Department of Community Planning and Economic Development - Planning Division
Conditional Use Permit
BZZ-4401

Date: June 22, 2009

Applicant: Hennepin Country Environmental Services

Address of Property: 419 5th Street N

Project Name: HERC

Contact Person and Phone: Durwin Fitch, Covanta Energy (612) 333-7303

Planning Staff and Phone: Kimberly Holien (612) 673-2402

Date Application Deemed Complete: May 5, 2009

End of 60 Day Decision Period: July 4, 2009

End of 120 Day Decision Period: September 2, 2009

Ward: 5 **Neighborhood Organization:** North Loop

Existing Zoning: I3 General Industrial District, DP Downtown Parking Overlay District

Zoning Plate Number: 13

Legal Descriptions: Not applicable

Existing Use: Waste disposal facility

Concurrent Review:
Conditional Use Permit: To amend a Conditional Use Permit for a waste disposal facility.

Applicable zoning code provisions: Chapter 525, Article VII Conditional Use Permits; Chapter 550 Industrial Districts; Chapter 536, Specific Development Standards

Background: Covanta Energy, on behalf of Hennepin County Environmental Services, has submitted an application to amend their existing conditional use permit for a waste disposal facility in the I3 District. This item was heard at the June 8, 2009 City Planning Commission meeting and was continued one cycle to allow for additional information to be distributed regarding the potential increase in emissions. Additional attachments have been provided accordingly. These attachments include information on environmental impacts from the EIS prepared for the HERC facility in 1986, the Revised Air Dispersion Modeling and Risk Assessment prepared by ENSR in May 2007, a memo from the applicant and supporting documentation, including relevant portions of the Ballpark EIS, as well as a link to the full EIS on the Hennepin County website. A memo from the City Attorney regarding the

City's authority to regulate air emissions in a manner that is more restrictive than state and federal laws has also been attached.

The existing waste disposal facility, known as the Hennepin Energy Recovery Center (HERC), received a conditional use permit in 1987 to allow the construction and operation of a large-scale energy recovery facility. The facility is a mass-burn municipal waste combustor owned by Hennepin County and operated by a subsidiary of Covanta Energy. The initial permit was approved with seven conditions, as follows:

1. The resource recovery facility shall not exceed a size and capacity necessary to reclaim, burn, use, process or dispose of more than 1,000 tons average daily throughput of mixed municipal solid waste.

2. Compliance shall be required with all emission standards specified in the permit approved by the MPCA on January 27, 1987.

3. All reports required to be furnished to the City of Minneapolis by the permit by Agency regulations shall be furnished to the City of Minneapolis at the time such reports are furnished to the MPCA.

4. The applicant shall furnish to the City of Minneapolis all records requested by the City to allow it to determine compliance with condition No. 1.

5. The resource recovery facility shall have two scales for truck and garbage weighing, in order to facilitate the movement of vehicles on and off the property.

6. Fly ash and bottom ash shall be tested monthly for one year after the initial base line testing has been completed. Thereafter, testing shall be done annually. Appropriate procedures as determined by the MPCA shall be used in all testing and disposal of fly ash, bottom ash or any other hazardous materials.

7. The furnaces or boilers shall be inspected annually for chlorine corrosion with reports thereof to the MPCA and the City of Minneapolis. Devices shall be appropriately used to provide advance warning of potential problems which may be caused by chlorine corrosion.

The applicant is now requesting to remove or amend condition number 1 to increase the average daily throughput of the facility. Specifically, the request is to allow the facility to process at the designed capacity of 1,212 tons per day (TPD). The existing condition establishing the 1,000 TPD throughput limit was a result of action taken by the state legislature on a bill that required four-fifths of the Minneapolis City Council to approve any plan for a 2,000 TPD facility, and granted the County the right to override City approvals in the siting of two facilities with up to 1,000 TPD average throughput each. The result of that bill was the Hennepin County pursued two 1,000 TPD facilities, one of which, the HERC facility, was constructed.

The facility is currently designed to operate at the proposed level. In January 2000, Minnesota State Statute 383B.235 was revised to eliminate the 1,000 ton per day condition, as follows:

> Subd. 3. Existing facility may use its capacity. *Not withstanding subdivisions 1 and 2, an existing resource recovery facility may reclaim, burn, use, process, or dispose of mixed municipal solid waste to the full extent of its maximum yearly capacity as of January 1, 2000. The facility must continue to comply with all federal and state environmental laws and regulations and must obtain a conditional use permit from the municipality where the facility is located.*

The revised statute does not require that the City allow the facility to use its capacity, but allows the facility to do so upon approval of a conditional use permit. The applicant's request at this time is consistent with the revised statute. According to the narrative submitted by the applicant, the additional processing of municipal solid waste is expected to generate 275 million additional pounds of steam with energy-from-waste at costs less than steam generated natural gas. This is expected to ultimately result in reduced heating and cooling costs for downtown businesses. The increase from 1,000 tons of municipal solid waste per day to 1,212 tons of municipal solid waste per day will result in a reduction of approximately 40,000 tons of waste that would have otherwise gone to landfills. The change would also increase ferrous recycling by approximately 1,200 tons annually.

