

**Excerpt from the  
CITY PLANNING COMMISSION MINUTES  
Minneapolis Community Planning & Economic Development (CPED)**

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**MEMORANDUM**

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DATE: July 30, 2015

TO: Zoning and Planning Committee

FROM: Jason Wittenberg, Manager, Community Planning & Economic Development – Land Use, Design and Preservation

SUBJECT: Planning Commission decisions of July 6, 2015

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The following actions were taken by the Planning Commission on July 6, 2015. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

**Committee Clerk**

Lisa Kusz - 612.673.3710

**Commissioners present**

Matthew Brown, President | John Slack, Vice President | Alissa Luepke Pier, Secretary  
Lisa Bender | Rebecca Gagnon | Ben Gisselman

**Not present**

Meg Forney | Ryan Kronzer | Theodore Tucker

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**6. GAF Heater Unit, 50-74 Lowry Ave N, Ward 4**

Staff report by [Mei-Ling Smith](#), BZZ-7205

**A. Conditional use permit.**

Action: Notwithstanding staff recommendation, the City Planning Commission **denied** the application for a conditional use permit to increase the maximum permitted height in the I3 General Industrial District, the MR Mississippi River Critical Area Overlay District, based on the following findings:

1. Approving the conditional use permit without conclusions from an air quality study will be injurious to the use and enjoyment of other property in the vicinity and will impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
2. The conditional use is not consistent with the applicable policies of the comprehensive plan in that it is not in conformance with future land use.

**Not Approved by the Commission**

3. Based on the information provided in citizen testimony, the existing use impedes access to clean air for surrounding properties.
4. The proposal would not limit visibility of structures and other development from protected waters in the Shoreland Overlay District.

**Aye:** Gagnon, Luepke-Pier and Slack

**Nay:** Bender and Gisselman,

**Absent:** Forney, Kronzer and Tucker

Staff Smith presented the staff report.

Commissioner Slack: So the intent of the taller stack in this proposal is to replace the shorter one. It appears in these letters we received that there was some sort of commitment to do \$500k worth of improvements to improve air quality. If that's recent, has that had a positive effect and subsequently, why the need to put up a taller stack?

Staff Smith: Unfortunately, I can't answer that question, but the applicant is here and they may be able to help answer that question.

President Brown opened the public hearing.

**Brian McCool:** I'm with Fredrikson & Byron. I'm serving as land use counsel for GAF in connection with this CUP application. I have a few people here with me that can help answer questions.

**Tommy Richardson:** I'm here to represent GAF. I work out of my home in Evansville, Indiana. I can address your question directly, but would like to give you some background first if that's appropriate. This CUP is as a result of ongoing odor complaints that we received. This is what we call internally phase 2 of the odor remediation issues. Phase 1 included almost \$500k worth of work. A supplemental air project, which went into our combustion unit that was mentioned earlier is the 53 foot stack. That stack does not go away. That stack stays. The stack that's coming in with the CUP is a 71 foot stack that is an addition to the 53 foot stack. We have put supplemental air intake into the 53 foot stack combustion unit. We now burn more efficiently there. We've seen process data that tells us we've improved. The emissions from that stack are moved forward to remediate even more odors is a \$1m project that will add a heater. That is the unit with the 71 foot stack. What that will do is our current combustion unit combusted or burned the fumes coming from our process and it heated asphalt for our process. What we're doing is splitting that unit so we have a heater that heats the asphalt and then we can turn up the combustion unit to higher temperatures, more consistency with the flame going up in the combustion chamber and have more efficient combustion in the combustion chamber that exists now. The heater in the 71 foot stack is an additional heater unit that does nothing but heat asphalt. This is solely to be used for burning fumes and remediating odors. It gives us no benefit operationally other than mitigating odors and cutting down the complaints. It doesn't increase our capacity or lower our costs. The unit we're putting in burns natural gas. It will raise our costs as we're burning the natural gas. I think I addressed your question. This isn't a replacement, it's an additional heater unit. This heater unit will not burn anything except natural gas and it will heat the asphalt which will make the combustion unit more efficient because we take the asphalt out of the combustion unit and move it to the heater.

**Commissioner Luepke-Pier:** I was reading that the higher temperature would substantially increase the efficiency of the combustion process, which would significantly reduce asphalt odors at the plant. I don't understand how increasing the efficiency of the combustion process would actually reduce the asphalt odors?

**Not Approved by the Commission**

**Tommy Richardson:** We have a unit that combusts the fumes we put in it from our process. The fumes come over into the bottom of this unit, go up through the unit and they're combusted as they move up through the unit. As these fumes move up through the unit, currently we have asphalt in tubes running through that unit. We have a minimum temperature which we must maintain by permit in that unit to burn the fumes. If we take the asphalt out of this unit and move it to a heater, we can turn the combustion unit and the flame height up to whatever we want. We have a minimum temperature we have to maintain, but we can go as high as we want in the combustion unit and raise the flame level in that unit so we can burn more efficiently and more area.

**Commissioner Luepke-Pier:** So you're burning fumes and that doesn't create even more of a yucky fume situation?

**Tommy Richardson:** We're burning fumes in the combustion unit. In the 71 foot stack that we have the CUP applied for, we're not burning anything, we're only heating asphalt. That's currently being done in the combustion unit, which keeps us from raising the temperature in the combustion unit because we overheat the processed asphalt and we can't use it in our process if we overheat it. We maintain a permitted level of temperature in that combustion unit. If we take the asphalt out of that unit and move it to the heater, we can ramp the temperature up in the combustion unit or raise the flame so the temperature is more consistent even as it goes up the stack.

**Commissioner Luepke-Pier:** Ok, but how does that reduce odors?

**Tommy Richardson:** We burn the constituents of the fumes which are causing the odors. There's more time elapsed as those odors flow through.

**Commissioner Gisselman:** It sounds like you're burning these fumes now, but you're planning to do it a different way or more efficient method with this second stack. According to what you're telling us, it sounds like you don't believe there is going to be increased output, you're just doing what you're doing now in a different way.

**Tommy Richardson:** That is correct. This doesn't allow us to increase output. Our output is dictated by the amount of asphalt we use. This will not give us the ability to use more asphalt, this is only an odor mitigation issue.

**Commissioner Gisselman:** The reason for this application is to deal with the existing complaints about odor.

**Tommy Richardson:** That is correct.

**Commissioner Slack:** Can you explain the process of how you would be using the 53 in conjunction with the 71?

**Tommy Richardson:** We will use the 53 foot unit as we use it now, but will be used to solely burn the fumes. Right now it heats the asphalt as it burns the fumes. In a series of tubes, coils that go around the 53 foot, we circulate asphalt so it actually heats the asphalt as it burns the fumes. We're going to take those coils out of that 53 foot unit and make it nothing but a combustion chamber. It will serve no other purpose. We will install this heater with coils in it to circulate our asphalt through that unit so the 53 foot unit which now serves a dual purpose, burning fumes and heating asphalt, will solely be for the purpose of burning fumes. It will allow us to turn the temperature up, to adjust the flame height without overheating our asphalt.

**Not Approved by the Commission**

**Commissioner Gagnon:** The 71 foot stack doesn't create an odor?

**Tommy Richardson:** No, it doesn't. It burns natural gas.

**Nancy Przymus (2205 California St NE):** I'm the staff person for the Bottineau Neighborhood Association. I'm here to talk specifically to why we shouldn't have a conditional use permit for an additional stack. As of March we were promised by March 15 that the new \$500k improvement was going to change the burning in the current 53 foot stack and that the odors would be mitigated because it was going to be higher burning temperatures and it was going to be better. It actually got worse. If anything, the belching of the toxic fumes has increased. We are trying to measure what is coming out of that stack. The city and MPCA has been working with the neighborhood group and with the East Side Quality of Life and with the four neighborhoods adjacent to the GAF plant and we have made progress where we're actually getting air samples that can be tested but the test results won't be due until October. Any change right now, we have to measure it on the fence line at the Lowry Ave Bridge, that's where we're measuring and taking air samples. We're also taking air samples when the belching occurs, which is intermittent. Any change right now in all these heights is going to change our air monitoring and make our samples invalid. We ask that you not approve this until the fence line testing can be done so we can prove from the source where these chemicals are coming from because their current permit does not measure gasses. Those are carcinogens and cause asthma. We're in the middle of this testing so we ask you to not make any changes until our testing is complete so we know how to hold the company accountable.

