tell the market what to do. We never try to tell people what size of housing units they should live in. That's why this variance is acceptable to me as was the previous one on our agenda tonight.

Commissioner Tucker: I would just add that this is more a function of reducing the land area that is part of the ratio than adding any building to it other than a few thousand square feet for circulation. Any other comments on variance B?

Commissioner Kronzer: Some of the existing structures on the site actually lend themselves to this variance. In other cities, some of these variances are just a product of the fact of the existing structures themselves. I support the motion.

Commissioner Tucker: Just to clarify, this will be to approve the variance of the maximum allowable floor area ration from 2.7 to 3.6 corrected on the green agendas. All those in favor? Opposed?

The motion carried 5-0 (Luepke-Pier not present for the vote, Motzenbecker and Huynh recused).

Commissioner Schiff: This is the variance on the screening requirement for mechanical property equipment. I will move approval with the condition subject to the approval of the Heritage Preservation Commission.

Commissioner Tucker: You want that as a second condition?

Commissioner Schiff: Yes (Cohen seconded).

Commissioner Tucker: Other comments? All those in favor? Opposed?

The motion carried 5-0 (Luepke-Pier not present for the vote, Motzenbecker and Huynh recused).

Commissioner Tucker: Item D, site plan review, has six suggested conditions and the applicant asked for the modification of condition number six to remove the last sentence which had to do with grass near the loading area.

Commissioner Schiff: I'm looking for discussion from staff on why they recommended the green boulevard with grass and plantings.

Staff Voll: We're talking about this area right here, which I thought was a parking bump out when I received the application materials. It wasn't identified as a loading area, this was identified as the loading area so I didn't know that that was what the purpose was for it. From the discussions with the commissioners and listening to the HPC discussions and talking with the HPC staff, we felt that there was this idea to get the connection through the site which is why we required the sidewalk. Second was for it to be a pleasant pedestrian atmosphere. The idea behind the condition was to put a tree boulevard on that side of the sidewalk, eliminate that bay and it could be perennials or landscape plantings and could have trees or not. I talked to Preservation staff and they felt that that was reasonable and wouldn't harm the historic character of the area so it was just designed to make it a more pleasant walkway through the site if that's truly going to be an amenity, but when I made that recommendation I wasn't aware that that was going to be a loading area, I thought it was parking spaces. If you don't think that the trees and the greening is necessary to make it a pleasant walkway, that's fine.

Commissioner Kronzer: I agree with the applicant on their request. Having known the drive here, it actually is a private drive, it's not a public street and given the complexity of the entire site I think the request for loading at that location is acceptable.

Commissioner Schiff: Question for the applicant, is any type of greening completely incompatible with the loading dock area?

Owen Metz: The intent was that that loading dock also represents...there are three loading docks back behind it so our desire is to keep that very industrial and having people trample over it and go across it just ruins the effect of that building and the use of the space. We are not opposed to it, I just think there are physical limitations on how much room there is to allow ADA accessible entrance to that building, allow the pedestrian sidewalk and allow us to load and unload resident move ins so it's more of a physical constraint than a preference.

Commission Schiff: But people will be walking through the space, it's not just a loading dock area, it's also going to be a pedestrian walkway?

Owen Metz: Yes, immediately adjacent to the loading dock area.

Commissioner Tucker: The sidewalk is specifically put in to make it pedestrian and seem as though it is a public street. In the Committee of the Whole and numerous other meetings we've always talked about making that as pleasant as possible so we may want to ask the applicant to work with staff to modify the current design and the staff recommendation to make it as pleasant for pedestrians as possible.

Commissioner Schiff: That's exactly what I was thinking, just subject to final staff approval that the developer work with staff to resubmit a new plan that allows for a pedestrian friendly environment but doesn't impede the primary use as a loading dock area.

Commissioner Tucker: So we could just add a sentence there. Did you want to remove that sentence and then in lieu of that put in a sentence to work with staff to make the walkway as pedestrian friendly as possible?

Commissioner Schiff: Yes. I think that's good because it's described in the staff report as a parking bay and now we know it's a loading dock.

Commissioner Tucker: So we'll remove that sentence and add the one I just said. Let's vote on the change to condition six to eliminate the last sentence and replace it with the applicant working with staff to make it pedestrian friendly. I'll move that (Schiff seconded). All in favor? Opposed?

The motion carried 5-0 (Luepke-Pier not present for the vote, Motzenbecker and Huynh recused).

Commissioner Tucker: Back to the main motion which is application D, site plan review with six conditions as amended. All those in favor? Opposed?

The motion carried 5-0 (Luepke-Pier not present for the vote, Motzenbecker and Huynh recused).

Commissioner Tucker: I will move that item (Mammen seconded). All those in favor? Opposed?

The motion carried 5-0 (Luepke-Pier not present for the vote, Motzenbecker and Huynh recused).