



## Legislation Text

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**File #:** RES 15-1392, **Version:** 1

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Memorializing City Council's July 15, 2015 decision denying an appeal from a decision of the Planning Commission to grant a conditional use permit for construction at the Hawkins, Inc. Terminal -2 Facility located at 701 Barge Channel Road.

WHEREAS, Hawkins, Inc. ("Applicant"), in PED Zoning File No. 15-018-147, made application to the Saint Paul Planning Commission ("Commission") for a conditional use permit to allow construction of 8 storage tanks and tank, truck, and rail containment area structures not elevated on fill in the City's Flood Fringe Zoning District pursuant to Legislative Code §§ 61.501, 72.32, and 72.73, on property commonly known as 701 Barge Channel Road, [PIN No. 09.28.22.31.0010] and legally described as Registered Land Survey 446 Tract G Of R.I.s. 446 & Part Of Blk 56 Of W St P Real Est & Imp Syn Add No 4 Desc As Fol; In Sw 1/4 Sec 9, T28, R 22 All Incl In A 94, 773 Sq Ft Tract Having 200 Ft Front On Sw Line Of Barge Channel & 97.28 Ft Front On Barge Cha; and

WHEREAS, on April 16, 2015, the Commission's Zoning Committee, duly conducted a public hearing at which all persons present were given an opportunity to be heard and, at the close of the hearing, Committee moved to recommend approval of the said application subject to the three recommended conditions set forth in the Commission's Staff Report dated March 26, 2015; and

WHEREAS, on April 24, 2015, the Commission, based upon the Staff Report evidence and the testimony received by its Zoning Committee at the said public hearing, as substantially reflected in the minutes, unanimously approved the conditional use permit requested by the Applicant including three specific conditions, based upon the following findings of fact as set forth in Commission Resolution No. 15-22 and adopted herein by reference:

"1. The applicant is proposing additions to an existing facility located in the Southport Industrial area in the FF flood fringe district. The applicant proposes construction of 8 new tanks, secondary tank containment walls, and rail and train loading and unloading areas with in-ground containment and pipe rack support structures not elevated on fill to the Regulatory Flood Protection Elevation (RFPE).

2. §72.74 lists standards for conditional uses in the FF flood fringe district. Subsections (a) through (d) are applicable to the proposed project:

*(a) Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls or above grade, enclosed areas such as crawl spaces or tuck-under garages. The base or floor of an enclosed area shall be considered above grade and not a structure's basement or lowest floor if: 1) the enclosed area is above grade on at least one (1) side of the structure; 2) is designed to internally flood and is constructed with flood-resistant materials; and 3) is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:*

*(1) Design and certification. The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the Minnesota State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent floodwater from entering or accumulating within these components during times of flooding.*

*(2) Specific standards for above grade, enclosed areas. Above grade, fully enclosed areas such as crawl spaces or tuck-under garages must be designed to internally flood and the design plans must stipulate:*

*a. A minimum area of "automatic" openings in the walls where internal flooding is to be used as a floodproofing technique. There shall be a minimum of two (2) openings on at least two (2) sides of the structure and the bottom of all openings shall be no higher than one (1) foot above grade. The automatic openings shall have a minimum net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters without any form of intervention.*

*b. That the enclosed area will be designed of flood-resistant materials in accordance with the FP-3 or FP-4 classifications in the Minnesota State Building Code and shall be used solely for building access, parking of*

vehicles or storage.

*(b) Basements, as defined in §72.14, shall be subject to the following:*

*(1) Residential basement construction shall not be allowed below the regulatory flood protection elevation except as authorized in subsection (e) of this section.*

*(2) Nonresidential basements may be allowed below the regulatory flood-protection elevation, provided the basement is protected in accordance with subsection (c) or (e) of this section.*

*(c) All areas of nonresidential structures including basements to be placed below the regulatory flood protection elevation shall be structurally dry floodproofed in accordance with the FP-1 or FP-2 floodproofing classifications in the Minnesota State Building Code. This shall require making the structure watertight, with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures floodproofed to the FP-3 or FP-4 classification shall not be permitted.*

*(d) The storage or processing of materials that are, in times of flooding, flammable, explosive or potentially injurious to human, animal or plant life is prohibited. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the planning commission, or if elevated above the regulatory flood protection elevation by alternative methods which meet the requirements of subsection (a) above. Storage of bulk materials may be allowed provided an erosion/sedimentation control plan is submitted which clearly specifies methods to be used to stabilize the materials on site for a regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the planning commission.*

*(e) When the Federal Emergency Management Agency has issued a letter of map revision-fill (LOMR-F) for vacant parcels of land elevated by fill to the one (1) percent chance flood elevation, the area elevated by fill remains subject to the provisions of this chapter. A structure may be placed on the area elevated by fill with the lowest floor below the regulatory flood protection elevation provided the structure meets the following*