In terms of the other conditions from the previous CUP, the applicant has been submitting all required information to the City's Environmental Services Department in a timely manner and staff is not aware of any issues with the previous conditions of approval. The facility has historically been compliant with federal and state laws pertaining to the environment and public safety. The requested change to the average daily throughput will also require a major modification to the existing MPCA permit. According to the applicant, the MPCA has stated that they will not consider an application for a major modification to the facility's Title V permit until the City of Minneapolis takes action on the amended conditional use permit request.

In a letter sent to the North Loop Neighborhood Association and Councilmember Don Samuels, the applicant states that the facility will credit Hennepin County 10 percent of the additional waste fees received as part of the increase in processed waste. This is expected to be up to $100,000 annually. The County will use this revenue for environmental projects within the City of Minneapolis.

No physical modifications are proposed for the site as part of this application. The facility is currently designed to operate at the proposed throughput. However, Hennepin County Environmental Services has submitted preliminary plans for a separate project that includes various site improvements. These site improvements include additional landscaping and groundcover, particularly on the east side of the site, surfacing changes from concrete to asphalt and a reconfiguration of overhead doors which will result in a change to truck traffic. This reconfiguration will create a truck traffic pattern that enters and exits the building from the south side, as opposed to exiting from the east side under the current configuration. The new door on the south side will include an airlock to reduce potential odors.

The North Loop Neighborhood Association voted on May 28, 2009 to support the amended Conditional Use Permit. A copy of their letter of support is attached.

<u>CONDITIONAL USE PERMIT (to allow changes to a waste disposal facility)</u>

Findings as Required by the Minneapolis Zoning Code:

The Minneapolis City Planning Department has analyzed the application and from the findings below concludes that the establishment, maintenance, or operation of the proposed conditional use:

1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.

The use has operated on the site since 1989. The requested modification to the Conditional Use Permit coincides with the recently revised Minnesota State Statute 383B.235, which permits the facility to process the requested 1,212 tons per day subject to the CUP. This statute, in its entirety, is attached for reference.

In 2006-2007 an Environmental Impact Statement (EIS) was prepared for the new Twins ballpark site, directly adjacent to the HERC facility. That EIS also assessed potential health impacts of HERC emissions on ballpark users at the proposed level of 1,212 tons per day. The Air Dispersion Modeling and Risk Assessment study of the HERC facility referenced in the EIS concluded that the health risks associated with the HERC emissions are below EPA levels of concern. As a result of the HERC air quality analysis, no adverse effects were anticipated, thus no mitigation proposed.

In addition to emissions, the EIS also evaluated the HERC site in terms of odors. During the monitoring period from April to November 2005 it was found that neighborhood odors such as sewer smells and car and diesel exhaust were more prevalent and intense than odors from HERC. As such, it was concluded that odors from HERC should not have an impact on ballpark users and no mitigation was found to be necessary. Given the nature of the proposed use, it is subject to ongoing monitoring review by the Minnesota Pollution Control Agency (MPCA). Therefore, the proposed modification to the CUP should not prove detrimental to public health, safety, comfort or general welfare, provided the use complies with all applicable state and local ordinances and permits.

2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.

The Planning Division does not believe that the increase in operation from 1,000 tons of waste per day to 1,212 tons of waste per day would be injurious to the use and enjoyment of other property in the vicinity or impede the normal or orderly development and improvement of surrounding property. The property is zoned I3 and has been used as a waste disposal facility since 1989. The proposed increase in the amount of municipal solid waste processed does not require any physical modifications to the site.

The site is bordered by industrial uses to the west, office uses to the north, and a residential use to the south. The new Minnesota Twins ballpark is being constructed directly east of the site. As stated above, the EIS for the ballpark site took into account emissions and odors from the HERC facility, assuming the increase in operation to 1,212 tons per day, and found that no adverse effects are anticipated. Previous air modeling for HERC in terms of stationary source air

emissions has established that the facility is operated in a manner such that resultant ground level concentrations are well below concentration levels that protect public health and welfare

3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.

Roads and utilities are existing and adequate. No changes to access or other physical modifications are proposed at this time. Internal traffic circulation will be modified as part of a separate project.

4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.

