

Board of Adjustment Minutes April 7, 2011

2. 340 27th Ave NE (BZZ-5082, Ward 1)

Actions: The Board of Adjustment adopted the findings and denied the appeal of the decision of the Zoning Administrator's interpretation that the proposed use of the property located at 340 27th Ave NE is a recycling facility in the I2 Medium Industrial District.

Matt Perry: Alright, Mr. Poor.

Steve Poor: Good afternoon. Today we have an appeal of a Zoning Administrator determination filed by James Peters on behalf of Bruce Shoemaker, et al. The et al was comprised of 26 other co-signers on the appeal. We also had quite a bit of input, comments to the Board. There was a large petition that we did not copy individually for each packet, but there's two copies provided to Board members to look at. There's also a copy available for the public. We received many e-mail messages today and yesterday so we tried to present those to the Board and those were not available during publication which is why you got them – many of them came in just the last few days. I would just note that many of the comments are cloaked in words of support or opposition. Some may be talking about the project. We take it to mean that they have an opinion about the appeal. I'll leave it to you to judge them on their merit and you can read through them. As we're aware, the project itself has not been proposed. It's not headed to the Planning Commission yet so they're really appealing a determination at this point. So with that I'll go through some of the Appellants' points. Maybe a little background would be helpful. The City has been in discussion over the years, last several years, dating back to mid-2000 with Hennepin County about finding a place for joint facility. And the joint facility would both be a recycling facility and also a drop off point for some materials which may be considered household hazardous waste. The City has Southside Transfer site which receives a lot of these types of materials. They have periodic drop sites for very specific hazardous waste, but we know that Public Works – maybe some of you are familiar, will open one of their south side facilities where people can bring in pesticides and other things. So there's been discussions for many years about trying to site this kind of joint facility, and so as would be expected in these kind of proposals, there's a lot of different iterations, ideas about what the facility may entail, the size, things like that. And so there was quite a bit of work done on this for many years and there are documents going back – one of them is in this Appellants' appeal file dating back to 2006, November 17, 2006. And so what that shows is this has been talked about for a long time. So we come into last years, or excuse me, earlier last year 2010 and discussions started to move forward. It looked the project was probably going to find some funding with the County and the City and there was a more intense effort to site the project. And so as things moved forward they settled on a site after looking at a number of sites, it was at 340 27th Avenue NE. And the project is zoned I2, or excuse me, the property is zoned I2. So along those lines there were a lot of documents that were out there to the public. Most of which were produced by Public Works in conjunction at some level with Hennepin County. And

many of these early iterations described probably a more robust facility. There's language in there that describes waste transfer facilities as well as recycling. That is not the project that I reviewed in my determination, and we'll come back to that. In any event the City went through a land sale forum or a land sell process for this property, and in that process there's a document that the Planning staff along with other City staff vetted it. And at that time we made a determination that based on the project as we understood it, how it was intended, again knowing that there's no firm plan in front of us, no firm site plan, that we made a determination that it was allowed as a recycling facility. And so the land sale process went through and it worked its way and I believe at this stage the City has finally closed on the property and actually owns it. The Appellant makes reference to appealing that decision in this letter. That is not an item I would suggest this Board has any bearing on. The land sale has gone through. That is not, in my estimation is not debatable today. It's a done deal. But what the Appellant does have a right to do and has appealed, is our determination that the project, as they understand it, is more properly classified as a waste transfer facility and not a recycling facility. And so the Appellant filed an appeal – let me take a step back. The Appellant let staff know that they had a disagreement with this determination and so we went through the formal exercise of actually producing a document that would then become the basis for their appeal. So as this Board's aware, the Zoning office makes a lot of determinations all the time in the daily course of business and so we don't readily produce these types of documents for every decision we have for, I think, fairly straight forward reasons. It would really make business slow down and virtually unworkable. But the Appellants specifically asked for some kind of determination and so we went about that exercise. And that's reflected in the substantially similar use document that's in your packet that our office produced. We then shared that with the Appellant and that became the basis for their appeal. They could judge against that document. And so then the Appellant followed through and filed the appeal in the proper time. So the Appellant has a few points and he can, of course, speak for himself – or for themselves, but I'll go through and just briefly. The Appellant asserts first that the Zoning office has improperly classified this facility and that really it should be classified as a waste transfer disposal facility, which is only permitted as a Conditional Use in the I3 District. Secondly, they assert that we are not following the plain or ordinary meaning of the Zoning Ordinance. And then they also finally assert that – and I think it's tied into their argument, is based on documents that they've seen previously it's described as a waste transfer facility and they cite the 2006 letter. So what I'd like to do and I imagine answering a lot of questions, but maybe I'd kind of briefly like to go through our response to those points.

Matt Perry: Please.

Steve Poor: The first thing I would suggest is that the current iterations that are being talked about clearly fit a recycling facility. They are not the project described in the previous document. So while I understand how people can see those and rely on those to some degree, they're not current. And they haven't been current since the time of the land sale review. For instance, this facility is intended to be for citizens and residents of Hennepin County and citizens of Minneapolis as a voucher program. There's not going to be any commercial haulers accessing this facility. So that's one point I'd like to make.

Secondly, inherent in receiving solid waste from residents, inherently in that process there is going to be product that is going to end up in the waste stream. When we put out our newspaper not all of it gets recycled. It maybe soiled, wet, they can't process it, it goes into the waste stream. There are certain plastics we receive that are not going to get recycled. We either don't have the means right now or not, but it's a process and there's not a market, but we receive them. (cell phone ringing)

Matt Perry: Excuse me Mr. Poor. I'm sorry for the interruption, I should've done this. Folks, I made a mistake. I should have asked you please turn your cell phones off or put them on vibrate so that they do not disturb the proceedings again. Thank you, I'm sorry for the interruption.

Steve Poor: It's quite alright. So inherent in the – (cell phone ringing). In any event, inherent in collecting solid waste and recycling there is going to be a waste stream. And it's like that now. It's been that way for some time. For instance, you know I tell the stories, I used to diligently recycle my wife's Yoplait yogurt cups, it had a little triangle on it. And for about five years the City had a good market for those. They had a guy who buying them and they recycled them. Currently, they can't recycle them. But they don't send notices to people saying: Hey stop with the Yoplait cups. Because we really want to encourage people to recycle them. We imagine that there will become – in fact there's a test program right now over at the Seward Co-op and I believe there's another co-op that is trying an experiment to take these types of cups back. So the point is, the City has an interest in encouraging recycling and when people look to these little triangles with markers on the bottom indicating what type of resin they are, they're trying to be good thoughtful citizens and recycling. The City wants to embrace and encourage in that. But we recognize that some of it, for whatever reason, is just not going to get recycled and they have to do something with it. And so it goes off, it's sorted and processed, and goes off into a different stream. It's actually a waste stream. So that's one aspect, is that again, the project that was described is not one that is before us in the determination. Secondly, that there is always going to be inherent waste stream in recycling. And all of this will take place in an enclosed building. And the third thing I'd like to address is the plain meaning of the Zoning Ordinance. There is a definition of a *recycling facility* in the Zoning Ordinance and it's in the report. There is not a definition of a *waste transfer facility*. And Merriam Webster has neither either. There is no definition. The City Attorney has advised us that generally speaking, or specifically, when you look at these definitions, that actually you have to look at what is defined in the Code. And so we were basing these determinations largely upon how a recycling facility is described and defined. And we believe that it is the case that this proposal, as we understand it today, meets that test. So I think that it's really a misnomer to talk about the fact that we didn't follow the plain meaning of the Zoning Ordinance language. There's another aspect to this determination that I think is important to recognize, is that because we don't have an absolute project or a final project in front of us that would then go on to the Planning Commission for review. A recycling facility is going take a conditional use permit; it'll go through the Planning Commission process and a site plan. But we don't have that in front of us. So part of the determination that the Zoning Administrator rendered is both prescriptive and proscriptive. It's going to say what that

facility can be and what it cannot be. And at the time they make a formal application, it will be judged against that determination and at that time, if there are things in there that make its way into the final iteration that don't align and are compliant with that determination, then they won't move forward. So I think the way to think of it is if the project, when it comes in in its final iteration, in both form and function, doesn't align with that determination it would not move forward in the I2. Finally, let me say that when we reviewed the record of the numerous conditional use permits that have been issued to private recyclers in the city, virtually every one of them has an MPCA permit for solid waste recycling and many of them have it for transfer. MPCA recognizes that between 80 – 85% of recyclable solid waste is not (sic) recycled. That tells you that really it's an inherent accessory use almost that there's going to be wasting. So the idea whether it's a primary use or not, I think our office suggests that because all of these recycling facilities that have gone through the conditional use permit were never challenged or appealed, have that component that part of the waste stream that was not recyclable, and is recognized even through the MPCA, that there will be a waste stream. And that this project will be held to that same standard. The document that we produce, just to remind you, we have the authority when we see these uses that don't immediately fit into our definitions that we can make an analysis. There's a similar analysis actually under Chapter 537, 537.120, which allows the Zoning Administrator to also determine if there is an accessory use. That's not in the packet, be happy to put it on the overhead. Well that's not going to work very well is it? So what it says is: Allowed or Accessory Uses in Structures. In addition to the accessory uses and structures listed in section 537.100 above, the zoning administrator may allow other accessory uses and structures, provided the zoning administrator determines that the proposed accessory use or structure is substantially similar to an accessory use or structure listed above in the manner provided for in determination of substantially similar uses, or the zoning administrator determines that the proposed accessory use or structure meets the standards as specified in section 537.20. 537.20 talks about Accessory uses and structures shall comply with the following standards and all other applicable regulations of this zoning ordinance. The accessory use or structure shall be incidental to and customarily associated with the principal use or structure. I think what I'm suggesting is that we taken through, I believe, 10 conditional use permits where that condition existed. And so *de facto*, really what we're pointing out is that this waste stream is pretty commonly associated with recycling. And I'll leave these up here for the Appellant to use if they'd like. Finally, one last point I'd like to make is that recycling is evolving. That even when a final plan comes in for the recycling facility there's going to be changes in what we recycle. State law's going to require that shingles be recycled soon. There was a press release from Hennepin County, November, or excuse me, February 22, 2011 kind of touting that now their recycling electronics and other items. These may have been considered hazardous waste at some time, but now they're going to be able to recycle them in some fashion. So it's really an evolving practice, recycling. And what has value and what doesn't, is there a market, is there a mandate from the federal government or the state to recycle it. So I just keep coming back to the fact that the determination is both prescriptive and proscriptive and that many of the concerns that you'll hear today are better heard at the Planning Commission within that conditional use permit and not really relevant to the appeal. And I'm open for questions.

