

LAW OFFICES OF JAMES P. PETERS, PLLC

JAMES P. PETERS
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April 15, 2011

City of Minneapolis
Community Planning & Economic Development
Planning Division
250 South 4th Street – Room 110
Minneapolis, MN 55415

HAND DELIVERED

***Re: Appeal of the City of Minneapolis Board of Adjustment
City/County Solid Waste Management Facility (“Facility”)
340 27th Avenue N.E.
PIN 1102924240083***

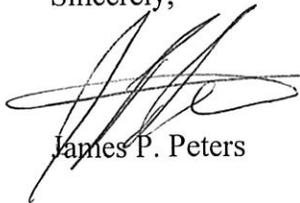
Ladies and Gentlemen:

I write to file the appeal documents for an appeal of the April 7, 2011 decision of the City of Minneapolis Board of Adjustment regarding the above-referenced facility. Enclosed please find the following:

1. Fees by check payable to “Minneapolis Finance Department”. The fees are \$350 + \$25 + \$ cost of postage.
2. Application Worksheet with signed Notice of Appeal form, with attachments to include Statement of Reason for Appeal. This document is attached.
3. List of property owners within 350’ of the site, including: a) Map showing property with the 350’ circle; b) mailing labels; and c) list of property owners. These materials were received from the County Taxpayers Service Division.

Your attention to this appeal is appreciated. Should you have any questions, please call me immediately. My cell phone number is 320-424-2326.

Sincerely,



James P. Peters

APPLICATION WORKSHEET

Appellant	Name	James P. Peters, Attorney; See attached list
	Mailing Address Including City, State and Zip Code	Law Offices of James P. Peters, PLLC 460 Franklin St. N. #100; PO Box 313 Glenwood MN 56334
	Phone Number	320-634-3778; 320-424-2326
	Fax	320-634-3778
	Email	jim@peterslawfirm.com

NOTICE OF APPEAL

Choose one:

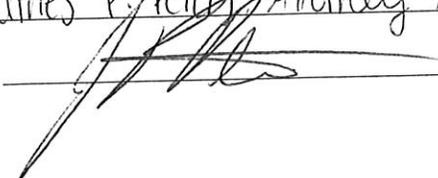
- I, _____ (print name) do hereby file an exception to the Decision of the **Zoning Administrator** as provided for in Chapter 525.170;
- I, James P. Peters, Attorney for listed Appellants (print name) do hereby file an exception to the Decision of the **Board of Adjustment** as provided for in Chapter 525.180;
- I, _____ (print name) do hereby file an exception to the Decision of the **City Planning Commission** as provided for in Chapter 525.180;

Project Name	City/County Household Hazardous Waste Facility
Project Address	340 27 th Avenue Northeast, Mpls, MN
BZZ Number	1102924240083

Further, I do hereby request that I be given an opportunity to express my case before the Board of Adjustment or the proper committee of the City Council.

The action being appealed and the reasons for appealing the decision are attached and made a part of this notice of appeal.

Appellant's Name: James P. Peters, Attorney for listed Appellants

Appellant's Signature:  Date: 4/13/2011

List Of Appellants

Appellant	Name	Lisa Hondros
	Mailing Address	171 East Island Ave, Minneapolis, MN 55401
	Phone Number	612-379-4524
	Fax	320-634-3778
	E-mail	lhondros@visi.com

Appellant	Name	Suzanne Durkacs
	Mailing Address	2632 Buchanan St. NE, Minneapolis, MN 55418
	Phone Number	612-788-0389
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Appellant	Name	Mark Meier
	Mailing Address	2407 Hayes St. NE, Minneapolis, MN 55418
	Phone Number	612-788-2850
	Fax	320-634-3778
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Appellant	Name	Mark Meier
	Mailing Address	2407 Hayes St. NE, Minneapolis, MN 55418
	Phone Number	612-788-2850
	Fax	320-634-3778
	E-mail	markm@equalicare.com

Appellant	Name	Dan Elias
	Mailing Address	731 Jefferson St., Minneapolis, MN 55413
	Phone Number	612-362-0120
	Fax	320-634-3778
	E-mail	bcm@eschelon.com

List Of Appellants

Appellant	Name	Lisa Elias
	Mailing Address	731 Jefferson St., Minneapolis, MN 55413
	Phone Number	312-362-0120
	Fax	320-634-3778
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Appellant	Name	Erin Winter-Belfery
	Mailing Address	223 4 th St. NE, Minneapolis, MN 55418
	Phone Number	612-229-4942
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Appellant	Name	Andrew Hunter
	Mailing Address	2515 Ulysses St. NE, Minneapolis, MN 55418
	Phone Number	612-789-5096
	Fax	320-634-3778
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Appellant	Name	Alison Hunter
	Mailing Address	2515 Ulysses St. NE, Minneapolis, MN 55418
	Phone Number	612-789-5096
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Appellant	Name	Sheila Lund
	Mailing Address	2506 5 th St. NE, Minneapolis, MN 55418
	Phone Number	612-706-0455
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List Of Appellants

Appellant	Name	Scott Horne
	Mailing Address	2514 NE St. Minneapolis, MN 55418
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Appellant	Name	Marie Zellar
	Mailing Address	2530 4 th St. NE, Minneapolis, MN 55418
	Phone Number	612-730-3389
	Fax	320-634-3778
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Appellant	Name	Dan Hansen
	Mailing Address	725 36 ½ Ave NE, Minneapolis, MN 55418
	Phone Number	612-788-0569
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Appellant	Name	Margie Siegel
	Mailing Address	2514 NE 4 th St., Minneapolis, MN 55418
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Appellant	Name	Bruce Shoemaker
	Mailing Address	2643 6 th St NE, Minneapolis, MN 55418
	Phone Number	612-706-1619
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List Of Appellants

Appellant	Name	Christopher David
	Mailing Address	917 27 th Ave NE #8, Minneapolis, MN 55418
	Phone Number	612-729-3475
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Appellant	Name	Craig Kruse
	Mailing Address	2609 University Ave NE, Minneapolis, MN 55418
	Phone Number	612-781-8641
	Fax	320-634-3778
	E-mail	Cragk@aol.com