*provisions:*

*(1) No floor level or portion of a structure that is below the regulatory flood protection elevation shall be used as habitable space or for storage of any property, materials, or equipment that might constitute a safety hazard when contacted by floodwaters. Habitable space shall be defined as any space in a structure used for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage rooms, laundry or utility space, and similar areas are not considered habitable space.*

*(2) For residential and nonresidential structures, the basement floor may be placed below the regulatory flood protection elevation subject to the following standards:*

*a. The top of the immediate floor above any basement area shall be placed at or above the regulatory flood protection elevation.*

*b. Any area of the structure placed below the regulatory flood protection elevation shall meet the "reasonably safe from flooding" standards in the Federal Emergency Management Agency (FEMA) publication entitled "Ensuring that Structures Built on Fill In or Near Special Flood Hazard Areas Are Reasonably Safe From Flooding," Technical Bulletin 10-01, a copy of which is hereby adopted by reference and made part of this chapter. In accordance with the provisions of this chapter, and specifically section 72.33(g), the applicant shall submit documentation that the structure is designed and built in accordance with either the "Simplified Approach" or "Engineered Basement Option" found in FEMA Technical Bulletin 10-01.*

*c. If the ground surrounding the lowest adjacent grade to the structure is not at or above the regulatory flood protection elevation, then any portion of the structure that is below the regulatory flood protection elevation must be floodproofed consistent with any of the FP-1 through FP-4 floodproofing classifications found in the Minnesota State Building Code.*

These standards can be met. The applicant is proposing construction of 8 new storage tanks with secondary

containment, and new rail and truck loading and unloading facilities with in-ground containment. Secondary tank containment and an Industrial Stormwater Permit are required by the Minnesota Pollution Control Agency (MPCA). Tank containment walls are proposed to be built to Regulatory Flood Protection Elevation (708.4 feet) and constructed to FP-1 or FP-2 floodproofing standards. Tanks and concrete tank pads are also proposed to be constructed to FP-1 or FP-2 floodproofing standards. Rail and truck area containment is in-ground, and proposed to be constructed to FP-1 or FP-2 floodproofing standards. Piping and associated loading and unloading equipment are proposed to be elevated on open structures constructed to FP-1 or FP-2 floodproofing standards. In times of flooding, tanks will be filled with either product or water sufficient to offset buoyancy and sealed, and any electrical equipment below the RFPE removed and utility connections capped. As a condition of approval, the applicant should provide tank, structure, and foundation/pad/pier plans and records of as-built condition signed by a registered professional engineer or architect and verifying consistency with the general design standards of the Minnesota Building Code as referenced in §72.74(a)(1) and construction to FP-1 or FP-2 floodproofing standards. Compliance with the flood response plan on file with the Department of Safety and Inspections should also be a condition of approval.

3. §72.32 list thirteen (13) factors to be considered in evaluating applications for conditional use permits in the FF flood fringe district:

*(a) The relationship of the proposed use to the comprehensive plan and floodplain management program for the city.* Subject to meeting the standards listed in §72.74, this proposed use is in compliance with the Saint Paul Comprehensive Plan and the city's floodplain management program. Policy 5.1.3 of the river corridor chapter of the comprehensive plan supports continuation of and additions to industrial uses in the Southport industrial area if said additions will not have significant adverse impacts on air or water quality nor impair river valley views. The proposed additions are in an existing industrial area, and will not significantly alter river valley views. The project will not significantly impact air quality, and subject to compliance with the flood response plan, storm water pollution prevention plan (SWPPP) required as part of site plan approval and on file with the Department of Safety and Inspections, and MPCA Industrial Stormwater Permit, the project will not have a significant adverse impact on water quality. Compliance with the flood response plan, SWPPP, and MPCA Industrial Stormwater Permit should be a condition of approval.

*(b) The importance of the services provided by the proposed facility to the community.* The proposed facilities will put vacant industrial land to use. The primary importance of the facility to the community is economic activity and tax base.

*(c) The ability of the existing topography, soils, and geology to support and accommodate the proposed use.* The topography, soils, and geology of the site are similar to those of the general Southport industrial area, and are sufficient to support and accommodate the proposed use.

(d) *The compatibility of the proposed use with existing characteristics of biologic and other natural communities.* The area of the proposed use is industrial in character, and does not contain significant biological communities; impacts of the proposed use will not extend beyond the immediate area.

(e) *The proposed water supply and sanitation systems and the ability of those to prevent disease, contamination, and unsanitary conditions.* The area is already served by adequate water supply and sanitation systems. The proposed addition will not create significant additional demand for water supply or sanitation capability.

(f) *The requirements of the facility for a river-dependent location, if applicable.* The purpose of the facility is for transfer of materials from barges, and is therefore dependent on a river location.

(g) *The safety of access to the property for ordinary vehicles.* Safe access to the site is available by private road accessed via Barge Channel Road.

(h) *The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.* All structures, including tanks, will be constructed to FP-1 or FP-2 floodproofing standards, and any electrical equipment will be removed in times of flooding. Tanks will be filled with product or water in times of flooding to neutralize any buoyancy forces.