Matt Perry: Thank you for your presentation Mr. Poor. Before we start I want to let the members of the public and the Board know, appeals of the Zoning Administrator are not variances. The Board's job is narrowly defined to determine whether the Zoning Administrator correctly interpreted and administered the provisions of the Zoning Ordinances adopted or as it is today, that are the subject of the appeal. It is not this Board's responsibility to determine whether the Zoning Ordinance is correct or should be changed. We're not a policy making body. Because this is not a variance we are not here to decide whether the Appellant should or should not be able to do something with the property. As Mr. Poor alluded, that's probably more appropriate for the Planning Commission which could be the next step depending upon the outcome of today's proceedings. In this particular case we are not here to decide whether or not there should be a facility allowed at this location. We are here to decide whether a project use, as defined by the findings on page 5, for the members or the public and for my colleagues on the Board. So I'll say that again. On page 5 we are here to decide whether a project use as defined by the findings on page 5 of the staff report are substantially similar to a recycling facility as defined by the City Ordinance. And as I said, depending on today's outcome, there is another body that will review approval of a facility so your comments may better be served being presented at that if that ends up being the next step. If I feel public testimony or Board member questions or comments are straying from this purpose I will interrupt you and ask you to address the decisions before this body. I'm not trying to be rude, but to be respectful to the purpose of the proceedings and of peoples' time. I hope that's clear to everyone. And with that, is the Appellant present? Please state your name and address for the record sir.

James Peters: Good afternoon. My name is James Peters, I'm an attorney. I represent a number of property owners in the area, the Northeast Neighborhood. My address is 460 Franklin Street North, Suite 100, Glenwood, Minnesota 56334.

Matt Perry: Thank you.

James Peters: Thank you for your attention. As I indicated, I represent a significant number of the property owners and residents on the Northeast side there, and I filed the appeal on their behalf. I think we had about 26 individuals. There's also a petition with several hundred signatures, 700 or something of that nature. And so we filed that appeal and we got a permit for this. The City offices gave us the permit to pursue this appeal of the Board of Adjustment- of the Zoning Administrator's decision. And so we have, what we have on the screen there is the January 28th decision of the Zoning Administrator pertaining to this project and proposal. The appeal, I don't know if this is included in your packet, but we – it probably is, we file a Statement of Reasons for the Appeal in connection with the formal form document. You probably have that. I have a letter that I submitted today and I'll get to that in a moment with just two extra pages. So what we're asking basically for a reversal of the Zoning Administrator's decision. I think the place to start is the ordinance itself and I have a copy of it here. It's Chapter 550 and it sets up the Industrial Districts, it talks about the principal uses for the district, it talks about the different categories of uses, and then it goes forward and puts together a chart. And so what we have here – this is page, well it's Chapter 550. These are the uses that are

allowed in a particular area by category. So you have I1, I2 and I3 and then it's indicated whether it's prohibited, permitted or conditional use. And what's important about the recycling facility that the City has got here is that it's – when they're trying to fit it within recycling, as a recycling facility that's an industrial use. That's the heading on this section: Specific Industrial Uses. And it lists recycling facilities. Now what we maintain this project is, if you go further back there's a section in the ordinance in the table there that talks about public services and utilities. So you're governmental functions, the types of land uses that a government provides, whether it's a city, whether it's a county, whether it's another municipality, a village. Those uses that are public services are listed within that section of the Code. This is a separate section from the Industrial Uses which are Private Land Uses. And within the Public Service and Utility section is where we have the waste transfer or disposal facility. That's a public service offered by a public entity, like a city, like a county. So what we maintain is that this project is a public service. It's offered by the City, it's in fact a joint venture project, hopefully, between the County and the City, and it falls within the categories that are listed as public services and utilities. Now there is no recycling facility in the public services section of the ordinance. So you know, if we're going with the ordinance and not trying to rewrite it then we have to go with this copy of the ordinance. So again, the Administrator, Mr. Poor, is correct. You look at the plain language and you do look at the dictionary. That's how you interpret an ordinance. Here, we want to talk about what the project is and what the City currently describes it as. And I've got a couple documents here from the City's current website. Okay, this sheet here is today's City of Minneapolis description of this proposal. And I submit to you that it is most directly a waste transfer facility and I'll read parts of it: The City of Minneapolis manages collection of residential household debris at its South Transfer facility. Hennepin County currently manages Household Hazardous Wastes at locations outside the City. City and County staff have been discussing a partnership and the potential for services that could be provided at a common site. By combining efforts and resources, the City and County will have the ability to cost-effectively provide convenient services to households for all types of solid waste materials. The City of Minneapolis and Hennepin County are proposing the development of a new household hazardous waste drop-off facility in Minneapolis, expanding the County's program for collection of household hazardous waste and problem materials in conjunction with the City's voucher program for collection of residential household debris. The proposed facility will primarily serve the collection and temporary storage of problem materials. Okay, so it's primarily waste transfer facility. And this section of the website – here's an iteration of that website from November 10th of 2010, about five months ago so that hasn't changed. That's what we have described. Now what we got from the County is a map that shows you that the larger circle, the kind of squiggle shaped circle, that's household hazardous waste. The bottom part, the smaller rectangle, that's the voucher program. So if you're looking on a predominant or accessory or substantial use here, very clearly the proposed design concept drawings for this project show that predominantly it's a waste transfer facility. As was referenced by Mr. Poor, the project has been described previously by the City, and most particularly in connection with the acquisition efforts, and both the May and June requests for action describe this as a waste management facility and not a recycling facility. That's why the people are so upset. It's not a recycling facility. So if you look at the May 18th memo, an authorization

request that speaks to solid waste management facility. If you look at the June 22 acquisition request – the same deft description. So I would submit that the description of this project has been consistent throughout and that it is predominantly a waste transfer facility and therefore it's prohibited use in an I2 zone which this property is. Finally, and then I'll wrap up and turn it over to the citizens, maybe save a minute or two at the end if I may, if there's any follow-up. I want to show you what the County thinks of the project. What I have here is an e-mail from Mr. Noonan who's a Senior Administrative Manager for the Real Estate Division of Hennepin County to their County Attorney and staff. And basically, the County is saying here that – he goes through factors, talks about the Zoning Code, talks about I2, I3, basically concludes that this is a household hazardous facility that should be in I3. Your joint venture partner on this project believes that it's an I3 type use. I think that has a lot of weight, because that's not just me saying it, it's not the citizens saying it, it's actually your proposed joint venture partner who is dragging their feet now and kind of holding back to see what happens in this process because the opinion of their Property Manager is this is a waste transfer facility that's I3 and you can't – you shouldn't be doing this. So you know, I'll read his conclusion: By default I look for a more appropriate use and am drawn to a waste transfer and disposal facility. This seems to match up with certain of the functions being performed on the site. So you know, final point, you know I think I've worked for several counties through the Insurance Trust. I probably represent 10 to 15 counties and going to the standard to the hold the City to on this project and the zoning staff. You know I've been in court for, you know, everything from jailed suicide cases to zoning determinations whenever counties get in trouble, I represented the City of Mendota Heights for a while, and I've worked with or against Attorneys Generals. And what I always thought, you know when I'm representing a municipality, whether it's a county, a township or a city, I feel like I have an obligation to – I have a higher obligation than a private citizen because I am part of the government. And what I thought of here on this project is if you had a private property developer coming in with this, if you had a private property owner saying well this really not a hazardous waste facility, you wouldn't give them the time of day. Because you know what it is. You've seen the pictures. You can see what it's going to be. It's a household hazardous waste transfer facility. And so what I say is look, the Zoning Administration here, you have to hold them to the highest standard. They're the professionals who administer your Code. If there's any gray area in there you have to go back through the public hearings to up zone it or down zone it so that it's appropriate. The citizens know that it's wrong to try to shoe horn this thing in to an I2 zone. And it is wrong. That the Code is very clear, the categories are clear and so the right thing to do here is to reverse the Administrator's decision and this thing will go back for, you know, review after the purchase and by the way, we filed this appeal before the purchase went through and we were hoping that the appeal would get heard before the purchase and our thing was delayed and in the meantime they slammed the agreement through. That doesn't sit well with these folks and they know that's what happened from the time line. But the right thing to do is to stop it now before it gets further down the pike in the wrong forum and City invests monies on engineering and consulting and design without an adequate direction as to what's an appropriate and inappropriate use. So thank you for your attention and again I'd like to reserve a minute or two in case there's something that comes up. Thank you. Any questions?