Appellant	Name	Duane Posner
	Mailing Address	2323 6 th St. NE, Minneapolis, MN 55418
	Phone Number	612-781-0164
	Fax	320-634-3778
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Appellant	Name	Geraldine Posner
	Mailing Address	2323 6 th St. NE, Minneapolis, MN 55418
	Phone Number	612-781-0164
	Fax	320-634-3778
	E-mail	duweypos@q.com

Appellant	Name	Ann Marie Cosgrove
	Mailing Address	2527 University Ave, Minneapolis, MN 55418
	Phone Number	312-789-1825
	Fax	320-634-3778
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List Of Appellants

Appellant	Name	Katie Zook Hegge
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Appellant	Name	Mathew Hegge
	Mailing Address	2919 California St. NE, Minneapolis, 55418
	Phone Number	612-706-0455
	Fax	320-634-3778
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Appellant	Name	Sandi Scherff
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	Phone Number	612-706-0455
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Appellant	Name	Brad Scherff
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Appellant	Name	Traci Hunt
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**STATEMENT OF REASONS FOR APPEAL
OF THE DECISION OF THE CITY OF
MINNEAPOLIS BOARD OF ADJUSTMENT**

TO: CITY COUNCIL; CITY OF MINNEAPOLIS

DATED: April 13, 2011

FROM: APPELLANTS, through attorney James P. Peters

RE: *Decision of Board of Adjustment, April 7, 2011*
City of Minneapolis
City/County Solid Waste Management Facility ("Facility")
340 27th Avenue N.E.
PIN 1102924240083

The following is the statement of reasons for the appeal of the April 7, 2011 decision of the Board of Adjustment, which decision affirmed the January 28, 2011 Determination of the Zoning Administrator regarding the above-referenced Facility.

- In summary, the City of Minneapolis Zoning Ordinance prohibits the design, construction, and proposed use of the above-referenced Facility in the I2 District because the Facility would primarily, or as an accessory use, improperly include use as a "waste transfer or disposal facility", which is a prohibited use in the I2 District.
- The Zoning Ordinance prohibits use as a waste transfer or disposal facility in the I2 District for which the Facility is proposed and only allows such use as a conditional use in an I3-General Industrial District, which is not the zoning for this area of the City.
- Because the proposed uses for the Facility are predominantly, or as an accessory use, waste transfer or disposal, and because the Zoning Ordinance prohibits such uses in the I2 District, the City cannot lawfully proceed with the design, construction and proposed use of the Facility for use all or in part as a waste transfer or disposal facility.
- The City Council should determine that the proposed Facility may only include recycling activities pursuant to a validly issued conditional use permit and pursuant to the appropriate MPCA permit and is prohibited from design, construction or primary or accessory use of the Facility as a waste transfer or disposal facility.

The uses of a property allowed in particular zones by a zoning ordinance include the primary use and also include such accessory uses customarily incident to the permitted primary use, but only where the zoning ordinance does not prohibit the accessory use in

the particular zone. *Lowry v. City of Mankato*, 42 N.W.2d 553 (Minn. 1950); *Potts v. City of Hugo*, 416 N.W.2d 465 (Minn.App. 1987).

Where a zoning ordinance prohibits a particular use, that use cannot be an accessory use. 101A C.J.S. Zoning & Land Planning, Sec. 144 (2011). A use may be termed an accessory use only where that accessory use is customarily incident to the main use.

Chapter 550 of the Zoning Ordinance establishes the performance standards for industrial uses within the City. Table 550-1, Principal Uses in the Industrial Districts, sets forth a listing of the permitted, conditional, and prohibited uses in zones I1, I2 and I3. Table 550-1 establishes that a recycling facility is a conditional use in I2. The Zoning Ordinance otherwise defines a recycling facility. Table 550-1 establishes that “Waste transfer or disposal facility” is prohibited in I2 and allowed only as conditional in I3.

Section 550.30 of the Zoning Ordinance also lists and describes general industrial uses by industrial district. The I3 General Industrial District principal uses defined in the ordinance include processing of, among other things: asphalt, paving, and roofing materials, batteries, chemicals, oil based paints, plastics, primary metals, sand and gravel, concrete products and tires.

While the Zoning Ordinance does not define “waste transfer or disposal facility”, the City Council, as well as the courts, will have to determine the intended meaning of the term. Among other things, the City Council should look to the Minnesota Statutes and Rules governing waste management for interpretation, as well as for recycling facility.

Minn.Stat. Sec. 115A.03, includes applicable definitions, as follows:

Subd. 25c. Recycling facility.

"Recycling facility" means a facility at which materials are prepared for reuse in their original form or for use in manufacturing processes that do not cause the destruction of the materials in a manner that precludes further use.

Subd. 33. Transfer station.

"Transfer station" means an intermediate waste facility in which waste collected from any source is temporarily deposited to await transportation to another waste facility.

Subd. 35. Waste facility.

"Waste facility" means all property, real or personal, including negative and positive easements and water and air rights, which is or may be needed or useful for the processing or disposal of waste, except property for the collection of the waste and property used primarily for the manufacture of

scrap metal or paper. Waste facility includes but is not limited to transfer stations, processing facilities, and disposal sites and facilities.

In addition, Minnesota Rules Sec. 7035.0300, also include definitions applicable to this matter, as follows:

Subp. 88. Recycling facility.

"Recycling facility" means a facility where only recyclable materials are received and prepared for reuse in their original form or for use in manufacturing processes that do not cause the destruction of the materials in a manner that precludes further use. The recyclable materials must:

A. fit the definition of mixed municipal solid waste prior to separation for recycling;

B. not include items which have been prohibited by state law from disposal or placement in mixed municipal solid waste, unless approved by the commissioner;

C. have been separated from other mixed municipal solid waste by the generator prior to collection; and

D. not be hazardous as defined in chapter 7045, except for household hazardous waste. Recyclable materials that are defined as household hazardous waste in part 7045.0131, subpart 1, and Minnesota Statutes, section 115A.96, subdivision 1, paragraphs (a) and (b), may be accepted at the facility for recycling if they are managed in accordance with part 7045.0310.

"Recycling facility" does not include an individual generator of recyclable materials, such as a homeowner, a business, or a government agency, and it does not include a manufacturer using recyclable materials as feedstock.

Subp. 111. Transfer facility.

"Transfer facility" means a facility in which solid waste from collection vehicles is compacted or rearranged for subsequent transport. A transfer facility may be fixed or mobile.

Moreover, recycling facilities must meet the standards set forth in Minn.R. 7035.2845.

Here, the evidence before the City Council on this Appeal, including by reference all of the evidence and testimony submitted at and for the public hearing on April 7, 2011

before the Board of Adjustment, establishes that the City cannot allow the design, construction and primary or accessory use of the Facility as a waste transfer or disposal facility and may only allow design, construction, and primary or accessory use as a recycling facility at this location with a valid conditional use permit and applicable MPCA permit. The proposed Facility is located within an I2 zone, according to the zoning map of the Zoning Ordinance.

The history of development of the Facility, the current website description of the proposed Facility, the December 2010 design drawings for the proposed Facility, and the public testimony from April 7, 2011 and at this City Council public hearing, which include the descriptions of the facility by Susan Young, Director of the Division of Solid Waste and Recycling of the City of Minneapolis, among others, demonstrate that the City Council must reverse the decision of the Board of Adjustment. The City has promoted the proposed Facility as a replacement to, and relocation of, the south transfer station. The acquisition authorizations of the Facility from 2010 were based on it serving primarily, or as an accessory use, as a waste transfer or disposal facility.

The public testimony at the hearing on April 7, 2011 established that the proposed Facility includes prohibited uses as a waste transfer or disposal facility. Residents testified to presentations to the public by Susan Young, Director of the Division of Solid Waste and Recycling of the City of Minneapolis. Once public opposition came forth, City officials attempted to belatedly rebrand the facility as a recycling facility and played with the definitions. The proposed Facility will act to serve the City voucher program, which involves waste transfer or disposal.

I incorporate herein by this reference all materials and public testimony previously submitted to the Board of Adjustment for hearing on April 7, 2011, including, but not limited to, the February 4, 2011 Statement of Reasons for Appeal, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference (exclusive of the list of signed petitions that are also on file with the City).

In conclusion, the City Council is respectfully requested to:

- Appoint a special hearing officer at the hearing of this appeal to make factual findings;
- Reverse the decision of the Zoning Administrator that allows design, construction and use, whether primary or accessory, of the Facility in this I2 zone as a waste transfer or disposal facility.
- Conclude that the Facility may not be designed, constructed or used, whether primary or accessory, as a waste transfer or disposal facility, which is prohibited in the I2 zone.

Your attention to this appeal is appreciated.

**STATEMENT OF REASONS FOR APPEAL
OF THE DETERMINATION
OF THE ZONING ADMINSTRATOR**

TO: BOARD OF ADJUSTMENT

DATED: February 4, 2011

FROM: APPELLANTS, through attorney James P. Peters

RE: *Decision of Steve Poor, Zoning Administrator, January 28, 2011
City of Minneapolis
250 4th Street South, PSC #110
Minneapolis, MN 55415*

*City/County Solid Waste Management Facility ("Facility")
340 27th Avenue N.E.
PIN 1102924240083*

The following is the statement of reasons for the appeal of the January 28, 2011 Determination of the Zoning Administrator.

The City of Minneapolis Zoning Ordinance prohibits the property acquisition, classification, and proposed use of the above-referenced Facility in the I2 District because the Facility would constitute a "waste transfer or disposal facility", which is a prohibited use in the I2 District. The Facility is only allowed as a conditional use in an I3-General Industrial District. Because the proposed uses for the Facility are predominantly waste transfer and disposal, and because these proposed uses match up with those that the Zoning Ordinance prohibits, the City cannot lawfully proceed with the acquisition, classification, and proposed use of the Facility.

The City has a duty to enforce the plain and ordinary meaning of the Zoning Ordinance and Minnesota Courts hold municipalities to the plan and ordinary meaning of ordinances in a legal challenge. *Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 634 (Minn.App. 2002); *Sunrise Lake Ass'n, Inc. v. Chisago County Bd. Of Comm'rs*, 633 N.W.2d 59, 61 (Minn. App. 2001); *Frank's Nursery Sales Inc. v. City of Roseville*, 295 N.W.2d 604, 607 (Minn. 1980).

Chapter 550 of the Zoning Ordinance establishes the performance standards for industrial uses within the City. Table 550-1, Principal Uses in the Industrial Districts, sets forth a listing of the permitted, conditional, and prohibited uses in zones I1, I2 and I3. Table 550-1 establishes that a "Waste transfer or disposal facility" is prohibited in I2 and allowed only as conditional in I3.

Section 550.30 of the Zoning Ordinance also lists and describes general industrial uses by industrial district. The I3 General Industrial District principal uses defined in the ordinance include processing of, among other things: asphalt, paving, and roofing materials, batteries, chemicals, oil based paints, plastics, primary metals, sand and gravel, concrete products and tires.

Here, the principal proposed uses of the proposed Facility are I3 uses for a general industrial district. The Facility sits within an I2 zone, according to the zoning map of the Zoning Ordinance. The Facility is a waste transfer or disposal facility within the meaning of the Zoning Ordinance. The Zoning Ordinance makes the proposed Facility a prohibited use.

This Facility is mainly for waste transfer and waste disposal. While there will be some recycling taking place at the facility, this is an accessory use to the primary uses of waste transfer and waste disposal. It is impossible to conclude based on the factual record that the proposed Facility is a "recycling facility" as defined by the Zoning Ordinance and as proposed to be used.

This appeal is based upon all the City and County files and records pertaining to this Facility and this statement of reasons will list some of these materials. The Board of Adjustment is requested to consider all the background information available to the Board and on file with the City and the County.