The use is existing and no significant additional traffic congestion is expected to result from the requested modifications. The facility currently receives an average of 210-220 trucks per day during the week and 60-70 trucks per day on the weekends. The applicant projects that the proposed modification will increase truck traffic to 230-240 trucks per day during the week and 65-75 on the weekend. However, truck deliveries to the site vary depending on demand, outage schedules, and operating conditions. In each of the last four years, the facility had more than 50 days in which deliveries exceeded 230 trucks per day

5. The conditional use is consistent with the applicable policies of the comprehensive plan.

The Minneapolis Plan for Sustainable Growth designates the site as a transitional industrial area on the future land use map. This land use designation is given to areas suitable for industrial development. Transitional industrial districts specifically may transition to other uses over time. The proposed increase in daily throughput is consistent with this land use designation.

6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit.

With the requested modifications the conditional use permit will conform to the applicable district regulations.

<u>Specific Development Standards:</u>

In addition to the conditional use standards, the following specific development standards also apply to waste disposal facilities:

1. A vicinity plan that includes the following:
    - A description of natural features, including streams, rivers, lakes, wetlands and major topographical features within 350 feet of the site.
    - A description of the proposal and how it compares to land uses within 350 feet of the site.
    - A description of any potential environmental hazard due to existing or proposed land uses, including soil, water and air contamination.

Staff comment: The facility has operated on the site for approximately twenty years. There are no such natural features within 350 feet of the site. The immediately surrounding land uses include vehicle related uses, office uses, the new Twins Ballpark, Sharing and Caring Hands and Mary's Place, a residential facility. The multiple-family residential facility, which was established after the HERC facility was constructed and operating, is located south of the site. The use is buffered by a significant grade change and existing landscaping. The impact on the Twins Ballpark and immediate area was reviewed in the EIS referenced above.

2. An air quality plan describing stationary and mobile source air emissions, their quantities and composition, and indicating performance with all applicable air quality regulations. .

Staff comment: Previous modeling for HERC in terms of stationary source air emissions has established that the facility is designed and operated such that resultant ground level concentrations are well below concentration levels that protect public health and welfare. According to a chart submitted by the applicant, the average emissions from 2005-2008 were well within the current air permit limits and in most cases, operating at 10 percent of the air permit limit or less. The applicant has stated that the modification to the annual processing limit will be consistent with the past performance in terms of air permit limits.

The EIS performed for the Twins Ballpark included a human health risk assessment that looked at emissions from HERC and modeled how people could be exposed to these emissions. Risk assessments combine information on the toxic properties of chemicals and the extent of exposure to determine potential risks. This assessment found that the health risks associated with HERC emissions are below EPA levels of concern. All EPA criteria pollutants were well below ambient standards. The Ballpark EIS assumed the requested average daily throughput of 1,212 tons per day. The facility is required to obtain a permit through the MPCA that sets emission limits to ensure that people in the surrounding area are not harmed. Compliance with this permit was a condition of approval from the previous CUP, and will be conditioned again as part of this application.

In terms of odors, the Ballpark EIS also included an analysis of odors from the HERC facility. Daily odor monitoring was performed on the HERC property and in the surrounding neighborhood starting in March 2004, in order to determine the potential impact of any odors from HERC on the proposed Ballpark Site. The data collected included the type of odor detected and the strength of the odor. Based on this analysis, it was concluded that odors from HERC should not have an impact on Ballpark users. In comparison, neighborhood odors such as sewer smells and car and diesel exhaust were more prevalent and intense than odors from HERC. The new airlock door proposed as part of the separate project should assist in reducing any potential odors from other adjacent land uses as well.

3. A dust management plan describing dust emission sources, their quantity and composition, and how dust will be collected, managed and disposed of, and indicating conformance with applicable dust emission regulations.

Staff comment: No additional dust is expected as part of the amended Conditional Use Permit and the facility has no significant dust emission sources. Roadway dust is controlled with periodic roadway sweeping. The initial EIS prepared for the HERC facility in 1985 addresses dust as follows:

- Acid flue gases leaving the economizer section of the boilers will be treated with hydrated lime droplets in the atomizing spray dryers where sulfur dioxide, hydrochloric acid and hydrofluoric acid will be respectively neutralized to calcium sulfite or calcium sulfate, calcium chloride and calcium fluoride. The hot flue gas will evaporate the water in the droplets, resulting in a dry powder residue which will flow into the particulate control device for removal. The design removal efficiencies for the SO2 and HCl are 90% and 95% respectively.
- Flue gases partially neutralized in the spray dryer will be further neutralized by the unreacted lime contained in the particulate layer on the bags of the baghouse collector.
- Within the baghouse, the dust and particulate laden gas impacts the surface of the bags, which are of Teflon coated fiberglass material.
- The particulates will collect on the surface of the bags and be periodically blown off by a pulse jet of air inside the bag. The particulates will drop to the hopper at the bottom of the module for subsequent removal.