Matt Perry: Mr. Peters one, if there are questions that people have I might allow them to ask those of you at the end. But that's not normal procedure, so if you have something you'd like to share now, please do.

James Peters: No, I'm done.

Matt Perry: Are there any questions of Mr. Peters? Mr. Ditzler then Mr. Manning.

Matt Ditzler: I'll allow Mr. Manning to go first, he might answer mine and I'll reserve the right to ask after.

Matt Perry: Mr. Manning?

Bruce Manning: Thank you for your presentation Mr. Peters and for staying on the issues and for presenting them as you did. I'm, as I sit here I think the question is: is this facility more similar to a recycling facility? In which case it would be permitted with a conditional permit. Or is it more similar to a waste transfer disposal facility? In which case it's an improper use of this property. Is that right?

James Peters: Not quite. I mean legally the standard on, you know, principal use, accessory use, they're – you know substantial, you know, I think you have to look at the predominant purpose. There's case language going both ways, but basically the concept is you kind of zone for the highest use. If you have a significant use that's part of the project that is high, you know, if it's a strip club and it's only open for two hours of the day and the rest of the time it's cards or something, it's still a strip club.

Bruce Manning: Okay, so again, the question is, and I understand that that's the methodology you're proposing to determine the answer, but is the question still is it more substantially similar to a recycling facility or more substantially similar to a solid waste or waste transfer disposal facility? And is that the core question we have to decide here? Now I understand

Matt Perry: I don't think it's Mr. Peter's decision what the core question is.

Bruce Manning: I just want to make sure that I understand what it is he thinks we should be looking at.

Matt Perry: Okay.

James Peters: Well, what I think you should be looking at is basically this, I mean, okay the thing is more than half waste transfer.

Bruce Manning: Okay, but that's a point that says it is more substantially similar to a waste transfer station. I understand that that's what ...

James Peters: That's what it is.

Bruce Manning: Okay. Why do I care if it's more substantially similar to a waste transfer station? Isn't that because if I find that to be the case, then it's not permitted in this zone? Alternately, if I find it to be the case that it is more substantially similar to something else, say recycling facility, then it would be permitted with a conditional use permit and an additional process.

James Peters: Well, you know, again I think you're trying to set the standard as – you know, the courts define what the standard is for zoning and the concept of zoning for the highest use is within that standard. So I don't think you can say that if it's only a church open for two hours a week that it's not a church, because the rest of the time it's used for counseling. I mean, in the concept of zoning there's the concept that you're kind of zoning for the higher use, the more intensive use. So, you know, even if a pure percentage of the amount of materials gadding through the site, if you say well it's 62% recycling quote - and that's again, that's separate and apart from whether the City can have a recycling facility because that's a private industrial use, it's not a public service. Don't forget that part of it. But, I think what's missing in the question and the way I'm arguing with you, and I appreciate your patience with me on that because I am arguing with you on that, is that I think there's this concept of highest use going on in there and you can't do a mathematical count. You have to be careful about what are the significant high uses when you're making a determination.

Bruce Manning: I think I've got it now and I'll defer to my colleagues for questions. It's your phrasing of the issue is if there is a use that is a waste transfer or disposal facility use then that's what this is. It's not a question of substantially similar to one or the other if there's a, to use your example, if it's used as a strip club and hour a day, it's a strip club use. If it's used as a waste transfer facility it's a waste transfer facility.

James Peters: Well, lawyers never think things are quite that black and white and I won't agree with you on that as being quite so black and white. I think what you can use that kind of determination to come up with kind of an arbitrary conclusion. I think you have to look, you know, more as to what is the facility going to be used as? Whether you call it substantial predominant or significant, you know that's where you have multiple definitions of how it's – how you go through that analysis and I think it's more than just a simple mathematical, you know, 51% 49%. That's not the way it works I don't believe. And by the way, even if it did we'd still win.

Bruce Manning: I appreciate it. Thank you Mr. Chair, Mr. Peters.

Matt Perry: Thank you Mr. Manning. Before we continue let's be clear about something. There is no project. There is no project.

Souliyah Keoubounpheng: Mr. Chair, I would like to disclose that I was contacted by one of the steering committee seeking advice and I gave no advice. So I would just like

to disclose that. I thought maybe I would wait until the discussion began, but questioning has already started.

Matt Perry: What was the – can you quickly describe the nature of the conversation?

Souliyah Keoubounpheng: It was just an e-mail seeking advice on the matter.

Matt Perry: And you responded

Souliyah Keoubounpheng: I responded and said I cannot give advice specifically on this topic and encouraged them to contact their elected councilmember and neighborhood.

Matt Perry: Thank you Mr. Keoubounpheng. I'm going to rule that that is not a conflict of interest and you can proceed as part of the discussion. I want to make sure folk, there is no project. Our purpose here today is to decide whether A project use, not THE project use, because there is no project, as defined by the findings on page 5 of the staff report are substantially similar to a recycling facility as defined in the ordinance. Mr. Ditzler, then Mr. Nutt and then Mr. Sandberg.

Matt Ditzler: Thank you Chair Member Perry. Mr. Peters, thank you for your presentation. To speak directly to Board Member Perry's comments and I will gladly take correction from Mr. Poor or the Chair if I'm wrong on this, but the point that we struggle with on Board in this case is that, for me, in this presentation is that the documents that deal with whether it's called a waste transfer facility or a waste disposal facility, I saw some from Hennepin County, I saw some from the Utility Division of the City and things like that, and from my understanding, when it gets to this point Mr. Poor has to classify it as something. Now waste transfer and disposal is not defined in the Code. Anywhere. I know it's on that table, but when we get to this point he has to stick it into a classification that has a definition and when the specific use is not defined, he needs to go and move it towards a use that he thinks it is the most similar to. We see several of these as technology in our lives progress and new uses come up, but it seems to be that he has determined this to be a recycling facility that is most like that. My question to you is that do you have any comment on is it more like another currently defined use in the Code as by Chapter 521.6 or 160 definitions?

James Peters: Yes, and I think you know, again going back to what your joint venture partner said, Hennepin County, they said this is a waste transfer and disposal facility.

Matt Ditzler: Alright, but that's not currently defined in the Minneapolis Zoning Code and obviously I don't think Hennepin County would know that, nor would I blame them that.

James Peters: Well, let me go to that because that's a legal question so I can wade in on that with both fists out. You know just because it's got a label but doesn't have a secondary description or definition, that doesn't mean that you disregard the label. You

just use plain language of the label. You know, you don't need a separate definition. What the court would say is you use the plain language: what's a waste transfer disposal facility? Go to Webster's, see what it is, that's a legitimate category with the Zoning Code. And you go to the plain ordinary language and that's what it is. You don't have to have – it's nice to have more detailed definition, but it's not a requirement of zoning law. And furthermore, if it was a requirement, whose fault is that? It's the City's. You didn't write it up more

Matt Ditzler: I appreciate your response.

James Peters: You don't hold that against you.

Matt Ditzler: I think I'll reserve my question for a follow-up for Mr. Poor later on after public testimony if that's okay with the Chair?

Matt Perry: Sure.

Matt Ditzler: Thank you.

Matt Perry: Mr. Sandberg?

Dick Sandberg: Thanks Mr. Chair. I also had a question for Mr. Poor and I can reserve that until later or I can just do it now.

Matt Perry: Are there any other questions for Mr. Peters? Because he's standing up here.

James Peters: You'd get an easier answer from Mr. Poor depending on what you want.

Matt Perry: Mr. Cahill. Oh, I'm sorry, Mr. Nutt and then Mr. Cahill.

James Nutt: Thank you Chairman Perry. One of the things I'm a little bit hung up on here is part of the recycle process is a waste process, Mr. Poor said 80 – 85%, so that's where I have a problem with the strip club analogy because you say if you're a strip club for two hours and you play cards the rest of time, these are related? Stripping is not a by-product of card playing. I guess not all card playing. But for this purpose it's not, so that's where I'm hung up on the definition. Because there's a substantial amount of waste as part of the process of recycling now and we can assume in the future that we'll get less and less as we can recycle more and more things. But that's my hang-up with the two definitions so could you speak to your interpretation of that?

James Peters: Yeah, yes thank you it's a good question and I think the answer is basically what the City has currently out there about this project on your website, and the map that I showed you. But what your website says, and here I'll put it up again, it's the third paragraph from the top: The proposed facility will primarily serve the collection and temporary storage of problem materials....The materials are then transported to other

facilities around the County. There's your primary purpose right there. That's the City's language, that's not mine. Hey, that's why your county – that's why the County's saying this is a waste transfer facility. That's what it is.

James Nutt: There's no doubt that the transfer would need to be moved. The other piece about the map that we've shown – I know there's no project, but the map is a diagram – I'm an architect, I deal with these things. The map is a diagram and shouldn't be taken to scale, in my opinion.