For example, the Facility will require permitting from the MPCA for solid waste management, including household hazardous waste. Minn.Stat. Ch. 115A. The required MPCA permitting process for the Facility pertain mainly to waste transfer and waste disposal, which matches up with a waste transfer or disposal facility.

The history of negotiations and proposed agreements between the City and the County support the conclusion that the Facility is predominantly a waste transfer or disposal facility that is a prohibited use in an I2 district. The proposed Operating Agreements between the City and the County of Hennepin establish the proposed uses as including a "household hazardous waste program" to "**collect, transfer and recycle or dispose**" of all household hazardous waste. The negotiations and proposed operation agreements include discussions with the County over the "solid waste" services and a "permanent household hazardous waste facility". The County has a Household Hazardous Waste Program of which this would be a part. The Facility would collect and transfer waste.

As of November 17, 2006, the County Department of Environmental Services prepared a letter to the City regarding the proposed "design, construction, operation, and maintenance of the joint facility". The Facility will "accept and manage" a variety of wastes, including paint, batteries, tires, appliances, oil and electronics, as listed on an attached chart. The majority of items are not recyclables. Attached is a copy of the letter.

As of December 3, 2010, after extensive rewrites, the City and County arrived at a final handout to describe the Facility. Attached is a copy of the final handout. The main purpose of the Facility is a "more convenient place to drop off household debris and household hazardous waste". The center will "collect" these materials and then be involved in "drop-off, handling, sorting, packaging, and temporary storage of materials". The center will accept: "electronics, paint, pesticides, fluorescent bulbs, aerosols, mercury thermometers and thermostats, automotive products, major appliances, tires . . . concrete and bricks."

In September 2009, the City prepared a Request for Proposals for Real Estate Brokerage Services for the City/County Household Hazardous Waste Facility. The Request for proposals addresses uses that constitute a waste transfer or disposal facility.

In September 2009, the City issued a Scope of Services document with a general project description of the Facility. The Scope of Services document describes the Facility as "a solid waste recycling management facility". These are I3 uses.

The City prepared answers to Frequently Asked Questions ("FAQ") regarding the Facility and included that the facility was for "recycling and safe transfer of materials", including batteries, paints, tires and household hazardous waste. Materials proposed for waste transfer at the site are not suitable for recycling and are intended for waste transfer at the Facility. These are I3 uses.

On May 18, 2010, the City received a request and recommendation for property acquisition of the Facility from Paul Miller. The purposes included for the "relocation of the solid waste services" and "the need for a Household Hazardous Waste Facility". On May 28, 2010, the City issued an authorization to acquire the Facility for I3 uses. In June 2010, the City Planning Commission approved the staff recommendation.

In conclusion, the Board of Adjustment is respectfully requested to reverse the decision of the Zoning Administrator that the Facility proposes I2 uses and fits appropriately within the zoning for this area of the City. The Board of Adjustment should conclude that the proposed Facility seeks to establish I3 uses, which the Zoning Ordinance prohibits in this neighborhood. While the City and County are desperate to find a spot for a waste transfer and disposal facility, this is not the right location. Hundreds of neighbors have signed petitions opposing the location of the Facility. A copy of the Petitions is attached.

Your attention to this appeal is appreciated.



Hennepin County Department of Environmental Services

417 North Fifth Street, Suite 200
Minneapolis, Minnesota 55401-1397

612-348-3777, Phone
612-348-8532, Fax
612-348-6500, 24 hour **INFO** Line
www.hennepin.us

November 17, 2006

Steve Kotke
Director of Public Works
City of Minneapolis
350 South Fifth Street, Rm. 223 City Hall
Minneapolis MN 55415-1390

Re: Joint City County Solid and Household Hazardous Waste Facility

Dear Steve:

During October, staff from the Hennepin County Department of Environmental Services and the City of Minneapolis met twice to discuss the proposed solid waste and household hazardous waste facility. Staff discussed how the County and City could proceed to purchase the property and cooperate in the design, construction, operation, and maintenance of the joint facility. This letter summarizes the results of those discussions based on what county staff recorded and proposes a process and schedule for how this facility could be constructed and operated in a manner that meets both organizations waste management goals and objectives. In addition, I've also highlighted a couple of issues that need resolution and suggest a way to move ahead on the project.

Goals and Expected Outcomes

Hennepin County and the City of Minneapolis staff have agreed to keep in mind the best interests of our customers throughout the planning and implementation of our new recycling facility. By our customers we mean city and county residents, small businesses needing to dispose of solid waste, and the City's Solid Waste Management Department and any of its contractors. Paramount to the joint project is to provide excellent customer service, management and disposal of waste in an environmentally responsible manner, support efforts to maintain a clean city and county, and provide for a sustainable facility design. By operating one site that integrates city and county functions, we believe that the following outcomes can be achieved:

- Customers will experience a high level of service in a safe and convenient manner,
- Waste will be managed in environmentally responsible manner,
- The site will be clean and well maintained, and
- The facility will be operated in an economically efficient manner.

Types of Customers and Wastes

The city and county plan to develop a site that will accept and manage a variety of waste types that comes primarily from three sources or customers. The following chart shows the three types of customers who would use the facility, including 1) Resident, 2) Small Business, and 3) City Vehicles. The first column lists the types of waste that will be accepted at the new facility. "Yes" means that this waste will be accepted from this type of customer. The last column explains which party will be responsible for managing the waste after it has been collected. County staff made an

effort to provide services at this facility consistent with the acceptance of waste currently received at the County's existing HHW facilities and the City's South Transfer Station.