**Dave Degennaro (2522 Grand St NE):** I submitted a letter on behalf of the Marshall Terrace Neighborhood. The odor is one thing, it's powerful and overwhelming and it gives people headaches and sore throats, we want to know what's causing it. What are they burning? That's what we want to find out before anything moves forward. We want to know what we're breathing in as these fumes drift across the river.

**Phillip Harder (2204 Marshall St):** We smell these fumes in our house. We've done various neighborhood activities to try make people aware where the fumes were coming from once we found out. About 10-12 years ago we put up flyers telling people if they smell the asphalt stink to call the environmental agencies. The complaints quickly rose because people never knew where that stink was coming from. People have lived there for decades and thought it's just northeast Minneapolis. It wafts where the wind takes it. It smells bad. People complain about this problem all the time. We were told by GAF 10 years ago that they'd solve it through some investment and nothing happened. They bought time. Last year we had a meeting about this again due to our 311 complaints. We are very cautious about what they're proposing this time around because we've been lied to for 12 years now. They said they'd improve and they didn't. What happens if they build this and the stink is still there? They should be moved out of this area, not be given a permit to do any more polluting. Thank you.

**David Salmela (2208 Marshall St NE):** I want to read something I saw in the Above the Falls Master Plan. It says "conflicts between some heavy industries and nearby properties are unavoidable given the nature of these operations. While these businesses provided needed services to society, the plan confirms that the upper river is too valuable and too close to existing neighborhoods and the heart of the city for this land use to continue indefinitely. A transition to light industry and other land uses is recommended." When I hear this proposal about bigger stacks, bigger flames, bigger gas, I think we're moving in the wrong direction. I also want to echo what Phil said. I was at those meetings 10-12 years ago when the plan manager said they'd fix it and nothing changed. Now I see this new proposal and I think we won't get any results from it. It feels like they're buying time. Is there any evidence that the plan is going to work or is this another failed attempt at remediating this problem?

**Not Approved by the Commission**

**Anna Bierbrauer (2401 Marshall St NE):** I'm on the Above the Falls Committee Advisory. I submitted a letter in opposition. This is not the highest and best use of our riverfront and recreation area. This is moving away from what we would like to see. I love my neighborhood and the location, but on a regular basis these fumes force me inside and force me to close my windows. Two years is a long time in terms of the development of a child and vulnerable people. These are neighborhoods who have a higher population of low income people, children under 18 and minority populations. These are the most vulnerable people in Minneapolis and we're taking on a greater burden. There has not been any improvements as was promised.

**Amanda Winterer (2322 2<sup>nd</sup> St NE):** I'm a member of the board of the Bottineau Neighborhood Association. I'm also a homeowner and realtor in the area. I request that you deny this request. I haven't seen any improvements over the last several months. My concern is less with the fumes and smell than with what's actually coming out of it. To date, they haven't provided us with information regarding that and I'm concerned about what's being let out into our air in our residential neighborhoods. Thank you.

**Susan Armington (2205 California St NE):** I know about this problem because I began to experience really terrible symptoms last summer. I felt so ill in my studio I thought I was going to vomit. I had no idea why. I went home and talked to other people in the building and people pointed me to GAF and this problem. I've done a little research and what I find disturbs me because I don't think it's clear what is coming out of those stacks and what is being spread across the city and across the river. I think that's really important and why don't we know? A higher smoke stack is not going to ensure the air is any cleaner for the people of Minneapolis, only that whatever is in the emissions will be spread more widely and be more difficult to measure and monitor since it will not show up as much on the MPCA monitors placed near the Lowry Ave Bridge. Any gasses and fumes will be more widely dispersed and difficult to measure. On the other hand, by permitting this new super high stack, we lose the chance to find out what the particulates and fumes GAF is emitting into the air. All the data, like the emissions, will be spread out across the metropolitan area. Better to wait on this smoke stack until sufficient data is collected by the MPCA, which has just begun to monitor the situation more closely due to citizen complaints. I think it's really critical that we don't understand what this process is and what the results of it will be.