Matt Perry: Alright, thank you. Thank you Mr. Nutt. Mr. Cahill.

Sean Cahill: Thank you Mr. Chair, Mr. Peters. If you wouldn't mind, would you mind looking at 521.60 which I believe Mr. Poor referenced in his determination? Do you mind taking a look at that real quick for me?

James Peters: I have it right here. Mr. Poor did not reference it. (Unintelligible – not speaking into microphone) definition of recycling facility?

Sean Cahill: Yes, please.

James Peters: Okay, I've got it, thank you.

Sean Cahill: Now understanding that a lot of your concern is rising out of the storage of household hazardous materials, correct? And temporary storage of that?

James Peters: No.

(Unintelligible – several people talking)

James Peters: Our concern is that the primary purpose of this facility is collections, storage and transfer.

Sean Cahill: Okay, so given that I'm looking at the recycling facility definition it says: A use performed in an enclosed building where scrap or salvage materials are shredded, milled, crushed, bought, sold, exchanged, stored, baled, packed, disassembled or handled, including but not limited to scrap iron and other metals, paper, rags, rubber tires, bottles, plastics and aluminum cans. It seems to me that storage and temporary storage fits directly under this definition. How would you – would you disagree with that?

James Peters: Well, yes ...

(Unintelligible – several people talking)

James Peters:...number one, the definition of a recycling facility in your Ordinance is a private sector use, not a public service. So if you go to Chapter 550 and you look at recycling facility, that's a specific industrial use.

Sean Cahill: So you're basing it strictly on the classification on the table, correct?

James Peters: Correct.

Sean Cahill: Okay, thank you.

James Peters: This portion – and if you go back to Public Services and Utilities, and because this project would be owned, operated, managed by the City and perhaps the County, this is where you look for the definition. And if there's nothing in here – if you look through the R's there's no recycling. What there is is waste transfer and disposal. It's not going to be milling and grinding going on here, but there's going to be a storage and transfer. What the City currently describes it as is primarily collection and temporary storage and then transportation.

Sean Cahill: I understand.

James Peters: So they're not talking about if you look at your section recycling – you're talking about shredding, milling, crushing, grinding, selling, exchanging

Sean Cahill: I understand, but ... (unintelligible – several people talking) but I do see that baled, stored and exchanged is on there. And that's pretty synonymous, at least from my point of view. My question is you base this on classification within the table. Can you point me to any part in the ordinance which gives a value to that classification saying that this is how we've broken them up, there's value to calling it public service versus a specific industrial use. It may just be – I, at least from what I can tell, there's no value in that classification other than it being arbitrary and convenience of specific, you know, just looking around the statute. I don't see any necessary substantive point to that. Can you point me somewhere in the ordinance where that definition would be?

James Peters: Well, again, what we have here is the ordinance in an effort – the way people set up ordinances, and I write them. I've written at least 30 cities and townships and when you have land uses, you put those land uses within the type of service or use within categories to which they apply. And what the City did here with your ordinance is you listed Public Services and Utilities. Things that the City or the County would provide: bus turnarounds, animal shelters, communication exchanges, fire stations, garages for public facilities, heating or cooling facilities, transit stations, police stations, post offices, retention ponds, streets, waste transfers disposal facilities.

Sean Cahill: So maybe ...

James Peters: It is not a recycling center and ...

Sean Cahill: I understand, but as an extension let's take what you're saying – does that say that the government cannot take any kind of action other than those lined up under that table?

James Peters: Well, that's generally the rule in Zoning. I mean, if you don't have a use that's listed that's the rule. It just is. If you have a zoning code that sets up what's permitted and what's conditional and what's not, you follow the list and if it's not listed you can't put it in there.

Sean Cahill: Okay, just checking. Thank you.

Matt Perry: Thank you Mr. Cahill. Are there any other questions for Mr. Peters? There are not.

James Peters: Thank you for your attention.

Matt Perry: You're welcome. Alright. I suspect there are a number of people here to speak in support of the Appellant. Can I see a raise of hands just so I can sort of manage this properly? Let's see, one, two, three ... keep your hands up please. Okay, so as to not have us sitting here until late evening, I think what I'm going to do is have everybody have an opportunity to speak for two minutes. I'm going to ask the Vice-Chair, Mr. Manning to keep time and let me know when your time is up. And when your time is up I will ask you to stop. And as I said, I know a little bit about this issue and the public probably a little bit more. I know this is a very important issue to the community and whether this facility is actually place there or not. But that's not what we're doing here today. We're talking about a very narrow legal definition of whether the Zoning Code Administrator has properly interpreted the Code and that, as I said, that the findings on page 5 are substantially similar to a definition that's already in the Ordinance. That's pretty narrow, so I'd like you speak to that and if you can't speak to that, that's okay. You don't need to speak. As I said, depending on the outcome of this hearing today, there is likely to be another hearing that would be a more appropriate place for you to raise those types of concerns. Lastly, I would ask that if someone has already made the point that you have, there's no reason to repeat it. Just say I agree with that previous person and we'll get that in the public record. So with that, who's first? If you could state your name and address for the record please?

Hanza Farah: Okay, thank you for allowing me to speak.

Matt Perry: Excuse me ma'am, could you state your name and address?

Hanza Farah: My name is Hanza Farah and live on 2625 University Avenue 10 feet from the proposed facility.

Matt Perry: Okay.

Hanza Farah: So, I guess as concerned citizen of the Northeast Minneapolis community main objective is to preserve the neighborhood, promote sustainability, and a better environment. I am here today with many of my neighbors to oppose this proposed

location for the transfer station. And here are some of the reasons we have. The site is zoned an I2 Industrial ...

Matt Perry: Excuse me ma'am, I know you're probably in opposition to that but we're not – this is not the body that's going to approve or not approve a project there, so do you have something to speak to why this is seen as a recycling facility versus a waste disposal facility?

Hanza Farah: Well, I see a contradiction with what the Comprehensive Plan says. The Comprehensive Plan says that industrial use are encouraged to be transitioned down in this location. Not to be up-zoned to an industrial or a higher industrial use. So that's my point.

Matt Perry: Yes, and as I said, and I'm sorry folks. I know you may have come here to speak in opposition to this, but this is not really the Board in which you would speak in opposition to the – to a waste disposal or recycling facility being at that location. The question here today is whether the Zoning Administrator properly categorized a use as a recycling facility. So do you have comment on that?

Hanza Farah: Well, I just have one single thing that I can bring to you guys...

Matt Perry: Sure.

Hanza Farah: ...to the Board is that the definition of the transfer station is clearly defined in Hennepin County ...

Matt Perry: Okay.

Hanza Farah: ...and in the State of Minnesota under Minnesota Rules, the State Administrative Rules, it's clearly defined a transfer station that it's primarily to transfer. To receive and transfer the wastes, not – recycling, many, many transfer stations – I am an architect, by the way. So some of those transfer stations can do it – can do both. Both functions. Be a transfer station and a recycling center. A recycling center is very precise – you only have to receive recyclables to manufacture or do some sort of transformation of the recycling. (2 minute timer) But, so that's the point I guess I want to bring up.

Matt Perry: Thank you for coming down and giving your testimony. Somebody else like to speak in favor of the Appellant's position?

Craig Kruse: Yeah, my name's Craig Kruse I live at 2609 University Avenue NE.

Matt Perry: Thank you sir.

Craig Kruse: Good afternoon, I own and have lived at 2609 University Avenue NE for 35 years. In early June this year I was informed by the Star Tribune that the City...(end of tape) ... facility in my back yard, literally. And if this happens I plan on moving out

of the City of Minneapolis. I was not the only person who's concerned about this proposal. About 740 people, citizens have signed the following petition, which I would like to read. I oppose the placement of a waste facility at 340 ...

Matt Perry: Excuse me sir. Again, I'm sorry for repeating myself to the public, I understand that there is a great number of people who are opposed to this project, but this isn't the body to state whether you're opposed or not to the project. And so I don't want to take testimony that is not going to influence. It would be disingenuous for this body to take testimony from you or anybody else for which it will have no influence over what we're deciding. And to talk about whether you oppose it or not will have no influence. Because that's not the decision before this body. The decision before this body is whether the Zoning Administrator has properly categorized the set of uses as similar – substantially similar to a recycling facility. That's what the body – so if we take testimony from you on something else, it just is not very fair to you or anybody else.

Craig Kruse: Well, I just wanted to bring to you the concerns of the community, the neighborhood organizations and many of the businesses Northeast.

Matt Perry: And depending upon the outcome of this – the decisions of this body, there will be another body, the Planning Commission, in which you can properly present those concerns.

Craig Kruse: Okay.

Matt Perry: Thank you. Is there anyone else here to speak? Your name and address?

Steve Wright: Steve Wright, 1007 19th Avenue NE. I believe that Mr. Poor has incorrectly classified this facility, please vote against it.

Matt Perry: Thank you sir. I think I'll call on people instead of just having them come up. So yes ma'am. Because I see a number of people jumping up and then not knowing what to do. I will direct traffic.

Margie Siegel: I distributed these before through the clerk, so I'm just identifying them to you now.

Matt Perry: And your name and address?

Margie Siegel: My name is Margie Siegel. I live at 2514 NE 4th Street with my husband two school aged kids...

Matt Perry: Thank you ma'am.