Customer	Resident¹	Small Business	City Vehicle²	Responsible Party
Waste				
HHW <i>Examples: paint, adhesives, fuels, pesticides, fluorescent lamps, thermostats</i>	Yes	No	No	County
Problem Materials:				
Batteries, dry cell	Yes	No	Yes, from curbside pickup	County
Batteries, automotive	Yes	Up to five	No	County
Electronics	Yes ³	No	Yes, from curbside pickup	County
Major appliances	Yes ⁴	Up to five	Yes, from curbside pickup	County/City - to be determined
Tires	Yes ⁵	No	No	County
Used oil & filters	Yes	No	No	County
Trash (MSW)⁶	Yes	Household amounts	No	City
Construction & Demolition waste⁷	Yes	Household amounts	No	City
Recyclables. <i>Examples: scrap metal, bottles, cans, and paper</i>	Yes	Household amounts	No	County/City - to be determined
Yard waste⁸.	Yes	Household amounts	Yes	City

¹ Resident means a household, which is defined in Mn. State Statute §115A.96 as a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures. Residents of Hennepin County will be the primary customers, although we also expect some customers from Anoka, Carver, Dakota, Ramsey, Scott and Washington counties. Hennepin County has reciprocal use agreements with these counties. The County anticipates 20,000 site visits per year, increasing to 50,000 site visits each year by the fifth year of operation.

² City vehicles means vehicles used to collect wastes from Minneapolis solid waste & recycling customers.

³ Up to two appliances (including TVs and computers) will be accepted at no charge from Minneapolis residents with a city voucher. Hennepin County will accept up to five electronics of the same type per customer, per 12 months.

⁴ Up to two appliances (including TVs and computers) will be accepted at no charge from Minneapolis residents with a city voucher. Hennepin County will charge a per-unit fee for all other customers' non-commercial appliances. Customers must make an appointment before delivering ammonia-cooled appliances.

⁵ Up to two tire vouchers will be accepted at no charge from Minneapolis residents with a city voucher. Customers may drop off a maximum of eight tires per voucher.

⁶ Up to 2,000 pounds will be accepted at no charge from customers with a city voucher. Customers may use a total of six vouchers per year, per property.

⁷ Up to 2,000 pounds will be accepted at no charge from customers with a city voucher. Customers may use a total of six vouchers per year, per property.

⁸ Household quantities of leaves, grass clippings, brush <2", limbs 2"-6", tree trunks >6", stumps, depending on the property's storage and processing capacity.

Two additional considerations regarding the types of waste accepted that need further discussion by city and county staff are how to deal with *industrial waste* and *yard waste*. The County recommends that the facility not accept industrial wastes, which means solid waste resulting from an industrial, manufacturing, service, or commercial activity that is managed as a separate waste stream (Mn State Statute 115A.03, subdivision 13a.). Also, hazardous waste in any quantity from any sized business will not be accepted. There were concerns identified by city staff that this waste should be accepted to avoid the intentional discarding of the material on private or public property if turned away at the Facility. By law, the county cannot accept hazardous waste from businesses. Industrial waste requires special handling and disposal and could be very expensive for proper management.

City and County staff need to determine what yard waste will be accepted at the site. Yard waste could be leaves, grass clippings, garden waste, brush under 2 inches in diameter, limbs between 2 and 6 inches in diameter, tree trunks greater than 6 inches in diameter, and stumps. The site design will be greatly impacted by the yard waste that will be accepted for management. Staff needs to continue our discussion about accepting yard waste at the Facility.

Site Ownership and Operation

In regards to ownership of the land, the County remains flexible on this point and would consider purchasing and owning all or part of the site. If the County were to own the entire site, the County could lease or sell that portion of it to accommodate any of the City's operations that would not be considered part of the joint solid and household hazardous waste facility. At a minimum, the County would prefer to own the land and buildings used for waste management activities. To the extent practical, county staff will use the existing transfer station building assuming that the goals and outcomes for customer service and operating efficiencies can be achieved with its location on the site. The County envisions selection of a consultant to prepare a design for the joint facility. Staff from the City and County will participate as equal partners on a team that will work with the consultant to prepare a Site Plan and Facility design. The County has issued an RFP for consultant services for the design of the Facility and would like the City to participate on the Designer Selection Committee. An initial information meeting has been tentatively scheduled for Tuesday, January 16 at 1:45 PM with a location to be determined. The County is cognizant that the City may need to relocate its operations out of South Minneapolis to this site before this Facility is ready.

Responsibilities for construction of the facility were not discussed; however, the County is willing to take responsibility for the construction of the facility including construction of buildings, roads, scalehouses, and scale installation. The City, as part of the design team, would be included in all construction meetings to ensure its interests are represented. Responsibilities for maintenance of the buildings and site were not discussed; however, the County is willing to take responsibility for maintenance. The City would be provided an opportunity to assist in establishing the specifications for maintenance of the facility.

In regards to the operations at the facility, the County is willing to take responsibility for receiving all customers and handling the operations at the scalehouse. County staff would operate the scalehouses. In addition, the County has a Solid Waste Information System that tracks all incoming customer transactions by material types that could easily accommodate the City's voucher program. The other operations and hauling and disposal of materials from the Facility would be contracted to private operators. Staff agreed that the site should be open Monday through Saturday with some evening hours during the week to accommodate residents.

City staff mentioned the need to accommodate the collection and drop-off of its bulky items, electronics and appliances at the Facility. Although staff did not discuss how these materials would be handled at the Facility, it was agreed that they should be managed in the most cost-effective and environmentally responsible manner. Further discussion is needed on this matter prior to the Designer Selection meeting in January. In addition, City staff indicated they would provide information to the County about the number of vouchers issued, the number of customers using the South Transfer Station, and the quantities of waste by type that was disposed of there. This information would be very useful and County staff would appreciate receiving that data as soon as possible.

I intend this letter to be a fair representation of our discussions to date. If there are comments or conclusions reached here that City staff recall differently or do not agree with, please let me know. The County is very excited about moving forward on this project and working with City staff to develop a Facility that our customers and organizations can be proud of. I'd like to schedule another meeting in the next couple of weeks to discuss acceptance of yard waste, the Designer Selection process, and any other issues that the City wants to talk about.