4. A sound attenuation plan describing sources of sound and indicating conformance with applicable sound and noise regulations.

Staff comment: No additional noise is expected as part of the amended conditional use permit. During normal operations the facility runs in a constant state with regard to noise.

5. A vibration and dampening plan describing the sources of vibration and indicating conformance with application vibration regulations.

Staff comment: No additional vibration is expected to occur as a result of the increase in daily throughput.

6. A drainage plan for stormwater management and runoff

Staff comment: The building is existing and no physical changes are proposed to the site as part of this application. The property owner is proposing site improvements as part of a separate project, including some changes to grade and impervious surfaces. The stormwater management and runoff implications from those improvements will be reviewed through the Preliminary Development Review process.

7. A landscape plan showing compliance with the requirements of Chapter 350, Recycling Activities and Salvage Yards, of the Minneapolis Code of Ordinances and Chapter 530, Site Plan Review.

Staff comment: The applicant has submitted a site plan illustrating existing landscaping and green space on the site. However, the application does not require site plan review. The applicant has also provided a rendering of the proposed landscaping and site improvements. While, those improvements are not part of this application, staff has reviewed the plans which show 299 overstory trees and nearly 6,000 perennials. There are approximately 190 trees on the site currently, 177 of which will remain, for a total of 476 trees after the site improvements are completed. Of the trees proposed to be removed, eight of them are on the east side of the site, between the HERC facility and the publicly accessible promenade adjacent to the northwest side of Target Field. The majority of these trees are either dead or in distress.

Additional landscaping, as referenced above, will be provided near the location of the trees proposed for removal. The remaining 5 trees proposed for removal are near the existing entry door.

8. A traffic plan describing the number of truck trips the proposal will generate and the principal access routes to the facility, including a description of the facility's traffic impact on the surrounding area.

Staff comment: The use is existing and the principal access routes to the facility will remain unchanged as part of the application. As stated in the background section, there will be a modification to the internal traffic circulation, with trucks entering and existing on the south side of the building. This modification is not expected to have an impact on traffic in the surrounding area.

The facility currently receives an average of 210-220 trucks per day during the week and 60-70 trucks per day on the weekends. The applicant projects that the proposed modification will increase truck traffic to 230-240 trucks per day during the week and 65-75 on the weekend. However, truck deliveries to the site vary depending on demand, outage schedules, and operating conditions. In each of the last four years, the facility had more than 50 days in which deliveries exceeded 230 trucks per day. The applicant anticipates that the maximum number of 240 trucks per day will remain unchanged. Instead, there will be more days in a given year with this level of traffic.

RECOMMENDATIONS:

Recommendation of the Community Planning and Economic Development Department - Planning Division for the amended conditional use permit:

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the amended Conditional Use Permit for a waste disposal facility at the property of 419 N 5th Street (aka 505 6th Avenue N), subject to the following conditions:

1) The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.

2) Condition number 1 of the previous permit C-993 shall be amended to read: The resource recovery facility shall not exceed a size and capacity necessary to reclaim, burn, use, process or dispose of more than 1,212 tons average daily throughput of mixed municipal solid waste.

3) The applicant shall obtain all necessary permits through the MPCA to accommodate the increase in daily throughput. Compliance shall be required with all emission standards specified in the permit modification approved by MPCA.

4) The facility must continue to comply with all federal and state environmental laws and regulations.

Attachments:

1. Statements from applicant
2. Letter from the applicant to the North Loop Neighborhood Organization and CM Don Samuels dated April 30, 2009
3. Correspondence received after June 8, 2009
4. 1987 Conditional Use Permit (C-993)
5. Zoning maps
6. Minnesota State Statute 383B.235
7. MPCA statement on waste-to-energy
8. Site plans
9. Photos
10. Future site improvements
11. Memo from John Sigmond and Daniel Fish with Covanta Energy dated June 15, 2009 and supporting information from the Ballpark EIS
12. Link to ballpark EIS: http://www.co.hennepin.mn.us/portal/site/HCInternet/menuitem.3f94db53874f9b6f68ce1e10b1466498/?vgnextoid=b0927242019e2110VgnVCM1000000f094689RCRD&vgnextfmt=default
13. Additional attachments are available on the City's website, as follows:
    a. Revised Air Dispersion Modeling and Risk Assessment prepared by ENSR in May 2007
    b. Environmental Impact portion of the 1986 Environmental Impact Statement prepared for the facility