Margie Siegel: About 200 yards from the property line of 340 27th Avenue NE. Thank you for your time today. My comments are to the point of the proposed use for the facility being a straight up waste transfer station and not a recycling facility. And this is

abundantly clear to me from all the City's very recent communications with me and my community. I've been in regular communication with Susan Young, who's the City's self-named Trash Lady, and from her and other City staff I've learned a lot. For example, the City puts the projected number of annual trips to the site at 40,000. That's 40,000 residents and landlords bringing their estimated 100,000 tons of trash items. The Letter of Determination, Statement of Clarification I believe, unfairly cherry picks a very few items that will be recycled but overlooks the vast array of garbage that will have to be hauled out of the site for permanent disposal. However, the City of Minneapolis has left a long trail of recent documentation that clearly states this. Including the item, I think it was the same one that Jim Peters mentioned from May 28th on that first page there where the City voted to acquire the property for a City-County solid waste management facility. And then I've had dozens of e-mail exchanges, my husband and I, with Susan Young. And from there I just want to read a couple of excerpts. On June 9th, 2010, so we're not looking back more than 10 months here, what's being considered as a household waste drop off, similar to the Hennepin County Bloomington facility, combined with the City of Minneapolis voucher program that's now at the South Transfer Station, Minneapolis folks could drop off their garage junk, tires, concrete chunks, et cetera, that can't go in their garbage carts. Then later that day she says, the facility that we hope to build will, just like South Transfer Station, be permitted as a transfer station. On the 23rd of July she writes, since the very beginning combining a County facility with a new South Transfer Station has been our goal. On September 16th she wrote, the proposed site will replace the South Transfer Station. So in none of these e-mails did we hear the word recycling. Recycling didn't come up until we brought the issue to the City about this zoning issue that we're here to talk about today. On, just finally, on October 15th we – she and I were discussing by e-mail the new proposed name for the site. Very briefly, it was called – for maybe a week or two, Minneapolis Hennepin Environmental Center. And she says this, if you want to help name a new facility I will sponsor that. I will agree not to call it an environmental facility if you will agree not to call it a dump. The voucher part of this facility cannot, by state law, hold waste overnight. The voucher part will be a transfer station. And she is really leading the project. Certainly, she's leading the City's communication to residents about what the project is. And then I had the same excerpt on your sheets, on the second page now from the City's current web page. Again, just trying to get at the fact that we didn't – we weren't drawing in our appeal on, solely on old documents. It's – on old conversations and old iterations of the plan. We've got lots of current information too that says waste transfer. Thank you very much.

Matt Perry: Alright. Thank you. And you were just a little bit over time so thank you for staying within your time. This - and then we'll work backwards. And your name and address please?

Anne Marie Cosgrove: My name is Anne Marie Cosgrove. I live at 2527 University Avenue NE. I was going to get up here and talk about traffic, but you stopped that. And now you're directing traffic. That's beautiful. I got a thing in the mail from the Minneapolis Recycling – when you get it in the mail it tells you how to recycle and stuff – there was a little thing in there that's talked about the waste transfer station and what

they said is we have enhanced the waste transfer station for your convenience and whatever. So they're still talking about it this spring as a waste transfer station. It is a waste transfer station. South Minneapolis has always been a waste transfer station and they plan on bringing it to Northeast Minneapolis behind our homes. Thank you.

Matt Perry: Alright. Thank you for your comments. Gentleman in the back in the red shirt. This shows my color abilities – maroon.

Mike Weston: Hi there, my name is Mike Weston. I live at 2534 4th Street NE.

Matt Perry: Thank you sir.

Mike Weston: 247 feet from the fence to my front door to this solid waste facility. And this is a picture of the South Transfer Station and says there, solid waste and recycling, but primarily solid waste. I mean, that's the first thing on there. And I think that kind of speaks to the whole thing. It's a solid waste transfer station. And if they're going to shutter that place and bring it to our neighborhood, then it's pretty clear to me that it's not a recycling center. I don't know anybody that's ever brought recycling to the South Transfer Station, but I know lots of people – I used to live in South Minneapolis, that brought, you know, construction debris and that sort of thing there. That's all.

Matt Perry: Thank you. Thanks for coming down. Yes sir, and then I'll go back up to the front, then I'll get you in the back sir.

Matt Mayotte: Hi my name's Matt Mayotte. I live at 527 19th Avenue NE.

Matt Perry: Yes sir.

Matt Mayotte: So I guess I just wanted to call out one thing in the legal definition. It says where scrap or salvage materials, it clearly calls that out right away, yet Mr. Poor mentioned that 80 to 85 percent of the materials are not recyclable? So it sounds to me like it's – is that right? I mean, it sounds to me like it's

Steve Poor: It's backwards.

Matt Mayotte: It's backwards? Okay, but I'm just wondering what, you know, if the definition is changing, so you know, what can we expect in the future? I mean, if Yoplait yogurt containers aren't recyclable what's, I guess you know, what's going to be allowed there? And would that change? I mean, especially if there's no plan right now, you say the plan is yet to be determined, well what if they, you know, after you approve it what's to stop him from changing the plan in the future?

Matt Perry: Just to be clear, this Board is not approving a project.

Matt Mayotte: I understand that.

Matt Perry: So and I'll take your question as rhetorical because we wouldn't be in a position to answer that question either, that you just asked about the definition. The definition is what the definition is for recycling center.

Matt Mayotte: Okay, thank you.

Matt Perry: Thanks. Here and then the gentleman in the back. And I want to thank everybody for keeping within the time limit, it's very much appreciated.

Bruce Shoemaker: Hi, I'm Bruce Shoemaker, 2643 6th Street NE, which is right across the railroad tracks from the proposed facility.

Matt Perry: Thank you.

Bruce Shoemaker: I submitted some written comments so I won't bother to repeat all those. Some of it relates to zoning, some might not.

Matt Perry: Sir, could just identify the document that we – that you submitted to us?

Bruce Shoemaker: Statement to CBA. I was told it would be provided to everybody.

Matt Perry: I just want to make sure we have it. Does everybody have that?

Bruce Shoemaker: I'll just make a couple points from that. One, I think that when we as property owners invest in a property in Minneapolis and we know that we have a certain – that we're adjacent to a certain zoned area, that City officials and even your Board have a responsibility to ensure that we've, you know we've invest, you can – we have a lot of choices where we can live and we invest in certain neighborhoods on certain understandings that we're adjacent to certain zoning. Now I don't – I didn't move out to be by a country club, I like being in a warehouse, railroad district, but light or medium zoning is different from heavy I3 zoning. You know, I didn't choose to live by a waste transfer station. That's very different from the type of use that was at this facility previously. And ...

Matt Perry: Mr. Shoemaker in your document do you have anything that specifically addresses the decision before this Board?

Bruce Shoemaker: Yes, in the – on the second page, the issue of rebranding of the facility. We did a – I was at neighborhood meetings and this was described previously as a waste transfer facility. It was only after people started questioning it that the City went through a rebranding of this proposal and started calling it a recycling center. And I think it's a real manipulation of the Zoning Code. It seems like it's be subject to a lot of political pressure because this is hot potato. It's the facility nobody wants and they're trying to force it in somewhere and our low income, diverse neighborhood is the one that always seems to get, you know, traditionally, historically has been – had a huge legacy of pollution and toxics already. And we're getting dumped on.

Matt Perry: Okay.

Bruce Shoemaker: And I'd (2 minute timer) just like you take a hard look at it.

Matt Perry: Thanks for your comments.

Bruce Shoemaker: Thank you.

Matt Perry: Thanks for coming down. Anybody else on this side before we move to the other side? Yes sir, and then come on up. No, the gentleman's been asking to come up for some time.

Unidentified person: You want us wait on deck or something?

Matt Perry: That's a great idea. Queue up.

Mark Lynch: My name is Mark Lynch and given your admonitions I will try to stick on the point.

Matt Perry: Super.

Mark Lynch: It's easy to get sideways so ...

Matt Perry: Could you give us your address as well sir?

Mark Lynch: Oh sure. It's 2408 4th Street NE. I moved to the neighborhood shortly - or about a year and a half ago, although did grow up in Minneapolis and always found Northeast a charming place to be and was happy to move back. I attended a neighborhood meeting in which, I'm just repeating, but it was referred to this site and what will go in there is a waste transfer station. What I've heard today and what I've heard many times is I think everyone is struggling to get well what is it? But what it's been defined as is a waste transfer station. Give you just another example how the City or some people with the City, just sort of play loose with the language depending on what fits the moment. When we ask questions about the Bloomington site, which I visited and the other gentleman showed a picture of, we were told it's an industrial area. I don't remember who, but someone asked how far is it from residential? We were told a quarter mile in an industrial site, which it is. Well, I went out and didn't walk it, but drove my car. If you go east from the Bloomington site, it's a mile before you reach a residential property. If you west, it's a half a mile. And I won't bother to draw it out, but if you go where the site they're proposing, it's 12 feet. Give or take. So it seems like all through this I've tried to understand. What is this facility? It's a waste transfer station is what we were first told. It's a waste transfer station now and I hope you would consider that maybe our forefathers or forewomen, were thinking when they made it an I2 instead of an I3, because it's only 12 feet from residential property. (2 minute timer) Thank you very much.

Matt Perry: Thank you.

Erin Belfry: Hello, my name is Erin Belfry, 2223 4th Street NE.

