

RESOLUTION  
CITY OF SAINT PAUL, MINNESOTA

10

Presented by \_\_\_\_\_

1 WHEREAS, the Council of the City of Saint Paul, on August 20, 2008, duly conducted public hearings  
2 regarding two separate appeals from zoning decisions of the Saint Paul Board of Zoning Appeals,  
3 (hereinafter, the "BZA"), and the Saint Paul Planning Commission, (hereinafter, the "Commission"),  
4 pertaining to a development proposal from the Port Authority of Saint Paul (hereinafter, the "Port") to  
5 develop land owned by the Port and commonly known as 637 Barge Channel Road for use as a barge  
6 service and cleaning operation by a company which presently provides the same services on another parcel  
7 of land owned by the Port; and

8  
9 WHEREAS, based upon the Port's proposal to relocate the barge service from its present location to the  
10 said site on Barge Channel Road, City staff determined that variances and a site plan review were  
11 necessary in order to proceed with the proposed relocation; and

12  
13 WHEREAS, the Port therefore duly applied to the Board and the Commission for their respective  
14 approvals and, as provided by City ordinance, public hearings regarding each application were duly  
15 noticed and conducted and, at the conclusion of each hearing, the Board and the Commission each moved  
16 to approve the Port's applications subject to certain conditions; and

17  
18 WHEREAS, as further provided by City ordinance, the decisions of both the Board and the Commission  
19 approving the Port's applications were appealed and ultimately set for public hearings on the same date  
20 before the City Council; and

21  
22 WHEREAS, this Resolution hereby consolidates the Council's decisions regarding each of the appeals  
23 taken from the respective decisions of the Board and the Commission so that the Council's decision as to  
24 each shall be easily ascertained for administrative convenience; and

25  
26 WHEREAS, this Resolution is therefore divided into four parts: part I addressing the appeal of the decision  
27 of the Board; part II addressing the appeal of the decision of the Commission; part III incorporating  
28 additional conditions of approval as proposed by the Port; and part IV refunds the appellate fee.

29  
30 **PART I: APPEAL OF THE DECISION OF THE BOARD OF ZONING APPEALS**

31  
32 WHEREAS, on February 26, 2008, the Port made application to the Board (Board zoning file no. 08-  
33 032022) for variances from the strict application of Leg. Code §§ 68.402.2 and .402.7 for work affecting  
34 existing slopes in the River Corridor District (underlying zoning district classification is I2) steeper than  
35 12% and to create new slopes steeper than 18%) in order to prepare the site commonly known as 637  
36 Barge Channel Road and legally described as REGISTERED LAND SURVEY 446 SELY 100 FT OF  
37 TRACT H & PART IN W 1/2 OF SW 1/4 OF SEC 9 TN 28 RN 22 AS FOL; A 47400 SQ FT LEASE & A  
38 35 FT BY 260 FT DRY DOCK LOCATED IN GOVT LOTS 7,9 & 15 MEAS 523 FT ON ON SELY  
39 LINE & 425 FT ON NWLY LINE BY 100 FT MOL WIDTH N for development at a later date by a  
40 company that services and cleans barges; and

41 WHEREAS, on March 10, 2008, the Board, pursuant to Leg. Code § 61.303, duly conducted a public  
42 hearing where all persons present were afforded the opportunity to be heard and, at the close of the public

42 WHEREAS, on March 10, 2008, the Board, pursuant to Leg. Code § 61.303, duly conducted a public  
43 hearing where all persons present were afforded the opportunity to be heard and, at the close of the public  
44 hearing, the Board, based upon all the files, reports, and the testimony offered at the hearing, moved to  
45 grant the Port's variance applications based upon the following findings as set forth in Board Resolution  
46 No. 08-032022 dated March 10, 2008 as follows:

47

48 1. *The property in question cannot be put to a reasonable use under the strict provisions of the code.*

49

50 The land on the north side of the barge channel cannot be put to a reasonable use without leveling  
51 some of the existing man-made steep slopes that have been created by deposits of dredge spoils.

52

53 New slopes steeper than 12% are required because dredge spoils will continue to be stored on part  
54 of the property and berms must be created to contain the spoils and free up that area along the edge  
55 of the barge channel.

56

57 2. *The plight of the land owner is due to circumstances unique to this property, and these  
58 circumstances were not created by the land owner.*

59

60 The site is unique because it contains a number of man-made piles of dredge material with slopes  
61 that would make development of the site impractical without a variance to level them.

62

63 3. *The proposed variance is in keeping with the spirit and intent of the code, and is consistent with the  
64 health, safety, comfort, morals and welfare of the inhabitants of the City of St. Paul.*

65

66 The zoning code has a section devoted to regulating development in the River Corridor and  
67 preserving the natural characteristics of the river valley. The proposed grading is consistent with  
68 that. The existing steep slopes that would be affected are man-made piles of dredge spoils and not  
69 natural slopes. The new  
70 slopes steeper than 12% that would be created will be used to create ponds to improve water  
71 qualities and contain dredge spoils. These new slopes will be landscaped using native plant  
72 materials.

73

74 The Mississippi River Corridor Plan identifies Southport as one of the City's three principal river  
75 port terminals.

76

77 However, a question has been raised about the possible loss of wetlands beyond what was approved  
78 in a 1996 Channel Maintenance Plan. This issue needs to be resolved if the current plan and  
79 associated variances are to be in keeping with the spirit and intent of the code.

80

81 4. *The proposed variance will not impair an adequate supply of light and air to adjacent property,  
82 nor will it alter the essential character of the surrounding area or unreasonably diminish  
83 established property values within the surrounding area.*

84

85 The variances will not affect light or air to adjacent properties. The changes that are proposed will  
86 improve the site and they will not diminish property values in the area. The changes will not alter  
87 the existing industrial and river character of the surrounding area.

88 ~~5. The variance, if granted, would not permit any use that is not permitted under the provisions of the~~  
89 ~~code for the property in the district where the affected land is located, nor would it alter or change~~  
90 ~~the zoning district classification of the property.~~

91  
92 The use of the property as a barge servicing business is permitted by the property's I2 and RC2  
93 zoning.

94  
95 6. *The request for variance is not based primarily on a desire to increase the value or income*  
96 *potential of the parcel of land.*

97  
98 The variances are needed to use land that adjoins a barge channel for a river related use.  
99

100 AND, WHEREAS, in granting the variances, the Board imposed the following conditions on the variances  
101 as also set forth in Board Resolution No. 08-032022:

102  
103 No construction or site preparation of any sort, anywhere on the site, may commence until  
104 such time as the applicant has resolved all issues related to wetland mitigation pursuant to  
105 the 1996 Channel Maintenance Plan, as noted in a letter from the Minnesota Department of  
106 Natural Resources (DNR) to the City dated February 27, 2008. This includes the possible  
107 loss of wetlands in excess of the 18 acres of wetlands that were scheduled to be lost under  
108 the 1996 Channel Maintenance Plan due to filling and containment site development for the  
109 Southport Barge Channel Improvements project. Construction may commence, when the  
110 DNR has officially informed the City's zoning administrator in writing that the matter has  
111 been resolved to its satisfaction  
112

113 WHEREAS, Pursuant to Leg. Code § 61.702(a), Hoka Miller, on March 24, 2008 filed an appeal (BZA  
114 zoning file no. 08-118751) from the determination made by the BZA and requested a hearing before the  
115 City Council for the purpose of considering the actions taken by the Board; and  
116

117 WHEREAS, on April 16, 2008, the said appeal was further continued with the agreement of the Port; and  
118

119 WHEREAS, Pursuant to Leg. Code § 61.702(b) and upon notice to affected parties, a public hearing was  
120 set before the City Council for August 6, 2008; and  
121

122 WHEREAS, On August 6, 2008, the City Council moved, with the agreement of the Port, to continue the  
123 public hearing until August 20, 2008; and  
124

125 WHEREAS, On August 20, 2008, the City Council conducted a public hearing where all interested persons  
126 were afforded the opportunity to be heard and, at the close of the public hearing, the Council, having  
127 considered the variance applications, the report of staff, the record, minutes and resolution of the Board,  
128 the Council does hereby:  
129

130 RESOLVE, to deny the appeal and uphold the decision of the Board in this matter there being no showing  
131 that the Board erred in its facts, findings or procedures and the Council hereby adopts the findings of the  
132 Board, as set forth in Board Resolution No. 08-032022, as its own; and, be it

~~133 FURTHER RESOLVED, that the Council, pursuant to its authority provided under Leg. Code § 61.704~~

~~134 and based upon the representations of the Port, as set forth in its letter dated August 20, 2008 from Port  
135 President Kenneth R. Johnson and more fully discussed by the Port's representative during the public  
136 hearing, shall impose additional conditions on the approval of the said variances which will be more fully  
137 discussed and imposed below under part III of this Resolution.~~

138

139

PART II: APPEAL OF THE DECISION OF THE PLANNING COMMISSION

140

141 WHEREAS, On May 9, 2008, the Port made application to the Commission (Commission zoning file No.  
142 08-072-743) for a Site Plan review pursuant to Leg. Code § 64.110 to make site improvements to Port  
143 property commonly known as 637 Barge Channel Road and legally described as noted in Part I of this  
144 resolution; and

145

146 WHEREAS, on July 2, 2008, the Commission's Zoning Committee held a public hearing on the  
147 application at which all persons present were given an opportunity to be heard and, at the close of the  
148 public hearing, the Committee, based upon the files, reports and testimony received, moved to recommend  
149 approval of the application subject to certain conditions; and

150

151 WHEREAS, the Commission, on July 11, 2008, based upon the evidence presented to its Zoning  
152 Committee, as substantially reflected in all the files, reports, testimony and records moved to approve the  
153 Port's site plan application, subject to certain conditions, finding the Port's application consistent with the  
154 findings required under Leg. Code § 61.402(c) and set forth in Commission Resolution No. 08-35, dated  
155 July 11, 2008, as follows:

156

157 1. *The city's adopted comprehensive plan and development or project plans for sub-areas of the city.*

158

159 The site plan is consistent with the Mississippi River Corridor Plan:

160

- 161 • The plan identifies Southport as one of the City's three principal river port terminals. (Policy 5.2.1  
162 on page 34)
- 163 • The plan calls for preserving and restoring natural vegetation. For this project, the area that will be  
164 used by Upper River Services is currently a disturbed area with no native vegetation. Native plant  
165 material will be used to landscape the area.
- 166 • The Mississippi River Corridor Plan calls for measures to improve water quality. (Policy 4.4.3 on  
167 page 27.) The site plan shows ponds and rain gardens that will improve water quality. In  
168 comparison, the site where Upper River Services currently operates does not have any measures for  
169 treating storm water before it goes into the river.

170

171 2. *Applicable ordinances of the City of Saint Paul.*

172

173 A variance to deal with steep slopes in the River Corridor was approved by the Board of Zoning  
174 Appeals in March 2008 on a vote of 6-1. (File 08-032022) The variances allow grading to affect  
175 existing slopes greater than 12%. (Most of these slopes were created by the piles of dredge  
176 material stored on the site and are not natural.) The variance also allows new slopes steeper than  
177 18% to be created. These slopes will be used to create a berm that will contain the area used for  
178 storing dredge materials. An appeal was filed of the Board of Zoning Appeals decision and this