Sincerely,



Carl Michaud

Assistant Director

Solid Waste Division

c: Greg Goeke, City of Minneapolis
Paul D. Miller, City of Minneapolis
Susan Young, City of Minneapolis
Phil Eckhert, Hennepin County
Judy Hollander, Hennepin County
Louisa Tallman, Hennepin County

FINAL handout on Minneapolis Hennepin Recycling and Drop-off Center

FINAL handout on Minneapolis Hennepin Recycling and Drop-off Center
Haugen, Elizabeth

to:

Amy.Roering, Angie.Timmons, Miller, Paul D., Dietrich, Sara L., Kotke, Steven A., Young, Susan,
Carol.Allis, Alisa.Reckinger, Louisa.Tallman, Dave.McNary, Carl.Michaud, J.Michael.Noonan,
Karen.Ballor, Brett.Bauer, McDonough, Shannon, Goeke, Greg A.

12/03/2010 04:15 PM

Show Details

Hi all. Thanks very much for your help making sure the handout is informative and accurate. I'm attaching the final.

<<Minneapolis Recycling and Drop-off Center handout.doc>>

Elizabeth Haugen, City of Minneapolis Communications
(612) 673-2009

Become a fan of the City of Minneapolis on [Facebook](#).
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Minneapolis Hennepin Recycling and Drop-off Center

The City of Minneapolis and Hennepin County are teaming up to save money, protect the environment, and make managing discarded household materials convenient for Minneapolis residents.

What is the Minneapolis Hennepin Recycling and Drop-off Center?

The new Minneapolis Hennepin Recycling and Drop-off Center will give Minneapolis residents a more convenient place to drop off household debris and household hazardous waste. The center will collect materials that shouldn't go in the trash, such as bulky household debris, recyclable materials, and household hazardous wastes. The center will not handle commercial garbage trucks.

The center will be fully enclosed; all drop-off, handling, sorting, packaging and temporary storage of materials will be done inside.

The center will accept electronics, paint, pesticides, fluorescent bulbs, aerosols, mercury thermometers and thermostats, automotive products, major appliances, tires, attic and garage cleanout items, unusable furniture, home remodeling debris, concrete and bricks. Most materials will be moved out of the center within a few weeks to be recycled or safely managed. Reusable household products (for example, paint, cleaners, automotive chemicals, TVs, and computer monitors) will be available free to residents.

How have other Hennepin County facilities been managed?

Hennepin County's drop-off facilities are safe, easy to use, and clean. The new center will have all of these qualities, plus it will meet both Minneapolis and Hennepin standards for sustainability: Leadership in Energy and Environmental Design (LEED), the nationally accepted benchmark for the design, construction and operation of high-performance green buildings; and the Minnesota Sustainable Design Guidelines.

This center will be good for the environment

Currently, Minneapolis residents have to use the Brooklyn Park or Bloomington facility, or a seasonal event, which are not always convenient. As a result, many materials pile up in people's basements and garages or get improperly dumped and pollute our air and water. The center will give Minneapolis residents a convenient, user-friendly place to drop off their household materials before they pile up or get improperly dumped. The voucher program keeps recyclables, appliances, remodeling construction and demolition materials and tires from being improperly dumped. In fact, in 2009 the voucher program kept 30,000 tires out of alleys and vacant lots and prevented them from becoming breeding grounds for mosquitoes.

Meeting the needs of Minneapolis residents

Even though Minneapolis has one-quarter of the county's population and older housing stock, its residents are not frequenting the county's household hazardous waste sites. Most residents don't use the sites because they are too far away or limited to one or two weekends a year. The center will be a safe, convenient place to bring your household materials year-round.

For more information, visit www.ci.minneapolis.mn.us/solid-waste/city-county.asp or contact Susan Young at (612) 673-2433.

LAW OFFICES OF JAMES P. PETERS, PLLC

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GLENWOOD, MINNESOTA 56334
(320) 634-3778
jim@peterslawfirm.us

April 7, 2011

City of Minneapolis Board of Adjustment
350 South 5th Street – Room 317
Minneapolis, MN

HAND DELIVERED

Re: Appeal of the Zoning Administrator – BZZ 5082
City/County Solid Waste Management Facility (“Facility”)
340 27th Avenue N.E.
PIN 1102924240083

Ladies and Gentlemen:

I write in support of our appeal of the determination of the zoning administrator and ask the Board of Adjustment to reverse. The proposed use of this Facility is not allowed in an I2 zone and would only fit within an I3 zone with a conditional use permit. It is not proper for the City to try and shoehorn the proposed Facility within an I2 zone.

The Board of Adjustment should apply the correct legal standard on this appeal, which is to apply the plain language of the ordinance to the proposed Facility and thereby reverse. When reviewing land uses under zoning ordinances, Minnesota Courts enforce the zoning codes and hold property owners to the zoning categories allowed under the ordinances. If a property owners wishes to vary from the standards of an ordinance, the property owner must meet a high standard to establish a variance from those terms. The Minnesota Supreme Court recently held that the City of Minnetonka improperly issued a variance in the matter of *Krummenacher v. City of Minnetonka*. For your convenience, enclosed as Exhibit A please find a copy of page 1 of that opinion.

On November 5, 2010, the Sr. Administrative Manager for the Real Estate Division of Hennepin County gave his opinion that the proposed Facility requires a CUP within an I3 zone as a waste transfer and disposal facility. Enclosed as Exhibit B please find a copy of the email. We stand ready to take all steps necessary to ensure that the City does the right thing in connection with this project. Your attention to this appeal is appreciated.

Sincerely,

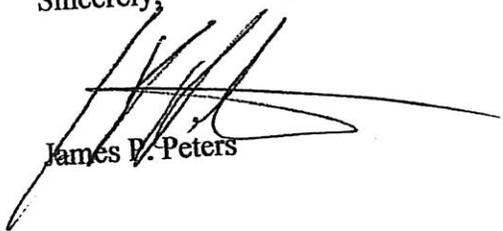

James P. Peters

Exhibit B



Supreme Court of Minnesota.

KRUMMENACHER v. CITY OF MINNETONKA

**Beat L. KRUMMENACHER, Appellant, v. CITY OF MINNETONKA, Respondent,
JoAnne K. Liebeler, Respondent.**

No. A08-1988.