Matt Perry: Thank you.

Erin Belfry: And we're here about zoning and everybody keeps saying, you know, this was waste transfer station and now it's rebranded as a recycling center. Just once, you know, once there was some neighborhood content. And then the City also went ahead and bought a recycling center area on Broadway Avenue, kind of toward Stinson, believe. And that's, I believe, where they plan on doing this baling, packing, disassembling that you were in question of. That's kind of – that's what they're going to be doing at that facility and here in our neighborhood they want to drive and drop off loads of stuff which is definitely an I3, you know, it's defined as I3. That's what we're all saying. I just hope you can look at that and realize that we live down the street. We didn't ask for this and I hope that the Code gets upheld.

Matt Perry: Alright. Thank you for coming down and sharing your comments. Yes sir.

Greg Mizer: Hi, my name is Greg Mizer. I live at 3349 5th Avenue South. So it's South Minneapolis. I worked in North Minneapolis, oh, I'm sorry Northeast for about 10 years, I lived there for a couple of years and in that time I visited the facility in South Minneapolis, I visited the facility in Brooklyn Park, I visited the facility in Bloomington, and I've used them all. I've never brought a single piece of recycling to the South Transfer Station. I certainly hope that none of the solid waste laden materials from a flooded basement that brought there ever end up recycled and back in my house. This has obviously been misclassified as I2 and I really suggest that you rethink this. Thank you for your time.

Matt Perry: Thanks. Alright, anybody else on this side? Then we'll get over to this side.

Marie Zellor: Mr. Chairman, members of the Board my name is Marie Zellor. I live at 2530 4th Street NE.

Matt Perry: I think you gave us something to read.

Marie Zellor: I did and I am going to try to just kiss that up and just hit some of the, since we're really zeroing in on some of the definition pieces.

Matt Perry: This is what that's all about.

Marie Zellor: Yes, so if you're having trouble falling asleep later tonight you can read the rest of it. But we do – I do believe the definition is important. It's a little concerning to me that we talk about that we can't find a definition for transfer station. It is actually

not the City's jurisdiction to define recycling or transfer station. That is defined in state law. And it's very clear in state law that a recycling center cannot take material that is intended for disposal. That is one thing.

Matt Perry: Okay.

Marie Zeller: And then there is another section of the state code under 7001 that talks about waste transfer facilities and how they are to be permitted. And it goes through just what is going to be the cubic yardage of waste through how long that waste is going stay there, other accessory uses at the site. And it's very clear from looking at that that this facility will have to be permitted. Either permit by rule or by an individual application as a waste transfer station under state law. It is the state that defines waste facilities in Minnesota and pretty much everywhere else. And that is where the definitions should be linked back to. If we do have to take this to a higher level that is, you know, the courts will look at that definition because the State sets those definitions, not the City. Thank you very much.

Matt Perry: Thanks for your time. Anybody else over here on my right hand side? I see no one. How about on my left hand side? The queuing up idea was brilliant. Who came up with that? If you want to do that, please do.

Wendy Menken: Wendy Menken, I actually live at 1058 14th Avenue SE. Couple quick thoughts. I am struggling with this substantially similar use when basically what it's coming down to is if we only look at the definitions in there, I'm going to find the one that's closest to what I think it's going to be, rather than looking at that waste transfer station label because there's no definition in it. And I think I just want to, you know, reiterate I agree with the previous speaker. Then we need to look to the State. My second piece and a part of the reason I'm here, is you know what, there was a comment about the earlier iterations of the project and the project has significantly changed; i.e., morphed from a waste station project to a recycling center. Basically saying that now it's a recycling center with some marginal waste off to the side rather than a waste transfer station where we try and reclaim some recycling out of the waste transfer business so to speak. I was around in 2006 with the discussions that were going on at that time for the Broadway location and the previous potential Malcolm Avenue location in Southeast. I've also been in these discussions here. I don't see a significant change in the project from those discussions. It is the voucher program for South, you know, for the City of Minneapolis where people clean out their garages. It's residential construction debris that all has to be processed and moved elsewhere, transferred through. So and that has not changed. There was also put on the table, interestingly enough, not in the 2006 conversation, it actually came to light in the recent conversation that it could be used as a temporary route relief location if HERC or the burner goes down. We've heard mixed reviews back on that with the City pulling back saying oh no, it will never be used for that, nothing in writing. But it is, you know, it is the voucher program. The majority of the materials are not recyclable or recycled. They are packaged and either sent to HERC or landfilled. And I just - the project has not changed (2 minute timer) significantly from 2006. Thank you.

Matt Perry: Thanks for your time, thanks for the comments. Who's next?

Mary Jamin Maguire: Thank you Chairman and members of the Board. My name is Mary Jamin Maguire, I live at 2641 Marshall St NE ...

Matt Perry: Thank you.

Mary Jamin Maguire: ...and I think it's disingenuous to talk about this facility as a recycling center. We have curbside pickup for our recyclables and we are not expected to bring them to a separate center. I often take debris to the Southside Waste Transfer Station. I've never seen anyone bring recyclables there and I have never brought any. What I do bring there and what I see other people bring there is construction debris, concrete, sheet rock and insulation, things like that. And I think, as other people have said, that this is just playing with words to get something put in there that is actually a waste transfer station. Thank you.

Matt Perry: Alright, thank you for your comments. Is there anybody else that would like to speak? Yes ma'am, please. Again, your name and address for the record.

Geri Posner: My name is Geri Posner and I live at 2323 6th Street NE and I'm basically a lifelong resident in that area. And my question, I'd just like to reiterate what she said. How do people plan to use the voucher program? They don't use it for recycling. That's the only thing. Thank you.

Matt Perry: Okay, thanks. Thank you. Is anybody else to speak favor or in agreement with the Appellant's position? I see no one. Is anyone here to speak against the Appellant? I don't think so. I going to save you that one, I think you're in the other side of the fence. I see no one. We're going to close the public hearing. Yes sir?

Bruce Manning: Mr. Chair, some people have reserved questions for Mr. Poor, I don't know if you want to take those now or ...

Matt Perry: Well, I was just going to say that I expect that there will be, given some of the comments that the public has made, I expect that there are a series of questions for staff that maybe we would want to ask and get clarification, so why don't we address those first? Thanks for bringing that up Mr. Manning. Mr. Ditzler, Mr. Koch and then Mr. Sandberg.

Matt Ditzler: I do have a question for Mr. Poor. Actually I have two.

Matt Perry: Please.

Matt Ditzler: Mr. Poor, forgive me if I have forgotten in my tenure here that the answer to the question that I am going to ask. Mr. Peters spoke about this – the table in the Industrial Use category and the Public Service Utility category and in hearing this item it

keeps – it reminds me of the birth center - the one that we had a while back. And I thought that when this comes before you that you do have to classify it as something that is defined by that subsection 160 and from what the testimony that I heard Mr. Peters, it appeared that that may not necessarily be the case. So my first question is, can you speak to that first?

Steve Poor: Sure. Board Member Ditzler, when I heard the Appellant's point I think it actually presupposes that it's a waste transfer facility and that's why he wants to talk about it being an I3. I think that's a self-serving argument. But let's set that aside. First off, the fact is that the public – it's a misnomer whether it's, he's presuming actually that recycling is private. It doesn't say whether it's public or private. It does talk about public facilities. But here's a good example that one of my colleagues pointed out. Everybody's familiar with the current doggy daycares? Doggy daycares are classified for the purposes of allowing them in the Zoning Code as an animal control shelter.

Matt Ditzler: Right.

Steve Poor: They're not animal control shelters run by the City. They show up in that table. The table is a guide, I think that Board Member Cahill was I think closer to how we look at it. It's a guide to help people find what a use is. It is not mutually inclusive or exclusive of either title under that table. It's just not.

Matt Ditzler: I guess my question is, since waste transfer facility is not defined in the Code, would you even have the ability to classify it as that, if we had a project even before us, which we don't?

Steve Poor: Yeah, let me speak to the classification pieces. I think there's a little

Matt Perry: May I interrupt you Mr. Poor?

Steve Poor: Sure.

Matt Perry: Because I – Mr. Ditzler I think is trying to get at this point. If there's something that is not defined in the Code, what do you do?

Matt Ditzler: Thank you.

Steve Poor: Well, first off, if something is not – if there's a definition, definitions give you a clear understanding of what the City intended it to be. So we looked at the definition of a recycling center, which clearly includes activities that we've described here: handling, baling; and it's all enclosed building and those are types of processes. And storing – they are stored. And we can talk about MPCA later, and some of that piece. So if there's a definition that gives us clear guidance. When you don't have a definition then you look for other guide posts. And so you've probably heard me talk before how sometimes we (unintelligible) look at how something is licensed, and I know how licensing regiment can be somewhat indicative of what's happening and how we

might look at it. We can look at where we do talk about waste transfer facilities, as in Chapter 536, which is the development standards. And there are some development standards that sound like they're definitions. Not in this case with a waste transfer facility. But when we look at what defines how do we describe what a fast food restaurant versus a sit down restaurant? And we have enumerated points that if you have these certain elements then you essentially are a fast food restaurant, and we've had that. So we would look to the other portions of the Code that would help discern what it is. And so when we looked at, for instance here, when we look at Chapter 536 under Development Standard for waste transfer, it really talks about protections that would be around those types of facilities, but really doesn't add any insight into how they're defined. So that's one way that we do it and we struggle with that. We also very seldom have black and white situations as we've talked about here today and on other occasions. And so what we found out again, is that almost without exception, and I don't know what that exception is, all recycling facilities produce a waste stream. By definition. Whether it's – it may not be intended to take in waste but there is a byproduct of waste that is generated. That is why the MPCA recognizes that recyclers are going to have a waste stream and their standards are generally 80% - or 80% of it has to be recycled. There's a 20% piece where they know it's not going to be recycled and they're often required to get the necessary MPCA permits to handle that. But those rules under MPCA don't actually define the use for the purposes of the Zoning Code. That is not their intended purpose and that's not what we look to necessarily in this case.

