Council File # 08-1033
Green Sheet # 3059177

RESOLUTION
CITY OF SAINT PAUL, MINNESOTA

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Presented by

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

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

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

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

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

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

PART I: APPEAL OF THE DECISION OF THE BOARD OF ZONING APPEALS

WHEREAS, on February 26, 2008, the Port made application to the Board (Board zoning file no. 08-032022) for variances from the strict application of Leg. Code §§ 68.402.2 and .402.7 for work affecting existing slopes in the River Corridor District (underlying zoning district classification is I2) steeper than 12% and to create new slopes steeper than 18%) in order to prepare the site commonly known as 637 Barge Channel Road and legally described as REGISTERED LAND SURVEY 446 SELY 100 FT OF 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 35 FT BY 260 FT DRY DOCK LOCATED IN GOVT LOTS 7,9 & 15 MEAS 523 FT ON ON SELY LINE & 425 FT ON NWLY LINE BY 100 FT MOL WIDTH N for development at a later date by a company that services and cleans barges; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FURHTER RESOLVED, that the Council, pursuant to its authority provided under Leg. Code § 61.704 and based upon the representations of the Port, as set forth in its letter dated August 20, 2008 from Port President Kenneth R. Johnson and more fully discussed by the Port's representative during the public hearing, shall impose additional conditions on the approval of the said variances which will be more fully discussed and imposed below under part III of this Resolution.

PART II: APPEAL OF THE DECISION OF THE PLANNING COMMISSION

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

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

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

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

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

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

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

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

~~appeal will be heard by the City Council, probably in August. If the City Council upholds the~~ decision of the Board of Zoning Appeals, the issues related to steep slopes in the River Corridor will be resolved.

The site preparation being proposed as Phase One meets all other applicable ordinances.

3. *Preservation of unique geologic, geographic or historically significant characteristics of the city and environmentally sensitive areas.*

Most of the area that will be affected by the proposed improvements is used to store dredge materials and does not have any unique features.

However, its location next to the river and wetlands make it an environmentally sensitive area. In response, the site plan calls for restoring 2.37 acres of new wetlands and creating storm water ponds and rain gardens to treat storm water before it goes to the river. The engineer hired by the Port Authority has been working with the City's Water Resource Coordinator on the design for rain gardens and storm water ponds. The plans have been revised in response to comments from City staff and most of the issues have been worked out.

4. *Protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.*

Storm water ponds and rain gardens will be created to improve water quality to a level that exceeds City standards. The proposed operations will not be visible from the main river channel.

The immediate neighbors are industrial properties. The closest residence is over ¼ mile from the area of operations and no negative impacts such as noise or dust are anticipated.

5. *The arrangement of buildings, uses and facilities of the proposed development in order to assure abutting property and/or its occupants will not be unreasonably affected.*

The sheet pile wall and associated grading will not negatively affect nearby property. The area of wetlands will be increased and the area for dredge spoils will be reduced, which will have a positive impact on nearby property.

6. *Creation of energy-conserving design through landscaping and location, orientation and elevation of structures.*

The site work is consistent with this finding. No new buildings are included in this phase.

7. *Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Donation of Port lands to City

1. An approximate one-acre parcel along the Mississippi shoreline at Lilydale Park.

2. An approximate 2.3-acre site known as Barge Terminal #2.

3. An approximate 10-acre site in the Southport Industrial Area, which is located immediately to the west of the Southport Dock Wall Project Area.

B. Wetlands Restoration on Port land

1. Restore 18 acres of wetlands, given the use by the Port Authority at Southport; wetlands restoration will occur within the City of Saint Paul, with priority given to proximity to the Southport site and within the Critical River Area.

2. Restore the additional 2.3 acres of wetlands outside of the permit area at the full 2-1 replacement ratio (4.6 acres), resulting in 1.8 new acres of wetlands restoration in addition to the 2.8 acres the Port Authority has already agreed to restore with the DNR.

3. In furtherance of wetlands restoration, when the Army Corps' dredge disposal agreement with the Port Authority ends on December 31, 2017, the Port Authority agrees to submit to the Saint Paul City Council the issue as to whether it is necessary for Southport to continue as an Army Corps dredge disposal site. If the determination by the City is that Southport is no longer necessary for this use, then the Port Authority agrees to cease using Southport for the Army Corps' dredge disposal and furthermore, agrees to then convert the area used for the Army Corps dredge disposal to wetlands as reasonably soon thereafter as possible.

C. Trails and Parks

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

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

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

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

PART IV: APELLATE FEE REFUNDED

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

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

	Yeas	Nays	Absent
Bostrom	✓		
Carter	✓		
Harris	✓		
Helgen	✓		
Lantry			✓
Stark	✓		
Thune	✓		
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Adopted by Council: Date 9/19/08

Adoption Certified by Council Secretary

By: Mary Erickson

Approved by Mayor: Date 9/19/08

By:

Requested by Department of: C 46

By:

Approved by the Office of Financial Services

By:

Approved by City Attorney

By: Peter W Warner 9-5-08

Approved by Mayor for Submission to Council

By: