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

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MEMORANDUM

DATE: August 18, 2006

TO: Steve Poor, Manager, Community Planning & Economic Development - Planning Division

FROM: Jason Wittenberg, Supervisor, Community Planning & Economic Development - Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of August 14, 2006

The following actions were taken by the Planning Commission on August 14, 2006. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

Commissioners Present: President Martin, El-Hindi, Krause, LaShomb, Motzenbecker, Schiff and Tucker – 7

Not Present: Henry-Blythe, Krueger and Nordyke

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10. Zoning Code Text Amendment (Title 20, Chapter 525, Ward: Citywide) (Hilary Dvorak).

A. Text Amendment: Amending Title 20 of the Minneapolis Code of Ordinances related to the Zoning Code, as follows:

Amending Chapter 525 related to Zoning Code: Administration & Enforcement.

The purpose of the amendment is to evaluate the current minimum width requirement for single and two-family dwellings and multiple-family dwellings of three and four units. This text amendment may lead to an authorized variance to allow property owners to apply to reduce

the width of proposed 1-4 unit dwellings or to reduce the amount of the dwelling that must meet the minimum width standard.

Action: The City Planning Commission recommended that the City Council adopt the findings and **approve** the zoning code text amendment.

Staff Dvorak presented the staff report, noting an error on her document. The title of Chapter 525.50 should be "authorized variances" instead of "temporary uses".

Commissioner Schiff: Hilary, I want to stress one point that you made that I think, at first glance is misinterpreted by some people when they got the notification for this, we're not changing the definition of a buildable lot. We're talking about lots that are already defined as buildable and in some ways you could say allowing more green space by making the homes on those lots more narrow.

Staff Dvorak: Correct.

Commissioner Schiff: Ok. I just want to make sure you agree with that assessment.

Staff Wittenberg: In some cases, certain lots that would clearly be unbuildable at the moment could become buildable should somebody get a variance of their dwelling width, which currently isn't authorized. A 20 foot wide lot currently is clearly not buildable. Now somebody could request a 15 foot wide house through a variance so there's gray area about a whether a 20 foot wide lot is buildable.

President Martin: They'd have to get that house in Amsterdam.

Staff Wittenberg: I'm just suggesting that this does introduce gray area into what is clearly buildable and not buildable.

Commissioner Schiff: We have minimum lot widths that also regulate the width of a lot.

Staff Wittenberg: Sure, but you can build on a lot of record that is existing on the effective date of the ordinance, notwithstanding the lot area and lot width requirements provided you meet setback requirements. You can build on a 32 foot wide lot by providing a 22 foot wide house with five feet of setback on each side without need for a variance.

President Martin: You couldn't build a 28 foot house on a 32 foot lot without this variance.

Staff Wittenberg: You could apply for the sideyard variances currently.

President Martin: Ok. Other comments, questions or clarifications?

President Martin opened the public hearing.

Eric Gustafson (3451 Cedar Ave S): I'm from Corcoran Neighborhood Organization. We're here to support the proposed amendment. We're not here to comment on what is buildable, but we do have a lot that I think is a good example in our neighborhood at this moment for which bids have been solicited by the city. It's a 30 foot lot from which a tax forfeited property was torn down last year. The challenges of the narrowness of the lot are compounded by the fact that the south property line occurs right on the neighbor's window well. On this lot, as you would expect, most of the proposals that came in were the 22 foot shotgun design. I don't have any fancy visuals, but I think that you can imagine that the situation does create detriments to an architect or a builder's ability to maintain sightline views to the street for both the new house and its' two neighbors as well as access to light. It's certainly to the detriment of window alignments and privacy. Without being able to vary either the 22 foot width or the percentage of length of the house, which has to be 22 feet wide, one is pretty limited on a lot such as this so we're here to support the proposed change. Thanks.

President Martin: Ok. Others who wish to speak to item 10?

Mark Tambornino (3840 Pillsbury Ave): We were asked by Corcoran neighborhood to take a look at this particular lot that Eric had referenced and see what the opportunities were for this particular 30 foot wide lot with the objective of keeping the home in scale with the neighboring properties as well as increasing sightlines on to the street from more areas in the house, particularly the kitchen area as well as the living room area and providing more green space between adjacent properties as well as increasing access to air and light for both adjacent properties and this property. In terms of elevation and characters, you can see how being able to apply for a variance with respect to the width of the house, they can keep the scale of the homes more in character with adjacent properties, allowing smaller elements that align better with adjacent properties instead of having one large mass that fills the width of the lot.

Commissioner Schiff: Thank you. Obviously, the care of the design shows your talents of thinking creatively as an architect. What's the estimated market value that you expect for this property?

Mark Tambornino: I don't know off-hand. The builder has not gone through purchasing the lot. We're awaiting some outcome on the possibility for applying for this kind of variance.

Commissioner Schiff: Any idea of price per square foot or anything like that for your design?

Mark Tambornino: We usually figure about $200 per square foot for construction. It may come in somewhat less than that.

Commissioner Schiff: Thank you.

President Martin closed the public hearing.

Commissioner Schiff: I'll move approval. (LaShomb seconded) I think the explanation by Mr. Wittenberg shows that what this does is allow us to… instead of a "one size fits all" rule, come up with a process for a variance where the definition should be based on a hardship and something unique. In this particular instance it's been advocated by the Corcoran neighborhood for some time for infill development. The unique hardship is that the house to the south is on its own property line. Something like this that is normally buildable would result in a less preferential outcome if we weren't more flexible with our codes and the research done by Planning staff shows that flexibility is more the norm in other cities across the country. I'll also say that the origins of this code, this restrictive element of the code that exists today was an effort to block trailer homes from being placed in inner-city lots. We've, I think, more effectively come up with a new tool in the past couple years that infill design 15-point plan, that is a far more precise way to address low quality infill housing in many city neighborhoods requiring a front porch, requiring trees, requiring a certain amount of windows and just making this decision based on the width of the house not only didn't serve us well, but the manufacturers of trailer housing have caught up to us and they figured out how to build a trailer home to the current code. So, I think this is a step in the right direction and is going to help neighborhoods get higher quality housing when it's a buildable lot.

Commissioner Motzenbecker: I just want to applaud the initiative. I think this allows, in addition to all the statements made by staff about the positives for this, I think one that was not mentioned was the affordability factor. The ability for people who can't maybe get a place, to buy a city lot and have an architect do a really creative design that would work within this to get some affordable and unique housing in there to fill in these lots and to grow the city. Thanks.

President Martin: All those in favor? Opposed?

The motion carried 6 – 0.

11. Zoning Code Text Amendment (Title 20, Chapter 535, Ward: Citywide) (Hilary Dvorak).

A. Text Amendment: Amending Title 20 of the Minneapolis Code of Ordinances related to the Zoning Code, as follows:

Amending Chapter 535 related to Zoning Code: Regulations of General Applicability
The purpose of the amendment is to authorize the mounting of communication antennas on poles in the downtown area bounded by the Mississippi River, I-35W, I-94, and I-394/3rd Ave N (extended to river).

Action: The City Planning Commission recommended that the City Council adopt the findings and **approve** the zoning code text amendment.

Staff Dvorak presented the staff report.

Commissioner Motzenbecker: Hilary, most of the antennas, if I'm correct, are quite small for the Wi-Fi. Do you know? I think they're 18 inches.

Staff Dvorak: They are quite small. That's not to say that telecommunications for cell phone services… this does apply to the whole spectrum of telecommunications, not just Wi-Fi. This does allow any carrier to come in and place something on an existing light pole. Some antennas that you see out there for telecommunications that you see on buildings are upwards of six or eight feet in length, but they do have ones that are as short as two or three feet. They have the 360 degree technology and that doesn't apply to every character out there of all the ones that we have.

Commissioner Motzenbecker: Would there be any benefit to add language in that last phrase to say something like "mounted in a consistent and uniform manner" or would that be irrelevant to this? I'm just thinking of people putting them all over the place on the light poles.

President Martin: You just know that when that door is open people will come up with the extreme, right?

Staff Dvorak: I guess to keep in mind… all of these carriers, they have to have base equipment and the base equipment has to be located within a reasonable distance from their antennas. Downtown, if you have base equipment, it does need to be buried and most carriers won't pay the cost of burying their equipment underneath the ground. That is something that also will help regulate how much stuff we get on these light poles downtown because of the requirement to actually bury everything below ground as far as those equipment boxes.

President Martin opened the public hearing.

No one was present to speak to the item.

President Martin closed the public hearing.

Commissioner Schiff moved approval of the staff recommendation (LaShomb seconded).

The motion carried 6 – 0.