Matt Ditzler: Alright, the same question I had for you is – you alluded to it before in your testimony about the proscriptiveness of your decision. If your decision is upheld that the land use for this situation is a recycling facility, that going forward, what is conducted on that property needs to fit that definition, and if there are activities that would be attempted to or be proposed to be on that site that would be out of that, it would be prohibited without special consideration or permit or licensing or whatever. Is that correct?

Steve Poor: Yeah, that's essentially correct. I mean I can speak to some of these examples that we've talked about and you know, I want to be respectful to the people who are opposed to this. I'm very sympathetic to them relying on the information and the communications that was brought to them. And some of that was outdated, some of it was what – different entities who are not burdened with making the determination, wanted. But they were not burdened with actually deciding whether it met the Code or not. So they may have been talking about, geez, it'd be nice to have all this, and boy, it'd be nice to do this, and geez, let's get the County and to put some – let's see what we can do. But when the question comes about whether they can do it or not, specifically with the HERC overflow, they were told that no uncertain terms by our office that that is not allowed. It was not a secret how that disappeared. So I'm trying to illustrate that our determination is in fact, prescriptive and proscriptive and some of these iterations were, frankly, very **grand** desires by well intentioned agencies and bureaucracies and elements of government trying to address this problem – the waste stream in recycling. But, as it moved forward and they started talking to the people who are burdened with making

those determinations: our office, things fell off with that plan. That will continue to be the case.

Matt Ditzler: Okay. Thank you.

Steve Poor: One more point. Everybody here, and I respect their opinions, is struggling with the fact that we're hearing about a plan, it's in various forms of iteration, we know it's coming. We have the same challenges. We had to look at what we're being told as they understand it at the time it came to our office and we looked at it, we made a call, we said some things are absolutely not permissible under a recycling facility. Other elements you can do.

Matt Perry: Okay, thanks.

Matt Ditzler: Thank you.

Matt Perry: And if we could, Mr. Koch if you could keep again the questions – just like I asked the public, I'm asking the Board to do the same thing. To keep your questions confined to the decision before us. Not that you wouldn't – just a reminder. Thank you.

Chris Koch: Mr. Poor, Ms. Zeller cited some state law that I'm unfamiliar with regarding the definitions around waste transfer recycling facilities. Did you – are you familiar with those definitions and did they weigh on your decision as you tried to categorize this?

Steve Poor: Well, I would not pretend to be as familiar with them as people who deal with those type of permitting regimens daily. What I would say is this: we did look at that and how that fit into the decision. And so that's why I'm reminding your or keep saying this, that of almost a dozen recycling facilities that the Planning Commission has approved, almost without exception, I don't know one that doesn't have, and it's literally called the DMCAMPCA a solid waste recycling. It comes in the door as solid waste, but it's going to be recycled. That's their name for it. And they all have the permit because they know, if you're going to handle this stuff, and we do get into how much of it in volume and all that, is that if you're handling it, even if we know you're intending to be a recycler, you're a commercial recycler, but you're going to get a waste stream and we need to know how you're handling it. And so the permitting process is about how you're handling these things. It is not – the permit is not determinate of the use, the use helps inform the licensing what's required and the other way too. So it's not – the licensing isn't purely on its own defining the use and certainly not for the purposes of the Zoning Code.

Matt Perry: Okay.

Steve Poor: So we were (unintelligible) we looked into how things were approved in the past and we looked at how current recyclers operate.

Matt Perry: And that was part of your analysis versus substantially similar.

Steve Poor: Well sure.

Matt Perry: Okay.

Steve Poor: You know, and I'd just like to make one other point on this if I may.

Matt Perry: Sure.

Steve Poor: We talked about the South Transfer Station, and people talked about concrete. One of the reasons that concrete cannot be recycled is because it is not in an enclosed building. Public Works actually believes that they have a market for recycled cementitious stone if it's held in a fully enclosed building, which this facility requires by definition of being a recycling facility. And this is why I'm suggesting that as things move forward, many of the materials that folks may today think of solid waste, is actually probably going to become a recycled material in the future.

Matt Perry: You know, I have to say this though, Mr. Poor, I don't think that's the question before us I'm going to tell you. It's an interesting point, but I don't think that's really the question before us. Mr. Sandberg?

Dick Sandberg: Yeah, thank you Mr. Chair. Mr. Poor, your first finding states the proposed center is intended to be a facility for recycling. You mentioned several documents from years ago that did not represent what that center was. When you made this determination was there a document that defined what the center was, to support your findings?

Steve Poor: There is no current document to rely on. There is no final agreed to document. So what happened is, is that as things went through the process – let me take a step back. There is a nomenclature problem here in that, you know, what a recycling facility and a waste transfer facility (unintelligible) is a use defined in the Code. People, professionals, who aren't necessarily in land use, but in those activities, are using some of those terms to describe it. So, even as you go through it people may be saying that there's this component, the waste transfer piece of it that we talked about, we talked about even the State talks about its solid waste recycling. So to answer your question, is no we didn't have that we had conversations, as I think I've alluded to those already where you said that oh, we'd like to know if the HERC breaks down, we have emergency trucks coming there – no that would not be allowed. So, to the degree that we relied on earlier documents, we were able to look at that and say here's what works and here's what doesn't for a recycling facility. But there is no final plan drawn up. The iterations we saw earlier are very general, very general diagrams. And one other point that was in the report is contrary to the Appellants' assertion there really isn't even an agree to operating – a binding operating agreement. Because we don't know what that's going to look like yet.

Dick Sandberg: So those questions need to wait for the conditional use permit to be approved.

Steve Poor: Which is why I made a point. The last point in the finding is it is both prescriptive and proscriptive. It is letting people know that these are certain things that are allowed as a recycling facility and things that are outside that definition, and outside (unintelligible) are not going to be allowed.

Matt Perry: Does that answer your question Mr. Sandberg?

Dick Sandberg: It does, thank you.

Matt Perry: Great. You know, and I – some of the public has raised their hands, as I said about an hour ago when we started, when the public hearing is closed there's no further public comment. Board members kind of ask staff for clarification so that we can have an intelligent discussion about what determination to make. So I'm not going to take questions from the public. Mr. Cahill.

Sean Cahill: Thanks Chair, Mr. Poor, just for clarification and maybe simplify this, if we call this a recycling center today we would be tied to that definition going forward correct?

Steve Poor: That's correct.

Sean Cahill: And as a result we'd have to adhere to all the limitations on the adverse effects, the problems with it, odors, noise issues would be tied only as allowed by the recycling center?

Steve Poor: I think a more specific answer, they would be tied to the conditions of approval coming out of a conditional use permit and the site plan, the site plan review that goes with it. Along with permitting through the state, storm water management review for the site, and probably a travel demand management plan as well. So there'll be several elements that will bind and construe the project.

Sean Cahill: But that's going to be done in reference to it as a recycling center?

Steve Poor: That's correct. All within the context of being a recycling center.

Sean Cahill: Okay, thank you.

Matt Perry: Okay, are there any other clarification questions? I think I got all mine answered too thanks to my colleagues on the Board. Okay. Board comment? And again, the public is probably tired of hearing this, my colleagues may be too, we're here to talk about and decide whether the Zoning Administrator properly interpreted the Code so that the – a project use, since we don't have a project, as defined by the findings on page 5 of the staff report are substantially similar to the definition of a recycling facility

as outlaid - outlined in the City Ordinance. Board comment? Mr. Koch and then Mr. Finlayson.

Chris Koch: Just following up on Mr. Cahill's questioning. I think it's – that to me was a reason to support this decision as a recycling center. By defining it today as a recycling center it's tied to everything that a recycling center is and thereby excludes everything that a waster transfer is. So it actually strengthens and bolsters a neighbor's argument saying: mmm that's not recycling, that's a dump. So I'm going to be supporting the motion.

Matt Perry: Okay, there's no motion. Let's not get ahead of ourselves and I want to make sure that members of the Board don't construe what the public's position may or may not be. I think there's a great number of positions and perspectives on whether even a recycling facility would be an appropriate use, but again, that's not before us today. Mr. Finlayson.

John Finlayson: As to nomenclature, about a dozen years ago I was transitioning careers and I was obtaining education and I had to pay the bills. So I worked for a company that serviced transportation. And one of my clients was a private waste hauler, specifically a recycling center, and we're tied up on words like waste and recycle and it all goes in as waste and it's hauled in and then a definition is made as to whether it has economic value. If it's got economic value it's recyclable. If it doesn't, it's waste. But it doesn't matter what it is. It came in and it's going out. They don't keep it. If it has economic value, when they have enough, when they find a buyer, they're going to sell it. If it's waste, it's going out right now. So what I'm saying is Mr. Poor, I think made the correct determination of what this is, because what they're doing is they're hauling it in and they're making determination as to whether or not it has economic value. If it does, it gets sold. If not, too bad. So I am going to be supporting the Zoning Administrator's decision because I do believe it's correct based on personal experience and on testimony.

