

Department of Community Planning and Economic Development – Planning Division
Appeal of the Decision of the Zoning Administrator
BZZ-5082

Date: April 7, 2011

Applicant: James P. Peters on behalf of Bruce Shoemaker et. al.

Address of Property: 340 27th Avenue Northeast

Project Name: Substantially Similar Use Analysis for Minneapolis and Hennepin County recycling facility and Drop-off Center

Contact Person and Phone: James Peters (320) 634-3778

Planning Staff and Phone: Steve Poor, (612) 673-5837

Date Application Deemed Complete: February 8, 2011

End of 60-Day Decision Period: April 7th, 2011.

End of 120-Day Decision Period: On February 24, 2011, staff sent a letter to the appellant extending the decision period to no later than June 6th, 2011. Subsequently, the appellant extended the decision period to no later than August 5, 2011.

Ward: 1

Neighborhood Organization: Holland; Marshall Terrace (adjacent) & Columbia Park (adjacent)

Existing Zoning: I2 Medium Industrial

Lot Area: 287,390 square feet (6.6 acres)

Zoning Plate Number: 9

Legal Description: NA

Proposed Use: Recycling facility

Appeal of the decision of the Zoning Administrator: James P. Peters, on behalf of Bruce Shoemaker et. al., has appealed the decision of the Zoning Administrator that the proposed use of the property located at 340 27th Ave NE is a recycling facility in the I2 Medium Industrial District.

525.170. Appeals of decisions of the zoning administrator. All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis:

Beginning in 2004, the City Council and Mayor directed City staff to evaluate options for the relocation of the solid waste services that the City provided at the South Transfer Station location (2850 20th Ave. S.). The City's Solid Waste and Recycling Division manage curbside residential solid waste and recycling services through a combined municipal and contract collection system. Currently, the City operates at two sites; the North Transfer Station at 2710 Pacific Ave. N. and the South Transfer Station located at 2852 20th Avenue South. The City provides a residential and small business construction waste management service at the South Transfer Location. Hennepin County's Department of Environmental Services manages household hazardous waste (HHW) services for County residents at two locations outside the City (Brooklyn Park and Bloomington). A facility for the management and recycling of household hazardous waste does not exist in Minneapolis. HHW customer participation data collected by the County indicates that Minneapolis residents do not utilize the existing facilities in Bloomington or Brooklyn Park on a regular basis. Consequently, the County desires to locate a permanent facility within the City to provide more convenient access for residents and increase participation in the HHW recycling program. Since 2005, representatives from the City and Hennepin County have discussed the potential of the City and Hennepin County partnering at a new location, and have worked on preliminary planning for a joint City/County recycling facility. Subsequently, the City approved funding for a joint City/County facility in the 2007-2011 Five-Year Capital Program.

In October of 2009, the City and the County, working with a real estate consulting firm, identified 340 – 27th Avenue Northeast as a potential site for the new recycling facility.

On May 25, 2011, Public Works staff submitted a CPED – Public Land Sale and Acquisition form for a Household Hazardous Waste Recycling Facility to be jointly operated and maintained by Hennepin County and the City to be located at 340 – 27th Avenue Northeast. The form was completed with specific comments regarding operational requirements as follows:

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“Hazardous materials cannot be permanently stored on site. The use shall be performed completely within an enclosed building, except that paper and cardboard may be stored outside in fully enclosed containers or trailers. For the purposes of this requirement, enclosed shall mean completely enclosed with no outdoor storage, sorting or processing of materials.” (See attached).

On November 29, 2010, Mr. Peters wrote to the City requesting a decision of the zoning administrator regarding the property acquisition, classification, and proposed use of the public facility to be located at 340 – 27th Avenue Northeast. Mr. Peters’ contention is that the facility is not a lawful use in the I2 Medium Industrial District under Chapter 550 of the Zoning Ordinance.

On January 28, 2011 the Zoning Administrator issued a Statement of Clarification – Substantially Similar Use Analysis with regards to the proposed Minneapolis Hennepin Recycling and Drop-off Center. (See attached).

On February 4, 2011 Mr. Peters filed an appeal of the decision of the zoning administrator that the proposed facility is a recycling facility. The appellant asserts that the proposed use is improperly determined to be a recycling facility and should be classified as a waste transfer or disposal facility and therefore not allowed in the I-2 zoning district.

The appellant bases this conclusion on several factors. First, that the City has a duty to enforce the plain and ordinary meaning of the Zoning Ordinance and that Minnesota Courts hold municipalities to the plain and ordinary meaning of ordinances in a legal challenges.

Second, the appellant refers to several documents pertaining to this facility and that were published by the City and the County supporting the description of the facility as Household Hazardous Waste Facility. (See attached)

The appellant references negotiations and proposed agreements between the City and Hennepin County (the County) to support their conclusion that the facility is predominately a waste transfer or disposal facility. Specifically, the appellant cites proposed Operating Agreements between the City and the County, which establishes the proposed uses as including a household hazardous waste program to collect transfer and recycle or dispose of all household hazardous waste. The appellant states that negotiations and proposed operational agreements include discussions with the County over the “solid waste” services and a “permanent household hazardous waste facility”. The City and the County understand any such operating agreements to be preliminary in nature. (See attached)

While the appellant acknowledges that there will be some recycling taking place at the facility, they argue that it is as an accessory use to the primary uses of waste transfer and disposal.

The appellant also states that the facility will require permitting by the Minnesota Pollution Control Agency (MPCA) under Minn. Stat. Ch. 115A and that this permitting pertains mainly to waste transfer and waste disposal.

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Department of Community Planning and Economic Development – Planning Division staff recognizes that the proposed facility will be subject to proper permitting by the MPCA, as has been the past practice with every recycling facility that the City has approved through the conditional use permitting process.

The City also recognizes that not all of the items and materials accepted and collected will be suitable for salvage, recycling and the recovery of resources. However, a substantial amount of the items accepted and collected will be processed in a manner consistent with the intention of maximizing the amount of resources that can be recovered for recycling. Virtually all resource recovery processes and recycling activities produce a bi-product waste stream. That being said, the fact there may be a bi-product waste stream from resource recovery and recycling activities within the fully enclosed facility does not constitute the facility being determined to be a waste transfer or disposal facility.

Because the facility will accept some materials that may not be currently recyclable the City conducted a substantially similar use analysis to determine if the proposed facility was to be properly classified as a waste transfer or disposal facility, or a recycling facility.

Under Chapter 525.80 the City has the authority to conduct an analysis of a proposed use that is not specifically included in the zoning ordinance. Upon completion of the analysis the zoning administrator shall issue a statement of clarification finding that the use is either substantially similar in character and impact to a use regulated in the zoning ordinance, or that the use is not sufficiently similar to any other use.

There is no definition of a waste transfer and disposal facility, waste transfer facility, or disposal facility within Chapter 520.160 Definitions. However, there is a definition of recycling facility in Chapter 520.160, which reads as follows:

“Recycling facility: A use performed in an enclosed building where scrap or salvage materials are shredded, milled, crushed, ground, 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. A recycling facility shall not include automobile wrecking or dismantling.”

Contrary to the appellants’ assertions, the City believes the City has construed the language defining the proposed use within the plain and ordinary meaning of the zoning ordinance and that the proposed use was most appropriately determined to be a recycling facility.

The City also recognizes that large, complex facilities go through numerous design and programmatic iterations prior to a final proposed design being settled upon. Some of the City documents cited by appellant do not represent the most recent version of the project proposal based on current descriptions by staff involved with the proposal. For example, the appellant submitted a copy of a November 17, 2006 letter from Carl Michaud, Assistant Director of Hennepin County Department of Environmental Services – Solid Waste Division to Steve Kotke, Minneapolis Director of Public Works regarding the Joint City County Solid and Household Hazardous Waste Facility. In that letter, Mr. Michaud describes “three types of customers that

would use the facility, including 1) Resident, 2) Small Business, and 3) City Vehicles.” (See attached). At the time the letter was written, it represented what was the current thinking about the project. Subsequently, the project has been amended and will not allow City vehicles and is intended to serve residents of Minneapolis, primarily using solid waste vouchers issued by the City and residents of Hennepin County.

Furthermore, to date there in fact is no joint, binding operational agreement between the City and the County. Thus, the documents cited by the appellant represent the current thinking about the project nearer to the time period in which they were drafted and published. They do not represent the project as presented to the zoning administrator at the time of the determination.

Furthermore, the zoning administrator’s determination may be viewed as both prescriptive and proscriptive, in that the project may only be considered to be a recycling facility if it continues to meet and satisfy the finding as enumerated in the zoning administrator’s determination dated January 28, 2011.

Findings:

1. The proposed Minneapolis Hennepin Recycling and Drop-off Center is intended to be a facility primarily engaged in resource recovery and recycling activities and as such staff believes that the proposed use was most appropriately determined to be a recycling facility
2. The proposed facility will accept a variety of household items that will be processed by various means in order to maximize the amount of resources that may be recovered and subsequently sold and recycled. The proposed facility will generate a non-recyclable bi-product waste stream as a result of accepting household items and resource recovery processes. The number of different types of household items that are currently recyclable will likely expand as processes intended to recover resources improves and innovates. The project may only be considered to be a recycling facility if it continues to meet and satisfy the finding as enumerated in the zoning administrator’s determination dated January 28, 2011
3. The proposed recycling facility, like other previously approved recycling facilities in the City of Minneapolis, will be required to obtain a Conditional Use Permit and Site Plan Review approvals and all necessary Minnesota Pollution Control Agency (MPCA) permits.

RECOMMENDATIONS

**Recommendation of the Department of Community Planning and Economic Development
– Planning Division for the appeal of the decision of the zoning administrator:**

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the appeal of the decision of the zoning administrator interpretation that the proposed use of the property located at 340 27th Ave NE is a recycling facility in the I2 Medium Industrial District.

Attachments:

- 1) CPED – Public Land Sale and Acquisition form for a Household Hazardous Waste Recycling Facility
- 2) Letter requesting a decision of the zoning administrator regarding the property acquisition, classification, and proposed use from James Peters letter November 29, 2010.
- 3) Zoning Administrator Determination dated January 28, 2011
- 4) Statement of reason for the appeal and supporting documents submitted by the applicant
- 5) Memo from Susan Young, Director, Solid Waste and Recycling Services
- 6) Zoning map
- 7) Oblique aerials
- 8) Complete list of appellants