12. A Mill Historic Complex (BZZ 3137, Ward 3), 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE (Jim Voll).

A. Rezoning: Application by St. Anthony Mill LLC for a rezoning from I1 Industrial District to the C3A Commercial District and to remove the Industrial Living Overlay for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE (generally bounded between 2nd and Main Streets SE and 3rd and 6th Aves SE).

Action: The City Planning Commission recommended that the City Council adopt the findings and **approve** the rezoning application from the I1 to C3A Districts and to remove the ILOD for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE.

B. Conditional Use Permit: Application by St. Anthony Mill LLC for a conditional use permit for a Planned Unit Development, with an exception for height up to 28 stories in the Shoreland Overlay District and the C3A Zoning District for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE (generally bounded between 2nd and Main Streets SE and 3rd and 6th Aves SE).

Action: The City Planning Commission adopted the findings and **approved** the conditional use permit for a planned unit development application, with exceptions, for 960 units for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE subject to the following conditions:

1. The final plans for the A Mill, South Mill, and Red Tile Elevator shall be approved before building permits for any new structures are issued. In addition, the A Mill, South Mill, and Red Tile Elevator renovations shall be substantially in progress and continuing towards completion; and a walkway plan for 5th Ave shall be approved, before building permits for Buildings C, D, E, F, and G are issued.

2. The phasing of the project shall be as outlined in the staff report phasing plan.

3. The elimination of any of the following proposed amenities will require an amendment to the PUD: the rail corridor preservation including the replacement of some tracks and the train shed; the pedestrian connections through the site at Prince Street, 5th Ave SE, and the pedestrian walkway between Buildings B and C and the Red Tile Elevator and Building D; provision of the view corridors through the site at Prince Street and 5th Ave SE; and the roof top gardens between Buildings D and E and Buildings F and G. Other changes to the PUD may require amendments and are required to be evaluated by staff.

4. The applicant provide a study to Planning staff that verifies the sound level exposure and air pollution impacts for the new Buildings D, E, F, and G and provide a plan for how the new construction will comply with the conditions and standards before building permits may be issued.

5. Provision of a streetscape on the applicant's portion of the vacated 5th Ave SE that is like a city street, including sidewalks adjacent to buildings, boulevards with trees and road access down the center, the entire scheme encompassing the applicant's portion of vacated 5th Ave SE right-of-way. Upper stories of adjacent buildings should be setback from the lower stories at least as much as that shown in the 8/14/06 proposal.

C. Variance: Application by St. Anthony Mill LLC for a variance of the maximum allowable Floor Area Ratio to approximately 5.0 for property located at 300 & 400 2nd St SE; 100 3rd

Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE (generally bounded between 2nd and Main Streets SE and 3rd and 6th Aves SE).

Action: The City Planning Commission **approved** the variance application to increase the maximum allowable floor area ratio from 3.24 to 5.0 for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE.

D. Variance: Application by St. Anthony Mill LLC for a variance to increase the maximum allowable floor area of retail tenant spaces from 8,000 square feet up to 33,000 square feet for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE (generally bounded between 2nd and Main Streets SE and 3rd and 6th Aves SE).

Action: The City Planning Commission **approved** the variance application to increase the maximum allowable floor area for three tenant spaces in the A Mill, South Mill, and Machine Shop for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE.

E. Variance: Application by St. Anthony Mill LLC for a variance of the north rear yard setback (east of the vacated 5th Ave SE) from 15 feet to approximately 10 feet for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE (generally bounded between 2nd and Main Streets SE and 3rd and 6th Aves SE).

Action: The City Planning Commission **approved** the variance application to reduce the north rear yard setback from the required 15 feet to 11 feet for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE.

F. Variance: Application by St. Anthony Mill LLC for a variance of the drive aisle width from 22 feet to approximately 20 feet for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE (generally bounded between 2nd and Main Streets SE and 3rd and 6th Aves SE).

Action: The City Planning Commission **denied** the variance application to reduce the drive aisle widths from the required 22 feet to 20 feet for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE.

G. Site Plan Review: Application by St. Anthony Mill LLC for a site plan review for property located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE (generally bounded between 2nd and Main Streets SE and 3rd and 6th Aves SE).

Action: The City Planning Commission adopted the findings and **approved** the site plan review application for a mixed use 960 unit Planned Unit Development located at 300 & 400 2nd St SE; 100 3rd Ave SE; 113 6th Ave SE; and 199 and 413-501 Main St SE, subject to the following conditions:

1. CPED Planning staff review and approval of the final site and landscaping plans and building elevations before permits may be issued.

2. All site improvements shall be completed as outlined in the phasing plan, unless extended by the Zoning Administrator, or the permit may be revoked for noncompliance.

3. The site plan and elevations are subject to HPC staff review and approval.

4. Compliance with the standards of the MR Mississippi Critical Area Overlay District with the exceptions for heights as allowed by the Planning Commission.

5. A walkway plan and view corridor for 5th Ave SE (vacated) shall be approved by staff before construction begins on Buildings C, D, E, F, and G. The plan shall provide public access and a view corridor through the site that is like a city street, including sidewalks adjacent to buildings, boulevards with trees and road access down the center, the entire scheme encompassing the applicant's portion of vacated 5th Ave SE right-of-way. Upper stories of adjacent buildings should be setback from the lower stories at least as much as that shown in the 8/14/06 proposal. The applicant will work with Planning and Public Works staff on the design of the corridor including possible platting of the street or a sidewalk easement, and an alternative proposal if the Soap Factory parcel is not available for use in the corridor.

6. Provision of architectural detail and recesses and projections in addition to or in combination with the landscape planting on the rear elevations of the parking structures of Buildings B, C, D, E, F, and G to break up blank facades greater than 25 feet in length as required by Section 530.120 of the zoning code. The green screening shown on the site elevations can be provided as architectural detail.

7. The applicant shall move the vehicular access from building G to the rail corridor, or directly adjacent to the rail corridor. The drive shall meet zoning code requirements and can be on the applicant's property or on an easement arranged with the adjacent property owner.

8. The commercial use on the first floor of Building G shall be expanded or moved to the southeasterly corner to front on Main St. A principal entrance shall be provided on Main Street for this use. If the parking structure entrance can be moved to the north side of the building, then commercial, residential, or active uses shall be provided along the 6th Ave SE side of the building in this area.

9. A loading plan shall be approved by Planning and Public Works staff before building permits may be issued. This plan would show dedicated loading spaces for the commercial uses along Prince Street, in the surface lots, or on-street loading spaces. In addition, loading areas shall be provided within the parking structures of Buildings B, C, D, E, and F. The loading areas in the parking structures do not have to meet the strict standards for loading spaces in the zoning code.

10. At least four public bicycle parking spaces per commercial tenant space shall be provided within 100 feet of the front entrances of the commercial uses, subject to Public Works approval, if necessary. Additional bike parking shall be provided as required in the TDM plan.

11. A walkway shall be provided along the south side of Prince Street from east to west through the site that connects the sidewalks on 3rd Ave SE to the vacated 5th Ave SE. Additional landscaping plants and tress, if possible, shall be provided along Prince St.

12. The required landscaped yard for the Machine Shop parking lot shall be changed to meet Section 530.170(b) of the zoning code by increasing the width to seven feet.

13. Where possible additional plantings shall be provided along the rear sides of the building facing Prince St along blank brick walls as a graffiti prevention measure.

14. The applicant shall develop a construction management plan that outlines measures to protect the Marcy-Holmes Neighborhood Art Gateway statues along 6th Ave SE during construction of the project. Planning staff encourages the applicant to work with the Marcy-Holmes neighborhood to reconstruct the streetscape on 6th Ave SE in conformance with the gateway plan for this street.

15. A preliminary and final plat shall be approved before the issuance of any building permits for the new structures.

16. Applicant will work with Planning and Public Works staff to consider the elimination for the need of a private street approach apron at the entrance of the north and south ends of vacated 5th Ave if that space remains a private street. Study the feasibility of bump outs to calm traffic on 2nd St and Main St SE.

17. The townhouse units facing the vacated 5th Ave SE shall provide entrances facing the street to the sidewalks.

Staff Voll presented the staff report.

Commissioner Schiff: If these elevations have been approved by HPC already, does that send them back for additional review?

Staff Voll: Yes, that's a good point. Both of the HPC staff that worked on this have left the City so it was difficult to get a chance to sit and talk with them about what we would do. It ultimately depends on what they bring back. There's a very good chance that if we made that change it would have to go back to the HPC. There's always some latitude to do some things administratively, but I think what we're looking for as Planning staff may end up having to go back to the HPC. When you make that decision, that's something you're going to have to weigh. Was the HPC's decision enough? I don't believe… Amy Lucas and I worked on this very closely and tried to identify all the issues and work them through, but as you know, one comes before the other and we can't always catch it. This was a situation that if we would have written the whole staff report we would have said "Amy, this is something maybe to talk about at the HPC as well", but we didn't do that.

Commissioner Schiff: If we add language here that says "notwithstanding HPC recommendations" does that avoid them having to go back?

Staff Voll: The way we've always looked at is that you have two tracks. You have to go to HPC and City Planning Commission and you have to get both approvals. Anything you do doesn't supersede their approvals and anything they do doesn't supersede ours. They can say you can have a 20 story building or you can have a four story building and you still have to do that. We both have to make the findings and if, at some point, it's the most restrictive that applies. Commissioner Schiff was talking about the blank walls on the back end. If we recommend more architectural… a blank wall is a little misleading, I mean, they do have mesh and landscaping, but they don't meet the architectural requirements of blank walls of more than 25 feet. We're requiring that they do some

additional architectural detail. We don't want to get into designing sites, but staff was thinking you could do something that would recognize the elevators that were there or there could be some continuation of the building down to the site. It's not that the landscaping that they proposed on there isn't workable, but we felt that maybe it could be mixed up and added to. It's a very important point that Commissioner Schiff raised that if you do that, you may be sending them back to the HPC again as well. There are also some facades that don't have the required window requirements and that would be the front of building C and in my staff report I say "building B" several times. It's building C anywhere that you see that. Staff is recommended approval of that because of the grade change. It's very difficult to get the windows on that slope as the way the code reads but they have provided more than enough windows on every floor, it's just the grade that triggers that issue.

Staff Voll continued with the staff report.

President Martin opened the public hearing.

David Frank (Schafer Richardson): We agree in substance and in intent with almost every last thing in here. I would just like to flag a couple things for a possible follow up by you either immediately or later. Jim mentioned a couple of things; I'd just like to indicate our continued willingness and intent to comply. We do intend to plat the entire property as a single lot and do a registered land survey. His report suggests that we've been working on it and we will do that. We'll probably get into some noise and air quality issues. We'd like to suggest a couple of minor modifications to Jim's staff report language there. Jim mentioned "phasing flexibility", we have said and we will continue to say that we're going to do the A-Mill complex first. We agree with Jim's crafted language on that. What we would appreciate your indulgence on is that ability to change around subsequent phases. So, A-Mill complex is the first phase… thereafter, phases two through five, as crafted. If the market is asking for one building and not the one that we happen to have been lucky enough to name today, we'd appreciate the flexibility to do them out of that sequence, but with the A-Mill complex first. Jim's report talks about the signal at Sixth and University, we can talk more about that if anybody wants to. We, in the site plan, have been through the preliminary development review process with Public Works. To our mild surprise, they agreed to support our request for what are called "tables" on Main Street to facilitate pedestrian crossings. That would be from the plaza, across to Father Hennepin park and then again at Fifth. This is what you'd see, I have a photo if you'd like. This is in front of the Weisman on River Road. A car comes along, comes up in the air, comes flat and comes back down. That's on Main Street and Public Works has said they will support those. Here's a photo of one.

President Martin: You call it a "table", but everybody else calls it a "bump".

David Frank: I'm going to talk about a different kind of bump in a second. Public Works has said a preliminary yes to two of these; midblock between Third and Fifth and then again at Fifth on Main Street. We think that's excellent news to facilitate the

crossings by pedestrians from the neighborhood towards the river and from the project towards the river and the park. What they have said, preliminarily, "no" to is bump-outs on Second Street. These don't look like that, they look like… if you have your site plan in front of you, this is the wider sidewalk that narrows the street. Here they are at Second at the top. This is by the machine shop, there's one at Third Avenue and Second Street, another in front of the plaza between buildings B and C, where Fourth Avenue SE is and continuing on at Fifth and, of course, we don't own the property on the far side of Fifth. Public Works has preliminarily said no to those and although it's not, I believe, within your jurisdiction if you would be interested in weighing in, it is our intent to request what I'm told is an encroachment, have Public Works deny it if that is their will, and then to appeal it to the City Council. I don't believe it's within your jurisdiction to say this has to be, on the other hand, if you inclined, we would appreciate your vote of support if you're there.

President Martin: We're not inclined to start appeal processes here, David, you know that.

David Frank: Oh, ok. It is our intent to have Fifth look, feel, function and act like a full public street whether it is actually that or whether it remains private property. That has a lot to do with ongoing conversations with Soap Factory. In the event that it is private, Public Work's current position is that there would need to be an apron here, a driveway apron, as a car turned off of Second and onto Fifth. If you were interested in weighing in on such a thing not being a good idea, we'd be appreciative. We have no end of things to say about this, but in the interest of time I will stop there and say again that we agree with Jim's recommendations and we hope you support them. Thank you.

President Martin: Thank you, David. Any questions at this point? Ok. Others who wish to speak to item 12?

Michael Norton (200 S 6th St): I'm an attorney representing Bluff Street Development. With me tonight is Jeff Ellerd of Bluff Street and also the principal Mr. Steve Minn. We are here because we oppose the rezoning for buildings E, F and G, the CUP and PUD variances and site plan for buildings F and G. Let me start to explain why. Some folks have suggested to me that it is the case that because the EAW and EIS processes and the HPC processes are done and certain decisions were made that those decisions are binding on this body. I think Mr. Voll has rightly pointed out that they are advisory to this commission and that the commission has an independent obligation and duty as I'm sure you all know, to consider how the impact… or what the impact of the proposed approvals has on adjacent property rights. We believe that we're going to be able to show you that the impact on our property rights are demonstrable and real and that we're going to ask you to address those rights as you consider how to proceed with the approvals that are requested. In particular, we…Mr. Ellerd is going to talk about the nature of the project and what those rights are, particularly our solar rights in the building that is immediately adjacent to buildings F and G.

Jeff Ellerd (200 S 6th St): I'm here to talk about our two projects located to the north of the F and G buildings. On this map we have Flour Sack Flats Phase I which is located north of Second Street, currently under construction. It came in requested at six stories, got cut down to five stories. We also have Flour Sack Flats Phase II, located immediately north of the property at 520 2nd St. That project came in at eight stories and was cut down to six stories at HPC. Flour Sack Flats Phase II has been through the site plan review process and has approvals. It was done prior to PDR being in existence, but those approvals are still valid. We also have a demolition permit for that site. The demolition has begun; half of that site has been demolished. The remaining half we are using as a sales center for our property to the north, but that building will also be demolished and Phase II will be under construction next year. As part of our approvals for Phase II, we have a green roof and solar panels that were included in the design and included as part of the approval. I brought some updated shadow studies showing the project and what the proposed F and G towers would do to those solar rights. This demonstrates that for half the year, our project would be greatly impacted by the shadows of these buildings. This is September 21st at noon showing our building Phase II right here more than half covered by the shadow of building G. This is December 21st at noon showing not only our Phase II building, but also our Phase I building.

President Martin: Everything on December 21st is covered by shadows.

Jeff Ellerd: Well, not right now it isn't.

President Martin: In the city everything is shadowed. December 21st there's no light.

Jeff Ellerd: Also, September 21st and March 21st would represent the same thing. Demonstrating that six months of the year, at a minimum half of the building would be cast into shadow. The last exhibit I have is the wall effect for the neighborhood from the north looking south towards the river showing our project here and here casting the shadow along with much of the block by this project.

Michael Norton: Based on what we've shown you, which were part of the EAW/EIS record, we feel that because of the permitting status that we have now, that our solar rights are perfected solar rights. That is, we have a vested interest in those rights that the city and this body we feel have a legal obligation to protect and to address. I want to make one point with respect to President Martin's comment about everything being in shadows… sure it is. There are many large parts of the city that are in shadows on December 21st, however, as I am going to discuss a little bit later, if you required buildings F and G to be of a 63 foot height, those shadows would not impact our solar rights access as they are going to impact them now. Let me talk about the rezoning and why we're opposing it. As you know, there are five standards that Mr. Voll set out in his report and we think that the project fails at least three of those standards. The first standard is, is the project consistent with the Comprehensive Plan? As I have pointed out in my memo to the commission, one of the requirements for the Comp Plan is that the City must, as a matter of law, pursuant to Minn. Stat. 462, provide for and address and

regulate solar rights. It's also in your Comp Plan and I guess I am failing to understand how almost total destruction of our solar rights is consistent with the Comp Plan requirements that they'd be protected under standard number one. Standard number two is, is the project in the public interest? With respect to that, my comment is that I don't see how destroying vested property rights of one property owner in favor of promoting the property rights of another property owner is in the public interest.

Commissioner Krause: I had a question about that. I am intrigued by the assertion of the solar rights in this case. I read through the legal memo and it's very thorough in citing case law to support some of your points, but there wasn't any case law on the solar rights issue. Is there, in fact, some case law that would demonstrate to us that the state statute has been used to protect solar rights in an applicable situation? I'd be really interested in seeing that if there is.

Michael Norton: I didn't bring any information regarding that. If the commission wants it, I'll certainly try to go find it. Let me suggest this though, there are a bundle of rights that we have. One of them is a vested right in the solar rights. The issue is, can the city affirmatively promote somebody else's rights over ours? There are probably 100 cases that say that can't occur. If the commission would prefer to have those, I can provide them through your city attorney to the commission.

Commissioner Krause: Here's a little more specifics to my question. The question is whether there is case law that says that some diminution of your solar rights is sufficient to trigger our responsibility to protect that because I think your own solar studies have shown that this is not completely denying you access to some solar… I guess what I am looking for is some case law that has a question of degree because I don't think that you're asserting that diminishing solar rights at a very minimal level or at some level would be acceptable. I just noted when I read the report that you refer to, a little bit earlier, saying that we have a responsibility with the buildings E, F and G that would mitigation of this impact. Mitigation suggesting that you expect the impact to occur, but there has to be some balancing off somewhere else. I'm having a hard time understanding this and it really is a central part of your argument.

Michael Norton: Let me try. First of all, I don't want to quibble or argue with the Commission on anything, but if 90% of our solar rights are being destroyed by buildings F and G, I guess I would not suggest that that's a minimal result in terms of those particular rights.

Commissioner Krause: Was it your intention to cover 100 % of the roof with some kind of a solar energy device?

Michael Norton: Well, 65% of the roof is going…it's going to be a green roof and 65% is going to have the solar panels that will…

Commissioner Krause: Solar works on green roofs perfectly well. You can have the two together.

Michael Norton: The point is that covering your solar panels for six months of the year is going to have a demonstrable and negative impact on the ability to preheat domestic hot water.

Commissioner Krause: I guess I don't understand why you wouldn't just simply shift them to the northern part of the building where there's less of a shadow effect.

Michael Norton: As Mr. Ellerd showed you, on December 21st half of the building is already covered…I'm sorry, September 21st half the building is covered and by the time you get to the fall and winter and late spring, the entire building is covered so moving them on the roof may assist us in a small measure if the height is reduced at least somewhat to address this issue, but it's not going to vindicate our rights completely.

Commissioner Krause: I'd grant you, you're not going to have a lot of solar access on the 21st of December. I question how significant that would be at any rate. I think that's along the lines…

Michael Norton: And that's certainly something that the commission can take into consideration. Of course there are no facts on the record upon which you can base that kind of conclusion. There is a case, I don't have the sight here but I can give it to you, it involved the skyway the city built adjacent to the Barrister's Building here down adjacent to along Third Street and the city was involved in a taking because the city, in building the skyway, took access to light and air and sunlight for the windows along that skyway and I certainly can provide that case to the commission if you wish to see it.

Commissioner Krause: I had one other question about the legal memo, which is you're critical of the staff recommendation that the staff there be phases of approval and I'm wondering what Bluff Street's interest is in that. How does that impact you to not want to have some kind of a phased approval process?

Michael Norton: Part of the reason for our opposition is that the phases that are going to be directly behind us we're concerned that they'll get sold off and Mr. Richardson has indicated that it may be a possibility that those pads will be sold off and if the phases aren't kept… and I'm not critical of the staff report in the phasing, I think it's an excellent idea. We have suggested that the phasing be in order as suggested by the staff, but that it be amended to require that each phase actually being completed before the next phase is rezoned. There's no legal requirement that the commission has to rezone the entire parcel for purposes of granting the approvals tonight. We think certainly any of the rezoning that's necessary for the renovation of the A-Mill complex ought to go forward because we think that's the whole reason for this entire project.

Commissioner Krause: I understand the point, but I don't understand why Bluff Street is impacted by it.

Michael Norton: By the phasing?

Commissioner Krause: Right. Assuming that what we're doing is we're essentially setting them in motion, all of the approvals that are requested tonight more or less. How does the phasing impact Bluff Street?

Michael Norton: Well, if it's suggested that the phasing is going to change, that for example F and G would go up first, not only do we have, as I believe, perfected solar rights in our permits for purposes of asking you to vindicate those rights, but our building is scheduled to be up first. If all of the sudden we're in competition with another building that was originally scheduled to be several years down the road, that is going to have an immediate impact on our ability to market and sell our units. This is a competitive business. There's no question about that. The other reason is, and as we've said consistently through the HPC and the EAW/EIS process, we do have a firm belief in vindicating the HPC standards and the requirements in the EAW/EIS for purposes of the redevelopment. We're subject to the same standards that they are and we think it's a matter of fundamental fairness. I didn't want to go into the HPC and EAW/EIS standards because I think most of you know that we disagreed with what happened there, but we think the standards ought to be applied to us. We were held to those standards and we think they ought to be held to the same standards too. We think with the phasing that we ought to be able to get into the ground first. They ought to be held to those standards. They ought to be able to make sure that the A-Mill complex gets done first. They've been telling us for over two and a half years that that's the whole reason why they're doing the project and why they need the height that they're having in E, F and G.

President Martin: Mr. Norton, Mr. Frank said here tonight three times that the A-Mill will be done first.

Michael Norton: I agree and I am hoping that you're going to make that a very firm commitment and ensure that not only is the A-Mill complex done first, but that each of the other subsequent phases are completed before each subsequent phase is permitted to be rezoned.

President Martin: Anything else Mr. Norton?

Michael Norton: Yes ma'am. I have a few more points to make since there are at least five approvals here. I'll be as brief as I can while still trying to represent my client. The next issue under "rezoning" is, is it compatible with existing uses. I'll only say this once, but this is essentially a major argument of ours and it permeates not just the rezoning but the CUP for the PUD and the variances and that is, unfortunately, although Mr. Voll has written a very good staff report, it's very concise and distills a lot of important information, his material with respect to this argument is conclusary. There are no facts.

It does not, and in fact, it totally ignores what I have said we have as vested rights in our particular project. It ignores that our height is only going to be 63 feet and treats us as if we're just some theoretical project. I guess we object to that and feel that it's not an appropriate demonstration of what our project really is. With respect to the additional height, it's a similar kind of issue. It's essentially incompatible and we don't think there are any standards that really show, other than conclusary statements, that this applicant is entitled to the additional height, particularly when you look at the impact of the height on our access to air and light and solar rights. Our view is, as I said earlier, we think you ought to seriously consider, and hope that you will do so, deny the height and/or at a minimum, limit it to 63 feet which is the height of our building that will then protect our solar rights. In addition, we've talked about the phasing plan, I don't think I need to go into that again. You understand, I think, where we're coming from there. Let me talk about the CUP. We're asking that the CUP be denied for F and G and the connecting structure. Effectively, anywhere from 20 to 30 or 40 feet from our building we're going to have two buildings of 243 ½ feet and 290 feet with a four story connecting structure and if the connecting structure is important it seems to me, in terms of the site plan, which I'll talk about a little bit later, that should be placed elsewhere on site or in front of their buildings not blocking our view. What this does, what this building does, it blocks our historic views from our location. You can't see the river if you're looking out the back window of one of our units because you've got the four story building and you've got those two enormous towers. We think that with respect to our view corridor, which this commission has protected in the past, we're entitled to the same kind of protection there. We think that, on that basis, the CUP standards, that it violates at least three of these standards. Again we've got the public health and safety standard, favoring one property owner over another; it seems to me violates that standard. The second standard injurious to the use of other property in the vicinity, our solar rights again impacted. Our rights to air and light…apparently, based on the applicant and if not for staff, we'd be looking at blank walls out of the first four stories of our project. We think that's inappropriate and we appreciate that staff is going to try to address that, but it does clearly impact our access to light and air. And again, is it consistent with the Comprehensive Plan, again solar rights are not being protected as required by statute and ordinance. We don't think the standards are met for issuance of the CUP for the PUD. There are two variances that we are particularly concerned about. The variances for bulk and height that are necessary for the 960 units, the Floor Area Ratio variance and also the side yard variance for the north side which immediately butts up against our property for building G. Although I think Mr. Voll's staff report is very well written, I don't see any facts. I see lots of conclusions supporting the issue with the variances. Standard one is the property cannot be put to reasonable use…

President Martin: Mr. Norton, we know the standards. You don't need to read them to us.

Michael Norton: Madame President, if I could make my argument I'd appreciate it. The first standard that the property cannot be put to a reasonable use is the justification and it can't be put to a reasonable use because the claim is that of the need to renovate historic

buildings. We agree with the need to renovate the historic buildings, however, there are no actual facts which the developer has provided that shows that they could not have otherwise created a plan and did a design that would protect the historic resources and not damage our rights. In fact, we've requested during the EAW/EIS process that there be an economic analysis so there wouldn't be this "he said/she said" kind of thing here and that's all we have here. I'm not in any way speaking pejoratively of the developer but all we have is the developer's word that they can't afford to preserve the A-Mill without making a gazillion dollars off buildings E, F and G. There's no question that they've said they need that profit. The real key here is that we believe that the whole argument for these variances is based on economic considerations. As you know, in the standards, economic considerations alone cannot justify or support the claim of an undue hardship. We've said that in a different environment that part of it is because of the developer's decision to pay what the developer paid for this. The developer is responsible for his own design and layout and how he's decided to use this site. He's got 11 acres. Surely there is some way to redesign this project that doesn't detrimentally impact those of use who are on the fringe of this project. One of the things that bothers me in particularly is that clearly the developer knew. There was every signal from the city in advance that the developer had to, and from the neighborhood, that the developer had to restore the A-Mill complex. That's a cost of doing business. It's not an undue hardship. That is their responsibility to do it. We don't think, quite honestly, that the cost should be shifted to Mr. Minn and his project because the developer is now saying he needs all this height. Therefore, we believe there is no hardship and this is based solely on economic considerations which we don't think, in fairness, you should approve. On the site plan I want to apologize. I may be, believe it or not, confused. HPC approved our project for a 30 foot setback on the north side to protect the rail corridor. I understood that is what was approved by the Planning Commission. Mr. Voll informed us today, and I appreciate him and his professionalism in letting us know this so I didn't misrepresent to the Commission what the setback is, the setback is either 15 or 30 feet and we're going to have to work that, for our building, we're going to have to work that through. My point then, always was only on the site plan that whatever our setback is, if it's 30 feet or 15 feet, then for new construction on the south side, not just in fairness, but as a matter of regulatory consistency, the developer ought to be held to that setback for new construction on the south side. In conclusion, again, we're asking to deny the rezoning, deny the CUP and variances since the variances in particular are based only on economic considerations and we're asking you to have the same setback for those buildings that we have and confine the buildings F and G to 63 feet in height with no structure in between so we can preserve our views to the river.

Commissioner Krause: I had one additional question for Mr. Norton. I think you're correct that we are not mandated to follow HPC or the conclusions of an EAW/EIS. I think we could argue that we are required to take notice of that action and include it in our considerations.

Mr. Norton: Absolutely.

Commissioner Krause: Let's say we did, based on that and the public testimony tonight, decide that the size of these buildings was appropriate, it was massed similar to the historic grain elevator structures, it fit in with the pattern of residential high-rise buildings in this part of the city… isn't your remedy really to seek some relief from the height limitations imposed on your site as opposed to take those limitations and impose it on this project? Where's that at? Are you pursuing that as well?

Michael Norton: First of all, I would fundamentally disagree with your characterization of came out of the HPC process and the EAW/EIS process. In fact, during the HPC and the EAW/EIS process, in fact, during the HPC and the EAW/EIS processes, it was very clear that all the commentators, the National Park Service, the DNR and the State Historic Preservation officer found that the massive height of these buildings and massing along Main Street was inconsistent with the historic character of the area so I would respectfully disagree with your characterization of…

Commissioner Krause: Let's just say that's the characterization that I might make as a Planning Commissioner and leave the HPC out of it.

Michael Norton: Let me give you the legal answer and Mr. Minn would like to give you his answer as the property owner. The legal answer is, is that I don't believe that this body, respectfully, can force upon us taking some other legal action that we don't necessarily have to take based on the rights that we already have. We have these rights already. They are directed and forced upon us, quite honestly, through the regulatory processes. We have those rights. I believe this body has the obligation to address those rights as they exist. What might happen in the future, I would respectfully suggest, is not the business of this particular body. I would respectfully suggest that.

Steve Minn (9304 Lyndale Ave S): I will be very brief. Mr. Norton's covered most of our issues. I will address Commissioner Krause's specific point. Our dilemma here is that we observed the existing regulatory schemes and relied upon them for the basis of making a presentation for development. We have a much smaller parcel, we have less than an acre compared to the 11 acres they have, 9 acres without the Phoenix site. Let me list for you the standards and ordinances which we relied upon which are being varied or altered in some way here that impacts our ability to make a change to point your question Commissioner Krause. The HPC height guidelines were varied. The Mississippi River Critical Area guidelines were varied. The Shoreland Ordinance for property west of Fifth, but east of Third, were varied. That's two and half stories. Variance standards for the CUP of height. The variance for the setback. Just to correct the record, the south end of our property and the north side of their property; we were held to a 30 foot view corridor that Council Member Schiff created an appeal. The Planning Commission granted 15 feet, you're considering varying that to 11 feet. This is supposed to be a section of rail looking east/west to the historic grain elevators which have been authorized to be torn down even though they're historically significant. The Marcy-Holmes Master Plan, the neighborhood did a 180 degree flip on themselves and violated their own Master Plan. Then we're dealing with granted variances denied to us that are

being granted to the applicant. My question to you, I guess, in response to your question is what reliance would I have and which standard would I look to in order to find relief if not to the code, ordinances and statutes? I applied, I followed, I was limited and here I am with an applicant much bigger which a much more exciting and interesting master planning concept to review. They've been given special consideration both at HPC and at this body for video presentations and time and discussion and we've had two years of EAW and EIS to study, but apparently what's been done is the EAW and EIS have been put on the shelf. I doubt anybody's read it from page to page. The findings and disclosures have not been relied upon for a finding of jurisprudence and I am here setting up a lawsuit. Thus Mr. Norton's wanting to get his information on the record. I don't have much choice because, based on the lot size that I have, even if I went to 10 stories and did two levels of parking below and two levels above and had eight usable feet, I would need the variances that are not available in this code to get to the height that the shadows that will be created by their projects. As Mr. Ellerd's pointed out, in both the spring and the fall, the shadow studies will obliterate 85% or more of our direct solar access. That's not by virtue of where the sun is, it's by virtue of where their buildings are. I have no angle of correction available to me. I can't push it all back to the north, I can't get enough mass to do preheat adequate for 60 units, let alone 45 units which I am approved for, without having at least 65% of my roof area covered by solar panels. I believe, Commissioner Krause, you know how that formula works. My point is, it is a fabulous plan, we solute 80% of what they've done, we think it's important that the phasing be observed the way it was presented at EAW/EIS, that they be obligated to complete not just the A-Mill, but the A-Mill North and the Historic Warehouse II, the important Machine Shop and the Red Tile Elevator. This is nine acres of the most historically documented preserved real estate in the state and to allow piece mill separation or segregation of the parcels to other developers without a complete completion of Phase I before Phase II and Phase II before Phase III would be a completion of the evisceration of the statutes, the ordinances and the reliances on guidelines that we had been stuck with for two and a half years. I hope that's responsive.

President Martin: Ok. Others who wish to speak to item number 12?

Jo Radzwill (507 2nd Ave SE): I am with the Marcy-Holmes Neighborhood Association. I would like to speak in favor of the changes in the conditions that we submitted. The main reason that we submitted those was because during the last year and half or so, with the A-Mill Task Force, we've been discussing this as a private street. We felt that the staff and the developer have done a fine job in trying to make our amenities stick to the development. We felt that maybe these things were not clearly enumerated enough in the staff report and that was why we wanted to suggest these. They have been submitted in places where we've been crossed out, I believe, and underlined the additions. I realize that Mr. Voll wants to speak to those. The intent is that we want these… these are part of the amenities that should be required under the conditional use permit and under the site plan review in our view.

Cadillac Kolstad (1403 4th St SE): I've often spoken in the past of the importance of the elevators on the site and they are indeed important. The disruption to this project will cause to over five different realms of historic and other importance deserves some mention. Some other recent events in the news bring up new dimensions to this issue which I feel are important to think about. It is officially a buyer's market in real estate according to WCCO television with Don Shelby. A recent fire of the short line rail trestle forced ADM to use the Pillsbury A-Mill site as a grain transfer site in July 2006. This is clearly not an obsolete use. The new Guthrie Theatre on the river has very carefully placed views from her windows. The Pillsbury A-Mill is a major focus of several of these views. With the significant public investment that has gone into those views, I think it's important that we, as a city, think about preserving those views now that we have invested in them. The Pillsbury A-Mill complex, in addition to being a nationally registered historic landmark, is capable of running on direct-drive water power from St. Anthony Falls. Our present state of energy costs would indicate that such an asset can only become more valuable in the future. The Minneapolis Grain Exchange recently said that the grain market has "gone ga-ga" and it's a bull-market for grain. Taking all of this into account, there is no sensible or logical way to argue that this project makes good economic sense for the city of Minneapolis. I would also argue that in an era when there is so much global poverty and famine that it is a crime against humanity to destroy a food production facility of this magnitude. I ask you to please put this project on hold. Our own mayor, R.T. Rybak, put it best when he recently said "there are plenty of blacktop parking lots to be developed in this city." Indeed adjacent to the A-Mill landmark complex, there are two city blocks of open space. Please deny the request for a change of zoning today. I want to make note that I am a private citizen and I have no affiliation with any of the developers represented here today and I thank you very much for your time.

President Martin: Ok. Others who wish to speak? Jim, did you have some extra stuff? I thought you said you wanted to come back with something.

Staff Voll: The only thing I would want to comment on is that if we were to adopt some of the changes to conditions that were in the Marcy-Holmes letter, I would want to discuss about some of my concerns on that. Once again, not with their intent, but just how the language would work.

President Martin closed the public hearing.

Commissioner Schiff: A question for staff, can you zero in on the site plan? I'm interested in your response to a comment made by Mr. Minn. On the view corridor, did the Heritage Preservation Commission ok additional buildings infringing into some of the spur rail lines in the rail corridor in-between I guess what's being called Prince Street?

Staff Voll: I guess I'm not following the question. As part of the Schafer Richardson proposal? My understanding is what you see before you is what went before the HPC. I don't know whether they… I don't recall that being something was discussed. I was at

the HPC meeting and I don't recall them allowing buildings to go any further into the rain corridor than what you see.

Commissioner Schiff: Do you know how many spur lines are being eliminated?

Staff Voll: I think the applicant would be better to answer that question.

Commissioner Schiff: Ok. That'd be great.

President Martin: David, can you answer that question please?

Commissioner Schiff: If you could throw that up there and show the area we're talking about.

David Frank: This is Sixth Avenue, this is the half block of our property between Sixth and Fifth, Main and the rain corridor. This property to the north is not ours. What the HPC saw and approved, as Jim said, is the plan that you see here. There's one main line preserved on our property, this track behind the building. The rail mitigation plan, which we've been discussing with HPC, the rails and ties which are there now, will go away. This will be a reinterpretation in a similar location. That connects across, in an interpretive manner, across Fifth Avenue SE and continues along. That's the main line that goes, and is in use today, into the train shed that's in the rear of the A-Mill complex. On our property, on the west side of Fifth Avenue SE, there are additional interpretive rail elements. Between Fifth and Third there are two, one of which connects across Fifth to our property between Fifth and Sixth as shown here.

Commissioner Schiff: How many are you building over? Are you encroaching into any spur lines that exist today with new construction?

David Frank: I'm not sure how to answer. As you know, there were some serious differences of opinion about what equals a spur line back at HPC. If you'll let me try to define my terms, there are tracks which come in this fashion. I don't think of those as main lines, I do think of those as spur lines. I don't have the count for you. It depends on where you stand and where they join each other. The lines which will be preserved in the sense of the existing rails and ties, new rail put in in an interpretive manner is one between Sixth and Fifth and then after crossing Fifth, two between Fifth and Third. Excuse me, on the Main Street boxcar tracks all the way from Sixth to Third. I don't mean to duck your question about spur; I don't know that number or how to count them exactly.

Commissioner Schiff: I know. Some of the spur lines were added after the period of significance for this district as well. I know you probably had all this documentation in front of HPC.

Commissioner Tucker: I want to disclose my history with this part of the riverfront, this site and this project. On the advice of assistant city attorney, Erik Nilsson, and in the interest of transparency, I will discuss these links in some detail because I have a long and active riverfront career. Over 30 years ago I discovered the A-Mill during the River Ramble, a community walk designed to highlight our neglected riverfront. I have worked for the Riverfront Development Coordination Board making inventory of riverfront resources, including the A-Mill. I joined the Historic Riverfront Development Coalition opposed to highrises on the river. That was a few years ago. I have served the City's Critical Area Plan, and the Citizen's Advisory Committee that suggested extending the grid to the river wherever possible. We finally approved that plan. I represented southeast Minneapolis on the Above the Falls Citizen's Advisory Committee and promoted lateral access to the river and transition to mixed-use. I have suggested guidelines for riverfront development for the Marcy-Holmes Neighborhood Master Plan. As that plan was wrapping up, Schafer Richardson came to Marcy-Holmes, where I live, with its proposal and showed how it was trying to follow the plan. Marcy-Holmes, with the Nicollet Island East Bank Neighborhood Association formed the A-Mill Task Force to test the proposal against the plan and report back. I acted as facilitator. The developer and his consultants have attended the meetings. All those interested, including adjacent land owners were welcome to attend. CPED staff and City Council members have attended. The handouts I am sending down contain documents produced by the task force showing its process. The first document is excerpts from the Marcy-Holmes Master Plan approved by this commission that pertain to the A-Mill proposal. We found that having a master plan has been useful, both to the developer and the neighborhood, to focus the discussion. The second document, June 3, is an evaluation of the proposal as it was understood at the time and discusses how it complies with the master plan. You'll see it also emphasizes street-level activity as highly desirable. The October 3 consensus statement, the next document, was written to support razing the white concrete elevators. That agreement was signed by those who agreed with the statement there, including me and at the time I was a member of the Marcy-Holmes Neighborhood Association Board, but not on the Planning Commission. The statement supports the demolition application by the developer to the HPC, but that's not something pertinent to this organization. The statement notes the amenities that demolition could bring to the neighborhood and conditions that neighborhood support on implementation of those amenities. The January 2006 Consensus Statement, which many of you may have seen because it was used for the HPC hearing for the Certificate of Appropriateness, lists four major areas of goals: saving the A-Mill, extending the grid to the riverfront, domesticating Second Street SE and enlivening the sidewalk. It states that if those goals are met, then the neighborhood may approve the extra height and if those goals are met and if the skyline is left open and varied. When Schafer Richardson submitted its applications to CPED, the taskforce met to evaluate them. In July 2006, the evaluation of the project was, as submitted, was reviewed by the task force. The next colored sheet with all the dots is a matrix, tabulation of the goals as stated in the consensus statement versus the project elements presented by Schafer Richardson. The green dots indicate the project element supports the goal; red that it does not. The document after that is a summary that highlights the projects' amenities and issues as noted by the task force. The document after that,

"Unresolved Issues as of August 1st" just highlights all of the points where some more work need to be done. It didn't necessarily mean everything had to be accomplished, but that's where there were some agreement and some comment. Since August 1, clarification from Schafer Richardson has resolved some of the issues. For instance, Warehouse II, which was suggested might not all be commercial, is in the application as commercial so that goes away. What? Warehouse I, I'm sorry. Conditions proposed by staff resolve other ones, particularly phasing and the use of Fifth Avenue space. The proposals brought forward by Marcy-Holmes tighten up some of the conditions, particularly access to Sixth Avenue. It's my understanding that Schafer Richardson supports at least the intent, if not every detail, [tape ended] these suggested conditions. Later I will offer some tweaks based on today's hearing and discussion and I'll get the help from staff on getting that so it fits with our zoning code. Other contacts that I want to disclose are that I have taken a tour of the site with the developer along with neighbors, Council Member Zerby and one HPC Commissioner. Over the years I have given Schafer Richardson information on the master plan and Gateway Plan for Marcy-Holmes, both at the Committee of the Whole meetings and neighborhood meetings. In summary, though I have great civic interest in this site and project, I have no direct or indirect financial interest. Further, I have not prejudged the applications, but I do bring to today's proceedings, information from my long career as a riverfront activist, the report prepared and distributed by staff and testimony heard from the public today. That said, I'd like to move on to the applications.

President Martin: Ok. That's the longest preliminary statement in my history on the Planning Commission.

Commissioner Tucker: I think I have given other long ones. On item A, rezoning, I will move we adopt the findings and approve the rezoning application from I1 to C3A districts and remove the ILOD for the properties listed in the agenda.

President Martin: Ok. Is there a second?

Commissioner Schiff: Second.

President Martin: Discussion?