Matt Perry: Okay. And again, a reminder to the Board, we don't have a motion. This is an – obviously a lot of people put a lot of time into this. This is a serious topic so I'd like to hear from as many Board members to make sure we have a rich and full discussion based on all the testimony we've heard. Mr. Ditzler and Mr. Sandberg?

Matt Ditzler: Thank you Chair Perry. I guess Matt, to go along with your point about to keep on task is what we're supposed to do, unfortunately it's not our job to decide whether we think this is a good idea or a good place for this. I'm pretty impressed with the turn out, I hope my Near Northside neighborhood would do the same if it was coming in my neighborhood. I don't know if they would or not, but I would hope so. So it's good to see that. I'm still – it kind of ticks me off a little bit that – again, I'm not even quite sure what Mr. Poor is forced to determine. There seems to be this amalgam project that sort of morphed, and Hennepin County weighed in, and Public Works weighed in, everybody weighed in then threw it at him and said: Hey, what do you think, what to do you think about this? And he kind of said, well, going through the vet process that he has to, I think it's most like this; which nobody seems to like. Sounds like a crappy job to me

to have to do. But I think from what he's been given in the confines that he has, I think he has properly defined it. I can't really comment on whether I think it's a good idea for the neighborhood and the neighbors, and there is definitely a forum for that with CPED and City Council, and I'm sure that they will hear, and should hear, plenty from the people who are in the room about whether or not they think that this is a good place to be in the City. But unfortunately, that's not what we're here to do. I think with the extremely limited tools that Mr. Poor and his staff had, is it exactly like a recycling center? I don't think so. I can't really tell what the heck it is, but I think it's most like a recycling center, and I agree with him.

Steve Poor: Okay, thank you. Mr. Sandberg.

Dick Sandberg: Yeah, thanks Mr. Chair. I also appreciate the number of people who came out. I think it really shows how people care about life in the city and it really represents how much you care about the city, so I appreciate your being here. I think you have some valid concerns based on what was presented some years ago about it being a solid waste transfer center and some of the precedence in other parts of the City. I think, however, as Mr. Poor said, this project isn't totally defined. I think if it is defined as a recycling center and is subject to the conditions of a conditional use permit, the concerns that you have can be addressed there and I think alleviated. And I think that's a more appropriate outcome of this than for us to determine that it's a waste transfer station and there should not be a recycling center in an I2 district. So I'm tending to agree with staff recommendation, but I'd like to hear from the remainder of the Board.

Matt Perry: Thank you for your comments Mr. Sandberg. Mr. Cahill, then Mr. Manning, then Mr. Nutt.

Sean Cahill: Thank you Mr. Chair. I agree with all of my colleagues thus far who have first of all expressed thank you's to everyone who showed up. I hope what you're hearing is that you're not out of options and this isn't over. But in going forward I think in the decision before me today is I will have to support staff findings based on a couple of comments. Particularly on that the uses described by Mr. Peters even, I do believe, fall under the definition of recycling center given in the Section 520.160. It's fairly synonymous the storage transfer of material. I think part of the frustration we are recognizing that well, almost any recycling center could be considered a waste transfer station. And I think going forward is deft, looking at state law and as Mr. Finlayson has pointed out, distinctions will have to be made and I think it will be made at a later process. But I think Mr. Poor did the right job. He looked at the language which is provided to him. He found it the use is as closely as possibly to what's provided in the law and he made that call and I support staff's position. Thank you.

Matt Perry: Thank you. Mr. Nutt?

James Nutt: Thank you Chairman Perry. I'd also like to thank the staff. This is a great packet on a very complex issue. It helped to understand this. I am deeply sympathetic to everyone who came because I do find it confusing about language change at the last

minute. I do find it confusing about the timeline when the City got this property, what they talking about at the time what is zoned for now. But what I can't rule against – or I have to support staff, because we were talking about this property, it is zoned this way, with a definition that is recycling that is protected with state law, and we're not talking an actual project. We're not talking about these other transfer centers, we're not talking about things that have happened in the past. This is a clean slate with some protections and you also have venues in place in protection. And also I also encourage you to bird-dog this once it gets built. If it's not going as a – as the City says it is, then we should held responsible. So I will be supporting staff. Thank you.

Matt Perry: Thank you for your comments. Mr. Manning and then Mr. Keobounpheng.

Bruce Manning: Thank you Mr. Chair. I am deeply miserable when we get hypothetical projects as we do from time to time. And I recognize that folks are struggling with it. I think Mr. Poor's task was to nail Jell-O to the wall, which can't be done. My kids have tried. And there's no "it". He said there's no "it". He said there's not current document to rely on. There's a memo in here from the City's very nice Garbage Lady that says there's no "it". So I can't find that he applied the Code correctly to "it" because there isn't "it". I mean, I think part of what I've been hearing, and I think Mr. Perry did an admirable job today in trying to focus on what this Board does as to what will happen in other forums is there's a box or there's door number 3, and behind door number 3 there's something and we don't know what it is. I frankly, am persuaded. Particularly by Ms. Siegel's memo, but also by some of the more recent documents presented by neighbors and Mr. Peters that the City has been thinking of this as something quite a bit bigger than a recycling center. If I had to guess what was behind door number 3. But I there isn't anything behind door number 3. And so I find myself persuaded by that evidence that all signs are pointing to this being something like a solid waste transfer facility. Because there's nothing there and because the Zoning Administrator's finding has the power being proscriptive. In other words, if what's allowed in this with a conditional use permit and for hearings, is something that has to be substantially similar to a recycling station. It better be substantially similar to a recycling station. I don't think Mr. Poor has made any findings about what it is. He can't, he said as much. Those determinations will have to be made in place well beyond this Board's authority. In some sense I feel this process, as I often feel with these appeals of the Zoning Administrator, is either premature or hypothetical even though there's a very really real potential project out there. I have no freaking clue if Mr. Poor is right or wrong because he doesn't have anything to actually compare the Code with. The Code doesn't apply some of the key terms. The Code defines other terms. But there's still nothing to match that to. So it's with a very sort of sense of confusion and frustration that I think I'm going to have to vote yes because that's what moves you on to the next stage where you can be heard on all of the amazing life style concerns that the neighbors have expressed. And we got a packet today of some folks who are happy to see this project go forward. Again, they don't know what this project is exactly either. And I hope that the neighborhood will be listened to and will remain very active in how this project gets defined. I also note that a lot of the people on this Board got on this Board after having sat through one of these hearings and felt, hey, I'd like to do that or I could

be more involved or I could do better. So whatever you do, bug Shanna Sether, our staff person, on the way out about how you might apply for this board or other City boards. It's really nice to see folks so involved. So, in sum, miserably and perhaps without any effect, frankly, on what or will not happen at this piece of property, I'll be supporting staff, but frankly, I don't think there's that much for us to do today absent an "it".

Matt Perry: Thank you for your comments Mr. Manning. Mr. Keobounpheng?

Souliyah Keobounpheng: Thank you. Thank you Chair. I'll make it brief. I pretty concur with every point that my Board members made. The one thing is that, you know, to the neighborhoods – I mean it's, you know, he's defining it as a recycling station and not as waste transfer station. So given that, you have a lot more power in making, you know, by owning the City adhere to that definition. And I will be supporting the

Bruce Manning: Make a motion.

Matt Perry: So thank you Mr. Keobounpheng for your comments. For the public, the Chair does not vote unless and in case of a tie and I won't offer my opinion either. The idea there is that I can hopefully give the perception that I am not biased toward one side or the other in these proceedings so I'll wait to see if it turns out that there is one: a motion, which there will be; and then what that will be. If it turns out to be a tie, I'll give my thoughts. Mr. Ditzler?

Matt Ditzler: I move staff recommendation.

John Finlayson: Second.

Matt Perry: There's a motion and a second. Any further discussion? Will the clerk please call the roll?

Clerk: Mr. Cahill?

Sean Cahill: Yes.

Clerk: Mr. Ditzler?

Matt Ditzler: Yes.

Clerk: Mr. Finalyson?

John Finlayson: Aye.

Clerk: Mr. Keobounpheng?

Souliyah Keobounpheng: Yes.

Clerk: Mr. Koch.

Chris Koch: Yes.

Clerk: Mr. Manning?.

Bruce Manning: Yes.

Clerk: Mr. Nutt?

James Nutt: Yes.

Clerk: Mr. Sandberg?

Dick Sandberg: Yes.

Clerk: The motion passes.

Matt Perry: Okay. That was that Planning Division recommends the Board of Adjustment adopt the findings and deny the appeal of the decision of the Zoning Administrator. So you can see staff on what your options are. I also want to thank people for coming down. I appreciate the time. This is – having worked with the City quite a bit in many different capacities, one thing that I think we hear loud and clear, and I have observed in many different capacities that I've served, is the City's communication about such things, as a lay person, can be extremely confusing. That clearly has been the case here. I think neighborhood organizations and residents do a great service by putting a light on things to help clear up that communication and to get better definitions. So I thank you for doing that on behalf of the City.