- 179 ~~appeal will be heard by the City Council, probably in August. If the City Council upholds the~~  
180 ~~decision of the Board of Zoning Appeals, the issues related to steep slopes in the River Corridor~~  
181 ~~will be resolved.~~  
182  
183 The site preparation being proposed as Phase One meets all other applicable ordinances.  
184  
185 3. *Preservation of unique geologic, geographic or historically significant characteristics of the city*  
186 *and environmentally sensitive areas.*  
187  
188 Most of the area that will be affected by the proposed improvements is used to store dredge  
189 materials and does not have any unique features.  
190  
191 However, its location next to the river and wetlands make it an environmentally sensitive area. In  
192 response, the site plan calls for restoring 2.37 acres of new wetlands and creating storm water  
193 ponds and rain gardens to treat storm water before it goes to the river. The engineer hired by the  
194 Port Authority has been working with the City's Water Resource Coordinator on the design for rain  
195 gardens and storm water ponds. The plans have been revised in response to comments from City  
196 staff and most of the issues have been worked out.  
197  
198 4. *Protection of adjacent and neighboring properties through reasonable provision for such matters*  
199 *as surface water drainage, sound and sight buffers, preservation of views, light and air, and those*  
200 *aspects of design which may have substantial effects on neighboring land uses.*  
201  
202 Storm water ponds and rain gardens will be created to improve water quality to a level that exceeds  
203 City standards. The proposed operations will not be visible from the main river channel.  
204  
205 The immediate neighbors are industrial properties. The closest residence is over ¼ mile from the  
206 area of operations and no negative impacts such as noise or dust are anticipated.  
207  
208 5. *The arrangement of buildings, uses and facilities of the proposed development in order to assure*  
209 *abutting property and/or its occupants will not be unreasonably affected.*  
210  
211 The sheet pile wall and associated grading will not negatively affect nearby property. The area of  
212 wetlands will be increased and the area for dredge spoils will be reduced, which will have a  
213 positive impact on nearby property.  
214  
215 6. *Creation of energy-conserving design through landscaping and location, orientation and elevation*  
216 *of structures.*  
217  
218 The site work is consistent with this finding. No new buildings are included in this phase.  
219  
220 7. *Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation*  
221 *to access streets, including traffic circulation features, the locations and design of entrances and*  
222 *exits and parking areas within the site.*  
223

224 ~~The proposed facility will not generate significant traffic. Traffic will go to Barge Channel Road~~  
 225 ~~and then to Concord.~~

226  
 227 8. *The satisfactory availability and capacity of storm and sanitary sewers, including solutions to any*  
 228 *drainage problems in the area of the development.*

229  
 230 Sewer and other utilities will be brought into the site from Barge Channel Road. It appears that a  
 231 lift station may be required to pump waste water up to the City's sanitary sewer.

232  
 233 Storm water coming off the site will be treated in storm water ponds and rain gardens before it  
 234 enters the Mississippi River. Loucks Associates, the engineering company hired by the Port  
 235 Authority to design this system, has met several times with City staff, including the City's Water  
 236 Resource Coordinator and the design they are proposing for stormwater meets and exceeds the  
 237 City's standards for water quality treatment.

238  
 239 9. *Sufficient landscaping, fences, walls and parking necessary to meet the above objectives.*

240  
 241 Areas of the site that will not be used by Upper River Services or for storing dredge spoils will be  
 242 landscaped using native plant species that are suitable for the flood plain.

243  
 244 10. *Site accessibility in accordance with the provisions of the Americans with Disabilities Act (ADA),*  
 245 *including parking spaces, passenger loading zones and accessible routes.*

246  
 247 Phase One is for site preparation and does not call for any buildings or parking lots. Phase Two  
 248 will be reviewed separately when it is submitted and it will have to comply with the provisions of  
 249 the Americans with Disabilities Act (ADA)

250  
 251 11. *Provision for erosion and sediment control as specified in the "Ramsey Erosion Sediment and*  
 252 *Control Handbook."*

253  
 254 The proposed erosion and sediment control measures are consistent with this finding

255  
 256 AND, WHEREAS, in approving the site plan application, the Commission imposed the following  
 257 conditions on the site plan approval as also set forth in Commission Resolution No. 08-35 as follows:

258  
 259 1. Final plans for landscaping, public utilities, storm water drainage and water quality (including  
 260 storm water ponds and rain gardens) must be approved by City staff.

261  
 262 2. The City Council must uphold the variance for development affecting steep slopes in the River  
 263 Corridor that was approved for this project by the Board of Zoning Appeals.

264  
 265 3. No construction or site preparation of any sort, anywhere on the site, may commence until such  
 266 time as the applicant has resolved all issues related to wetland mitigation pursuant to the 1996  
 267 Channel Maintenance Plan, as noted in a letter from the Minnesota Department of Natural  
 268 Resources (DNR) to the City dated February 27, 2008. This includes the possible loss of wetlands  
 269 in excess of the 18 acres of wetlands that were scheduled to be lost under the 1996 Channel

270 ~~Maintenance Plan due to filling and containment site development for the Southport Barge Channel~~  
271 ~~Improvements project. Construction may commence, when the DNR has officially informed the~~  
272 ~~City's zoning administrator in writing that the matter has been resolved to its satisfaction.~~  
273

274 4. A separate Site Plan Review (and Conditional Use Permit if applicable) will be required for Phase  
275 Two improvements, including new buildings, a parking lot, storage tanks and equipment.  
276

277 WHEREAS, on July 21, 2008, Messrs. Tom Dimond, Hakan Miller and Gjerry Berquist, duly filed an  
278 appeal (Commission zoning file No. 08-118751) from the determination made by the Commission and  
279 requested a hearing before the City Council for the purpose of considering the actions taken by the  
280 Commission; and  
281

282 WHEREAS, the appeal was duly noticed and set on for a public hearing before the City Council on August  
283 6, 2008 whereupon, the Council further continued this appeal to August 20, 2008 for the purpose of  
284 combining the appellants appeals from the Board's and Commission's decisions into one public hearing;  
285 and  
286

287 WHEREAS, on August 20, 2008, the City Council conducted its public hearing where all interested parties  
288 were given an opportunity to be heard; and  
289

290 WHEREAS, The Council, having heard and read the testimony offered and having considered the staff  
291 report, the record, minutes, and the Commission's resolution does hereby  
292

293 RESOLVE, That the Council of the City of Saint Paul hereby affirms the decision of the Commission in  
294 this matter there being no showing that the Commission erred in its facts, findings or procedures and,  
295 accordingly, denies the said appeal and adopts as its own the findings of the Commission in support of the  
296 decision as set forth in Commission Resolution No. 08-35 as its own together with the additional  
297 conditions imposed therein on the said application.  
298

299 PART III: COUNCIL'S IMPOSITION OF ADDITIONAL CONDITIONS ON THE APPROVAL OF  
300 THE VARIANCES AND SITE PLAN BASED UPON THE AUGUST 20, 2008 REPRESENTATIONS  
301 OF THE PORT  
302

303 WHEREAS, In a letter from the President of the Port dated August 20, 2008 and introduced into the  
304 Council's record as a part of these proceedings, the Port represented to the Council the Port's commitment  
305 to being an excellent steward of the Mississippi River and its eco-system and the Port's equal commitment  
306 to the optimal use of the Saint Paul Harbor and that it was the Port's view that these commitments were  
307 compatible; and  
308

309 WHEREAS, the Port, further stating its position that development or environmental regulations did not  
310 require it to do so, nevertheless indicated that it was, subject to the approval of the Port's Board of  
311 Commissioners, prepared to donate to the City certain parcels of Port owned land and to undertake certain  
312 wetlands restoration on Port owned land within the City in exchange for the Council's approval of the  
313 Southport site plan and variance applications which are the subject of this appeal Resolution; and  
314

315 ~~WHEREAS, pursuant to Leg. Code § 61.704, the Council may exercise all the powers of the Board and~~  
 316 Commission when hearing appeals from decisions of the Board and Commission, and the Council, based  
 317 upon the representations of the Port to donate land and restore wetlands and mindful of the need within the  
 318 River Corridor for opportunities for increase environmental stewardship and to provide connections to the  
 319 Mississippi River as set forth in the River Corridor Chapter of the Comprehensive Plan, hereby  
 320 incorporates the Port's offers as additional conditions to be imposed on the Port's variance and site plan  
 321 approval applications; NOW, THEREFORE,

322  
 323 BE IT RESOLVED, based upon the findings stated under this part, that the following shall be attached to  
 324 the Port's variance approvals (Board Resolution No. 08-032022) and the Port's site plan approval  
 325 (Commission Resolution No. 08-35) as additional conditions of approval as set forth in the Port's August  
 326 20, 2008 letter:

327  
 328 A. Donation of Port lands to City

- 329  
 330 1. An approximate one-acre parcel along the Mississippi shoreline at Lilydale Park. *AS IS*  
 331  
 332 2. An approximate 2.3-acre site known as Barge Terminal #2.  
 333  
 334 3. An approximate 10-acre site in the Southport Industrial Area, which is located immediately to  
 335 the west of the Southport Dock Wall Project Area.  
 336

337 B. Wetlands Restoration on Port land

- 338  
 339 1. Restore 18 acres of wetlands, given the use by the Port Authority at Southport; wetlands  
 340 restoration will occur within the City of Saint Paul, with priority given to proximity to the  
 341 Southport site and within the Critical River Area.  
 342  
 343 2. Restore the additional 2.3 acres of wetlands outside of the permit area at the full 2-1 replacement  
 344 ratio (4.6 acres), resulting in 1.8 new acres of wetlands restoration in addition to the 2.8 acres the  
 345 Port Authority has already agreed to restore with the DNR.  
 346  
 347 3. In furtherance of wetlands restoration, when the Army Corps' dredge disposal agreement with  
 348 the Port Authority ends on December 31, 2017, the Port Authority agrees to submit to the Saint  
 349 Paul City Council the issue as to whether it is necessary for Southport to continue as an Army  
 350 Corps dredge disposal site. If the determination by the City is that Southport is no longer necessary  
 351 for this use, then the Port Authority agrees to cease using Southport for the Army Corps' dredge  
 352 disposal and furthermore, agrees to then convert the area used for the Army Corps dredge disposal  
 353 to wetlands as reasonably soon thereafter as possible.  
 354

355 C. Trails and Parks

- 356  
 357 1. The Port Authority will assist City and community representatives' efforts to provide trail access  
 358 to the River's edge at Southport. The trail will provide neighborhood access to the River and  
 359 wetlands viewing opportunities. The long range plan envisions this connecting with future phases  
 360 of the trail laid out in the Holman Field Floodwall Design dated June 15, 2006.

08-1033

361 ~~2. As to the 13.3 acres of the three donation parcels noted above, in the event wetlands restoration~~  
362 occurs on these parcels, such restoration may be counted towards the Port Authority's commitment  
363 to 18 acres of wetlands noted within the Wetlands Restoration section above.  
364

365 AND, BE IT FURTHER RESOLVED, that in the event the Port's Board declines to approve any or all of  
366 these conditions the Council hereby revokes the variances and site plan approvals upheld under this  
367 Resolution; and  
368

369 BE IT FURTHER RESOLVED, in the event the Port, or any successor(s) to it in interest regarding the  
370 subject lands and the conditions of approval imposed under this Resolution, should fail to abide by any or  
371 all of the conditions imposed under this Resolution, and upon notice to the Council pursuant to Leg. Code  
372 § 61.108, the Council hereby deems the Port or any successor(s) as the case may be, to be in violation of  
373 this Resolution and the violation shall be set on for a public hearing before City Council following the  
374 process set forth under Leg. Code § 61.108, the Council shall act as the Planning Commission for the  
375 purpose of considering whether to revoke the approvals under this Resolution or to take such other action  
376 as deemed appropriate as provided under Leg. Code § 61.108.  
377

378 PART IV: APPELLATE FEE REFUNDED

379  
380 BE IT RESOLVED, that any fee paid for the appeals of the decisions of the Board and the Commission to  
381 the City Council, shall be refunded to the appellants: and  
382

383 BE IT FINALLY RESOLVED, That the City Clerk shall mail a copy of this resolution to the Port, Tom  
384 Dimond, Hakan Miller, Gjerry Berquist, the Board of Zoning Appeals, the Planning Commission and the  
385 Zoning and Planning Administrators.

	Yeas	Nays	Absent
Bostrom	✓		
Carter	✓		
Harris	✓		
Helgen	✓		
Lantry			✓
Stark	✓		
Thune	✓		
	6	0	1

Requested by Department of: C 40

By: [Signature]

Approved by the Office of Financial Services  
By: \_\_\_\_\_

Approved by City Attorney  
By: [Signature] 9-5-08

Approved by Mayor for Submission to Council  
By: [Signature]

Adopted by Council: Date 9/19/08

Adoption Certified by Council Secretary  
By: [Signature]

Approved by Mayor: Date 9/19/08

By: [Signature]