(i) *The dangers to life and property due to increased flood heights or velocities caused by encroachments.* The proposed encroachments are of limited footprint and located in the flood fringe where impacts on flood flows are negligible.

(j) *The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.* The proposed facility is located in the flood fringe, where the velocity of flood flow and sediment transport is generally minimal. The 100-year flood height elevation for the site is 706.4 feet.

(k) *The danger that materials may be swept onto other lands or downstream to the injury of others.* The proposed facility will be located in the flood fringe, where water velocities are generally minimal. All structures will be constructed to FP-1 or FP-2 floodproofing standards. Secondary containment around the tanks would minimize drift in the unlikely event of tank detachment from pads.

(l) *The availability of alternative locations or configurations for the proposed use.* Operations at the subject site involve transfer from barges to trains and trucks. Elevation on fill of the entire site would not be feasible, and would result in practical difficulties for intermodal transfer operations.

(m) *Such other factors as are relevant to the purposes of this chapter.* The factors and findings enumerated and described herein adequately evaluate the proposed use for the purposes of this chapter.

4. §61.501 lists five standards that all conditional uses must satisfy:

(a) *The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council.* This condition is met. Subject to meeting the standards listed in §72.74, this proposed use is in compliance with the Saint Paul Comprehensive Plan. Policy 5.1.3 of the river corridor chapter of the comprehensive plan supports continuation of and additions to industrial uses in the Southport industrial area if said additions will not have significant adverse impacts on air or water quality nor impair river valley views. The proposed additions are in an existing industrial area, and will not significantly alter river valley views. The project will not significantly impact air quality, and subject to the requirements of the flood response plan, SWPPP, and terms of the MPCA Industrial Stormwater Permit, the project will not have a significant adverse impact on water quality. Compliance with the flood response plan, SWPPP, and MPCA Industrial Stormwater Permit should be a condition of approval.

(b) *The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.* This condition is met. The proposed facility will be served by a private road accessed via Barge Channel Road.

During site plan review, Saint Paul Public Works staff did not identify any adverse impacts associated with increased truck traffic on Barge Channel Road.

*(c) The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.* This condition is met. The proposed facility is consistent with the existing industrial character of the immediate neighborhood.

*(d) The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.* This condition is met. The use is industrial in nature, and will not impede improvement of surrounding properties for allowed uses.

*(e) The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.* This condition can be met. Subject to compliance with the flood response plan, SWPPP and MPCA Industrial Stormwater Permit, the use conforms to all applicable regulations of the I2 general industrial district, RC2 river corridor district, and the FF flood fringe district. Compliance with the flood response plan, SWPPP, and MPCA Industrial Stormwater Permit should be a condition of approval.”

AND, WHEREAS, on May 3, 2015, pursuant to the provisions of Leg. Code § 61.702(a), Salina Amey and Kathy Larson (“Appellants”) filed an appeal from the Commission’s determination and requested a public hearing before the City Council; and

WHEREAS, on June 17, 2015, acting pursuant to Leg. Code § 61.702(b) and upon notice to all affected parties, the City Council conducted a public hearing on the said appeal where all interested parties were given an opportunity to be heard; and

WHEREAS, the Council moved to keep the June 17, 2015 public hearing open and, pursuant to Minn. Stat. § 116D.04, Subd.2b(1), continued the hearing for the purposes of making a final decision on the appeal pending the outcome of an environmental review petition regarding the Applicant’s project which had been filed by the



Appellants under Minn. Stat. § 116D.04, Subd.2a(c) and which, on June 15, 2015, the Minnesota Environmental Quality Board had certified to the Minnesota Pollution Control Agency ("MPCA") requiring it to render a decision on the need for an environmental assessment worksheet; and

WHEREAS, on July 15, 2015, upon affirmation that the MPCA had determined that Applicant's proposed project did not have the potential for significant environmental effects and that the MPCA had denied Appellant's environmental review petition, the City Council concluded the public hearing on the Appellant's appeal of the Commission's decision to grant a conditional use permit to the Applicant for the purposes of making a final decision on the said appeal; and

WHEREAS, the Council, having heard the statements made at the June 17 and July 15 2015 hearings and having considered the application, the Staff Report, the record, minutes and recommendation of the Zoning Committee and the Commission's resolution, does hereby

RESOLVE, that the Council of the City of Saint Paul hereby affirms the decision of the Planning Commission in this matter to grant a conditional use permit to the Applicant as the Council finds that Appellant's have failed to meet their burden of demonstrating error in any fact, procedure or finding on the part of the Commission in this matter. Accordingly, the Council adopts as its own the Commission's decision in this matter based upon the facts and findings as set forth in Commission Resolution No. 15-22.

AND, BE IT FURTHER RESOLVED, based upon the finding above, that the Appellant's appeal is hereby denied; and, be it

FINALLY RESOLVED, that the City Clerk shall mail a copy of this resolution to Applicant Hawkins Chemical, the Appellant's Salina Amey and Kathy Larson, the Zoning Administrator and the Planning Commission.