Commissioner Tucker: I just note that this commission has rezoned property adjacent and further from the activity area which centers around East Hennepin, 520 and 521 2nd Street. Noting at the time, I wasn't on the Commission then, that this area was ripe for mixed-use and more intense development and…

President Martin: I think that was Commissioner Krause's direct quote.

Commissioner Tucker: This is the property between those rezoned properties and the actual activity center so I think it's quite appropriate to rezone to C3A.

President Martin: Ok. All those in favor? Opposed?

The motion carried 5-0 (Commissioner Motzenbecker not present for the vote).

Commissioner Tucker: On item B, I would move we adopt the findings and approve the conditional use permit for a planned unit development application with exceptions for the 960 units for property as listed in the agenda. Here I may have some suggestions for changing condition three to something similar to what the Marcy-Holmes Land Use Committee worked out and I'd be happy to hear from Mr. Voll what changes he thinks are needed to keep the intent, but have it line up with the code. I would add on one of those… part of the suggested change, and I can just read that for those who don't have it. It says, for conditional use permit, condition three "the elimination of any of the following proposed amenities will require an amendment to the PUD: the rail corridor preservation including the replacement of some tracks and the train shed; the pedestrian connections through the site at Prince Street and the 4th Avenue SE pedestrian walkway between buildings B and C and the Red Tile Elevator and building D connecting 2nd Street SE with Main Street SE; provision of a streetscape on vacated 5th Avenue SE that is like a city street, including sidewalks adjacent to the buildings, boulevards with trees and road access down the center, the entire scheme encompassing the full width of the vacated 5th Avenue SE right of way. Upper stories of adjacent buildings should be set back from the lower stories at least 15 feet…" they suggest 15 feet, I suggest we substitute language that would say 'at least as much as that shown in the 8/14/06 proposal' and I think that's all the changes in your condition three.

Staff Voll: I think this if fine to put in this language if the Commission chooses to do it, but I think it would be better to make it a separate condition because really what we were trying to get in condition three is that there are lots of things that could cause the PUD to come back for an amendment but we were trying to make it clear that the developer is saying 'these are the amenities we are giving you' so we don't want it to be that they come back later and say 'we want to get rid of that'. We want to make it clear that these come back to the Planning Commission no matter what because that's really the exceptions. What I hear the neighborhood group saying here is really a condition saying what they want Fifth Avenue SE to look like so…

Commissioner Tucker: I think it's just specifying the elements that make that space street-like. It just protects it incase others develop…

President Martin: Can we just be clear what we're talking about here because in condition three it's Fifth Avenue SE and in the neighborhood recommendation it's Fourth Avenue SE.

Commissioner Tucker: There's two different ones, there's the walkway that goes from Fourth and then there's the one from Fifth.

President Martin: Alright, but I just want to be clear which one we're talking about.

Commissioner Tucker: I think we're talking about the Fifth.

Staff Voll: The way I read what they said here is they deleted Fifth and put in Fourth to clarify that pedestrian connection. They say 'streetscape for vacated Fifth' and go through that whole long… I think it works better as a separate condition and then just leaving it as I've written; Fifth Avenue SE being eliminated comes back to the Planning Commission, but I will leave that up to you all.

Commissioner Tucker: As long as the specifications are in there as separate, that's fine. If it reads more easily and is less confusing then it's all to the good.

Staff Voll: As long I'm here, condition number four under the PUD, it probably… I didn't mention this during my presentation…it would probably make sense to say 'the applicant provide a study to Planning staff' just to make it clear who that goes to. It comes to us, it doesn't go to anybody else since we're looking at it and making the evaluation.

Commissioner Tucker: Just one small note, in the agenda you wrote 'Fifth Street SE' where I know you meant 'Fifth Avenue SE'. Those were the only changes suggested for item B in the conditions.

President Martin: Ok. Commission Tucker, you've motioned approval of that and now we've got…

Commissioner Tucker: We'll add a condition that encompasses the neighborhood addition; changing the last bit of their addition where it says 'upper stories of adjacent buildings should be set back from lower stories at least 15…' change "15 feet" to "as much as that shown in the 10/14/06 proposal". Because this is a 10-year plan, the building is going to change somewhere along the line one might imagine. The idea of the setback is to realize one of the goals in that consensus statement which is to keep a distinct gap where the grid goes through and this is just holding that space.

President Martin: Ok. Jason, you had something.

Staff Wittenberg: One point on the suggested language from the neighborhood association, there's a reference to the entire scheme encompassing the full width of the vacated Fifth Avenue SE right-of-way. As was pointed out earlier, the applicant doesn't own the entire width of the vacated Fifth Avenue SE so would the Commission consider 'the applicant's portion of the vacated Fifth Avenue SE'?

Commissioner Tucker: I think the idea is to try get the whole street to be like a street. One hopes that the applicant and adjacent land owners will work cooperatively to use that rail corridor for their access and to use that one part of vacated Fifth Street owned by the Soap Factor to all work together. I know we can't mandate that. I think that the way this reads, it could be possible that their plan says 'we can't do anything with this', but their

plan might say 'we really want to do this and will buy a strip of the land'. Another place, I think Mr. Voll suggested that they work with Public Works possibly replatting and making the street public again. There are lots of different ways to do it and I think the language allows for different solutions even including no solution for that one corridor. I think we want to leave that in there to be as strong as possible that we want that whole space to act like a street.

President Martin: Commissioner Tucker, one huge confusion in my mind at the moment… you made reference to 'as noted in the 10/14/06 report', that's still two months from now.

Commissioner Tucker: I meant 8/14/06.

President Martin: Thank you. Ok.

Staff Wittenberg: I remain a bit concerned that should the applicant not secure the ability to improve that property that's not theirs, that this could be read as invalidating this particular land use approval.

President Martin: Ok. We don't have our lawyer here to advise us about that. So, Commissioner Tucker, we have before us the CUP which has been moved and seconded with the original condition three, your suggestion of… and condition four with the note that it's to go to Planning staff, and now the additional condition which on this is noted as B, condition three. You want to add that one?

Commissioner Tucker: Condition whatever. Insert it wherever.

President Martin: If we're going to add something it should be number five just to be consistent here. Jason, just so I'm clear…

Commissioner Tucker: What is Jason's suggestion on language to protect the application?

Staff Wittenberg: My suggestion would be 'the entire scheme encompassing the full width of the applicant's portion of vacated Fifth Avenue SE'.

Commissioner Tucker: Ok. Can we add 'with the hope that it includes…'.

President Martin: You can always hope. We're all in favor of hope. All those in favor? Sorry, Commissioner Krause.

Commissioner Krause: I appreciated the very passionate argument that Mr. Norton and Mr. Minn made on the height issue. I do think that, as I was trying to read through the report, that the combination of factors on this site: the desire of the neighborhood and the city to have an active street-use, the mixed use nature of the site, the historic

characteristics we're trying to preserve… all of those things, to me, lend themselves to the need for some level of density perhaps higher than you would otherwise expect here. A lot of this, I think, will turn on this question of whether historic preservation without public subsidy is in fact a hardship. I think the position the city is in right now with no source of funding that I know of to achieve this historic preservation… and you're right, it is probably one of the most historic parts of the city. The fact that there is no source for that means that butfor the fact that a developer was coming forward and incorporating that historic preservation into a larger project would mean that it didn't happen. I know that this argument that was made tonight is going to get heard again in other forums as this moves along. I think it's an interesting argument and I'll be interested to watch what happens as it moves forward.

President Martin: Ok. All those in favor of the motion? Opposed?

The motion carried 5-0 (Motzenbecker not present for the vote).

Commissioner Tucker: I will move the variance C (Schiff seconded). I just want to note that I think staff is proper to mention all the amenities that justify this. It's actually a hardship for the city were this not to be allowed and the A-Mill saved and the access improved and the Second Street domesticated. All these things, I think, are positive for the city. I will recall that when the Phoenix project came forward from these same developers I voted against their FAR because there was no particular public benefit coming out of that access, but here I think it's highly justified.

President Martin: Commission Tucker, I'm going to be interested in seeing how Second Street SE gets domesticated with all of those Metal-Matic trucks still running. All those in favor of the approval of the variance? Opposed?

The motion carried 5-0 (Motzenbecker not present for the vote).

Commissioner Tucker: I will move D, E and F. I move approval as recommended by staff in their findings. There is a denial of the 20 foot drive aisle (Krause seconded).

President Martin: So the motion is to approve D and E and deny F as written by staff.

Commissioner Tucker: Correct.

Commissioner El-Hindi: Just to make sure that the applicant agree to the variance F denial in the report that was mentioned.

President Martin: They don't have to agree, they just have to go along with it.

Commissioner Tucker: We're always curios what they think.