-- June 24, 2010

Paul W. Chamberlain, Ryan R. Kuhlmann, Chamberlain Law Firm, Wayzata, MN, for appellant. George C. Hoff, Shelley M. Ryan, Hoff, Barry & Kozar, P.A., Eden Prairie, MN, for respondent City of Minnetonka. James M. Susag, Larkin, Hoffman, Daly & Lindgren Ltd., Bloomington, MN, for respondent JoAnne Liebeler. Susan L. Naughton, St. Paul, MN, for amicus curiae League of Minnesota Cities.

OPINION

This case involves the decision of respondent City of Minnetonka to grant a variance to respondent JoAnne Liebeler so that she could expand her nonconforming garage. Appellant Beat Krummenacher is Liebeler's neighbor and he challenges the City's decision. The district court upheld the City's variance, and the court of appeals affirmed. See *Krummenacher v. City of Minnetonka*, 768 N.W.2d 377, 384 (Minn.App.2009). Because we conclude that the City applied the wrong standard to Liebeler's variance request, we reverse and remand to the City for reconsideration under the correct standard.

Liebeler owns property located in Minnetonka. Krummenacher is Liebeler's neighbor to the west. Liebeler's property consists of a 2.4-acre lot, which contains a 2,975-square-foot home and an attached two-car garage. The property also contains a detached flat-roofed garage that a previous owner constructed sometime in the 1940s. The City has an ordinance requiring that the detached garage be set back a minimum of 50 feet from the property's boundary line. Minnetonka City Code § 300.10. Liebeler's garage was constructed before this ordinance went into effect, and it does not satisfy the setback requirement. Specifically, the garage is nonconforming because it is set back only 17 feet



HHW

J. Michael Noonan to: Brett M. Bauer, Amy S Roering, Karen L Ballor

11/05/2010 11:30 AM

Cc: Phillip C. Eckhart

This is further to our meeting with the city on October 29th. I understand that an issue may continue to exist with respect to the zoning of the site and the proposed operation being a permitted use within the I2 zone. I further understand that the community has attached to this issue.

I have downloaded the relevant sections of the City's zoning code and have conducted my own review. Here are my conclusions:

- zoning 9 of the City's "Zoning Code" designates the subject land I2 - medium industrial district.
- chapter 550 of the "Zoning Code" sets forth permitted uses. It is noted that "determination of whether a particular use is included within a general use category shall be made by the zoning administrator".
- section 550(f) (2) sets forth general use categories for the medium industrial (I2) zone. Items (a) to (l) spell out specific manufacturing type uses. I note there is not a described use that matches up with the operation proposed for the site.
- table 550-1 details principal uses in Industrial zones. In reviewing this list I find the following specific uses identified as being permitted in an I2 zone (by a conditional permit): "recycling facility - a use performed in an enclosed building where scrap or salvage materials are shredded, milled, crushed, ground, bought, sold, exchanged, stored, baled, paced, disassembled or handled, including but not limited to iron and other metals, paper, rags, rubber, tires, bottles, plastics and aluminium cans"; and "waste hauler (undefined term)". The question exists as to whether these two specifically identified uses match the nature of the use proposed for the site.
- a "waster transfer or disposal facility" (not a defined term) is a permitted use by way of a condition use permit within an I3 zone. The question is whether this use is closer to the nature of the use proposed to be established on the subject property.

Bottomline is from my reading of the zoning code there are questions as to whether the proposed use conforms to the I2 zone. I have a hard time reaching the conclusion that the propose use is a "recycling facility" as defined and proposed to be used. By default I look for a more appropriate use and am drawn to a "waste transfer and disposal facility". This seems to match up with certain of the functions being performed on the site.

Ultimately, the final determination is that of the zoning administrator.

JMN

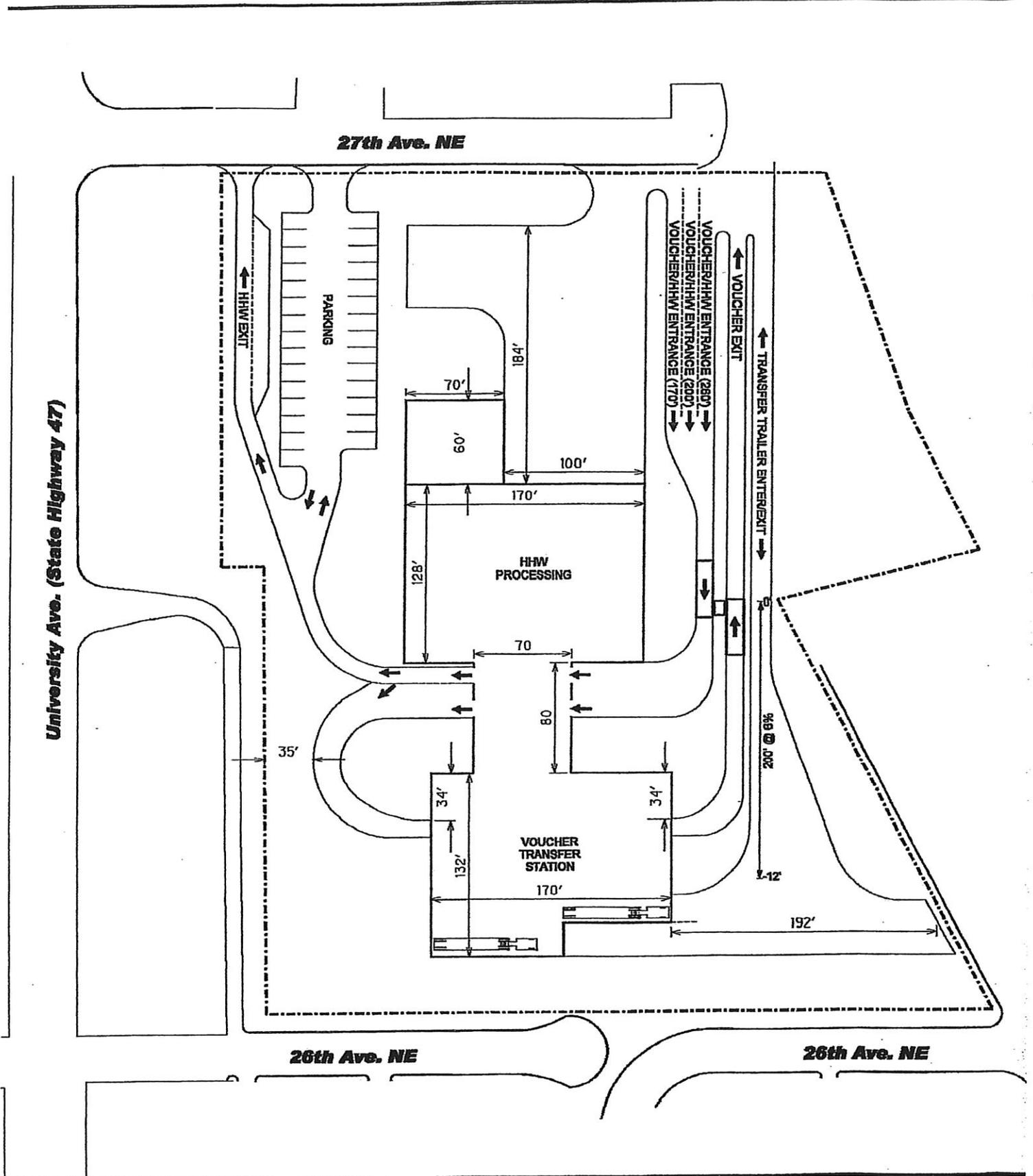
zoning administration → board adjustment → city council → comms

J. Michael Noonan | Sr. Administrative Manager, Real Estate Division | Housing, Community Works & Transit
417 North Fifth Street – Suite 320 | Minneapolis, MN 55401 | MC L608 | Office 612.348.8537 | Fax 612.348.9710 |

J.Michael.Noonan@co.hennepin.mn.us

Please consider the environment before printing this e-mail.

"B"



X:\MS\12-2009\09M037\cad\new project\November redesign\Fig 7.dgn

Exhibit C

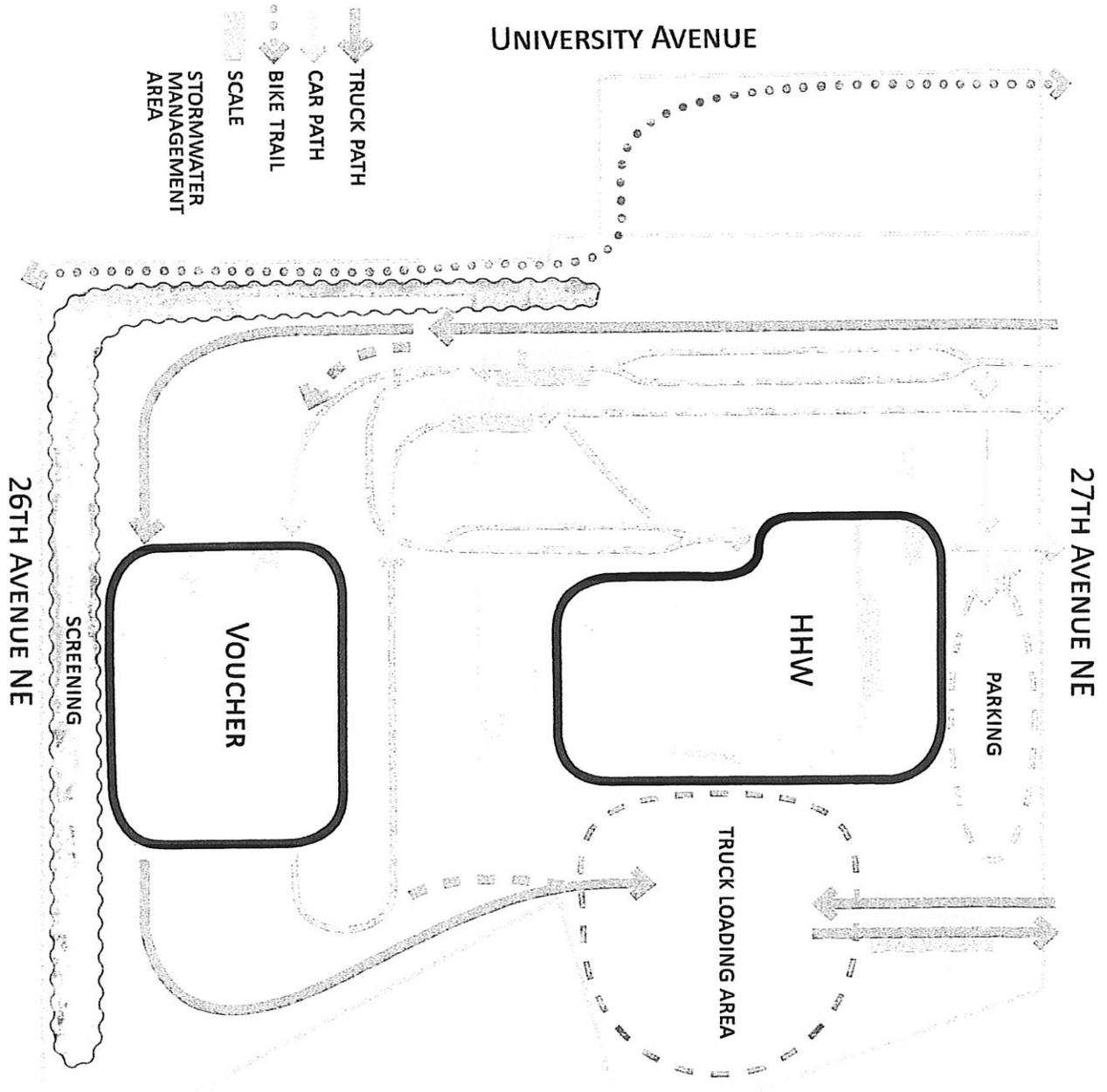


Exhibit D