President Martin: All those in favor of approving those three variances? Opposed?

The motions carried 5-0 (Motzenbecker not present for the vote).

Commissioner Tucker: I move staff recommendation to approve the site plan review with a couple of changes to conditions. On number five, as suggested by the neighborhood and perhaps this should be an additional one, that same language talking about making a street-like space where vacated Fifth Avenue is. I don't know, Jason, if you think that works better separate or as part of that five.

President Martin: This is the language here.

Commissioner Tucker: It's restating it for emphasis if nothing else.

Staff Wittenberg: I guess one question… there's a slight difference in the language here in that it sort of suggests more that the plan completely emulate a city street.

Commissioner Tucker: No, it says 'such elements as' so you would expect to find most possibly all of them.

Staff Wittenberg: Ok.

Commissioner Tucker: We'd take out 'at least 15 feet' as suggested because we've done that in the other one. So where the neighborhood suggested at least 15 feet, it would just read 'upper stories of building should be set back from lower stories…'

President Martin: Same as in the earlier condition.

Staff Voll: Can I just ask a clarifying question? The Marcy-Holmes letter talked about deleting the language that the applicant will work with Planning and Public works staff, is it your intent to still leave that in?

Commissioner Tucker: That can still be in there I think.

Staff Voll: Just to clarify, the reason I want that in there is because if the Soap Factory goes away, some of the widths we have don't meet code standards so we have to work with them right now to get an approvable plan incase that should happen.

Commissioner Tucker: I don't intend to take that out.

Staff Voll: I want to ask one more clarifying question. I'm not understanding the 15 foot setback. What is the intent of what we'd be doing now?

Commissioner Tucker: It's not a 15 foot setback, but it is a setback. The intent there is that's part of what makes vacated Fifth Avenue seem like a city street because in this

project, as well as many others, it's been established that the lower plinth level base of the building comes up to the street and then for six stories up it sets back. The same pattern would be repeated on vacated Fifth Avenue, thus reinforcing the sense that it's a city street.

Staff Voll: But if they came in with plans to me, what would I be…let's say this gets through everything and is approved as is…what would I be telling them to set the tower back? Exactly what they've shown on the plan?

Commissioner Tucker: What they've shown or more.

Staff Voll: Ok. I understand. Thank you.

Staff Wittenberg: To clarify, is that only from the vacated Fifth Avenue right-of-way or are we talking about the entire perimeter where that's applicable?

Commissioner Tucker: Just from vacated Fifth Avenue.

President Martin: Ok. Other corrections or additions to the conditions?

Commissioner Tucker: Yes. Item seven, I'd more we substitute what was written by the neighborhood which would read 'the applicant shall move the vehicular access from building G to the rail corridor or directly adjacent to the rail corridor' and I think we need to change some words 'the roadway acceptable to the city can be on the applicant's property or on an easement arranged with the adjacent property owner.' The idea there being that if they can arrange something then they have a bit more space. If they can't, it goes on their own space. This way, that access will work exactly the same way as the access to building G/F coming off of Fifth Avenue and reinforce this rail corridor which seems to be coming an access for parking now.

Staff Voll: I did want to clarify one thing just so the Commission is aware of it. The neighborhood sent this condition to us and the reason we did it as 'encourage' is, even if they do it on their property, I don't believe they would have a wide enough driveway. The zoning code would require a 12 foot wide driveway. It seems to me there is an awful lot of traffic coming in an out of the site and you'd only be able to get one car going one way.

Commissioner Tucker: It seems to me, in the plan, it shows a 16 foot exit roadway or driveway I think. I believe it's a one way currently as it's designed. Probably the reason for moving is that it comes out in the middle of sloping Sixth Avenue through the neighborhood's gateway, the extra wide boulevard that was created for a little extra greening and a welcome to the neighborhood so moving it up to the rail corridor reinforces the rail corridor as an access point and relieves the gateway from this extra curb cut that is not helpful. On 14, just to notify the neighborhood of changes that are proposed, not if amendments are coming through that need public notice but just changes.

It seems that a lot happens administratively and not that the neighborhood would have a veto, but it should have a chance to know that things are changing on a project that's going to go on for 10 years in this size.

Staff Wittenberg: I'm a bit concerned that the condition as suggested by the neighborhood would be a bit overly broad and perhaps that can be a staff direction rather than a condition that's placed on the applicant's land use approvals.

Commissioner Tucker: That's fine.

Commissioner El-Hindi: I guess I would like to go to condition number six. Jim has mentioned the possibility that if those changes were to happen that this might have to go back to HPC. I'd like to address that a little bit in terms of the screening, the green screening. I have a note from Commissioner Motzenbecker before he had to leave to catch a flight and I'd like to communicate those notes. The first one is in regards to the screening and this is something we share very similar views from the notes that I have from Commissioner Motzenbecker is that there is the possibility of providing and actually using the screen itself as the architectural feature. In our line of work, we've worked with so many different types of screens if it's the Jacob kind or something of that nature that it is a really beautiful screen in itself and it could act as an element that would, in a away, provide that architectural feature.

President Martin: We had that on that Aloft hotel recently.

Commissioner El-Hindi: Is it? Is it the same one?

President Martin: I don't know if it was a screen but it was something like that.

Commissioner El-Hindi: I guess I am just trying to argue a point where maybe it saves the idea of not knowing whether this has to go through the HPC once more or not that maybe that would be one point to make. The other one is, and this is a point that Commissioner Motzenbecker is making, is that potentially you could add a condition in there to, until the screening actually does fill in with green, that one of the ideas could be to actually use public art. It might take a couple of years for the green to fill in, but in the meantime the public art could be one idea that's investigated. I maybe want to remove condition number six from the site plan if the Commissioners do agree with that.

President Martin: Commissioner Tucker do you regard that as a friendly amendment?

Commissioner Tucker: Yes.

President Martin: Ok. So strike number six?

Commissioner Tucker: [microphone not on] …SE vacated…directly from that space. I think that's the intention of the developer, but it didn't quite get in the plans. It doesn't hurt to repeat it.

President Martin: Ok. So that's a new condition number six.

Commissioner Tucker: We'll bring up the discussion if we want to be talking about bump-outs and Public Works kinds of things. That would be 'the applicant will work with Planning and Public Works staff to eliminate the need for a private street approach apron'…I think that's what it's called, that lip that you go over... 'at the entrance of the north and south ends of vacated Fifth Avenue if that space remains a private street' and 'also study the feasibility of bump-outs to calm traffic on Second Street and Main Street SE'.

President Martin: Ok. So that would be condition number 16?

Staff Wittenberg: I'm sorry, Commissioner Tucker, could you repeat the first part of your…

Commissioner Tucker: 'The applicant will work with Planning and Public Works staff to eliminate the need for a private street approach apron.' You know when you go off the main street on to a big parking ramp or whatever there is that little lip that tells you you're not on a public street anymore. Part of making Fifth seem like a street would be to not have that. This is directing staff to work with the developer and Public Works to see if that can be eliminated under the city's rules.

Staff Wittenberg: Might I suggest that they work together to "consider" elimination of…

Commissioner Tucker: Ok. I just want to get that idea there and see if the Planning Commission supports pursuing that. I know we have talked about street design and how that works for more than just moving traffic around and this is, perhaps, one of the first instances where that will come up.

President Martin: Ok. Who seconded?

Commissioner LaShomb: I'll second that.

Commissioner Krause: I was wondering if Commissioner El-Hindi…I'd be a little more comfortable if instead of eliminating number six if we simply added the green screening…

Commissioner El-Hindi: I was just about to actually come back…

Commissioner Krause: Just add the green screening as an option for them to break up the 25 feet of wall space rather than eliminate it.

President Martin: Ok. Six is back in with green screening. Anybody else?

Staff Voll: Can I ask one more clarifying question? On Commissioner Tucker's condition for the townhomes having entrances facing vacated Fifth, is that for both buildings E and F?

Commissioner Tucker: E and F, yes.

Staff Voll: Alright, thank you.

President Martin: Ok. So we have now the site plan with a slightly altered condition six, a slightly altered condition seven, slightly altered condition 14 and an added condition 16 and 17. Did that capture all of them? Ok. All those in favor? Opposed?

The motion carried 5-0 (Motzenbecker not present for the vote).

President Martin: I would like to, on behalf of all of us on the Planning Commission, thank Schafer Richardson and particularly Mr. Frank for his ceaseless work with the community on this. We would not be where we are on being able to approve this project without the effort that'd been put in on that and the effort to keep us informed about what's going on. We all really appreciated that because this is certainly one of the biggest, most complicated projects that we've had before us in a really long time. Thank you.