**Paul Helgeson (401 S 1<sup>st</sup> St):** I used to live on Marshall Ave and I'm also a boater with a boat on the river. These fumes impede me from using the boat on the river. As many speakers have said, this is not in accordance with the Above the Falls Plan, it derails the monitoring efforts, there are issues with aesthetics with the appearance of the Lowry Ave Bridge. It affects the greater community. I could smell the fume a few blocks from the building. This is greater than just northeast, this is about Minneapolis. I strongly urge you to vote against this.

President Brown closed the public hearing.

**Staff Wittenberg:** Just a reminder that this isn't the body that regulates industrial air emissions. The application that's in front of you is a conditional use permit to increase height. You're required to analyze that specific request within the context of the findings in front of you.

**Commissioner Bender:** Did staff present information about some of these health impacts and the measurement study that's happening and what the next steps of that may be?

**Staff Smith:** No, I don't have a lot of information on that. As Mr. Wittenberg said, we did the analysis based on the proposed height, which is triggering the conditional use permit and I defer to the applicant for questions about their long-term plans and mitigation efforts.

**Not Approved by the Commission**

**Commissioner Bender:** Is this new use regulated by a different body? Does it need a permit? Are there any steps in approval other than a conditional use permit for the tower?

**Staff Smith:** As far as I know, our Environmental Health people have been in contact with the applicant a number of times. This is truly a response to conversations with the city. I'm not sure whether permits would be necessary to approve the additional stack.

**Commissioner Gagnon:** Would there be any harm in waiting for data to come back so we have a baseline to determine whether this stack really does what it says it's going to do?

**Staff Smith:** Are you proposing to continue the item to gather more information or are you proposing a condition of approval?

**Commissioner Gagnon:** I would say to continue because if you have information you've collected and it will be invalid if this is done, but that information could help assure that this stack is doing what the applicant says it's supposed to do and the neighborhood and environmental agency has gone through the effort to collect samples and so forth. I'm stunned that our environmental agency doesn't know what's coming out of this. I think if you already started a process to figure that out, it seems odd to interrupt that process and make it invalid.

**Staff Smith:** This is the first time that process has been brought to my attention. The applicant has stated that this is an effort to try to get rid of the odor problem. I don't know if I'm in the position to make a recommendation whether it's better to move forward or to wait for that testing to be done.

**Staff Wittenberg:** Commissioners, you certainly have the ability to continue this. Just be cautious of requesting information that will lead us down the path of getting outside the scope of analysis of a conditional use permit to increase height.

**Staff Smith:** I believe that the Bottineau Neighborhood mentioned October as the end date for the study.

**Commissioner Bender:** We are being asked to approve this stack that is being proposed to solve the odor problem. I think we're all very sympathetic to these bigger questions about the air pollution and air quality and other concerns being raised. I'm struggling a bit with the extent to which this stack would preclude there to be further study of the air quality issues.

**Tommy Richardson:** Not to confuse things further, but the 71 foot stack is a heater. It will literally have no emissions, no burned fumes. The 53 foot stack will continue to burn all the fumes. We will simply be able to turn up the heat, extend the flame and heat the entire combustion unit to have more heat to burn the fumes. As far as a baseline, you have a baseline now. Our activity is aimed at one thing and that's mitigating the complaints you've heard from this group of people. That's our sole purpose in this activity. This is an additional step on what we've already done. This is a step to improve the odor situation and the relations with the neighborhood. We are regulated by the state and monitored by your own environmental agency in the city. We work with them closely and have yet to have a violation.

**President Brown:** Is there any permitting through the state that is required for this unit?

**Tommy Richardson:** This is a heater, not a combustion unit. In the heater, the asphalt is contained in a tube, a coiled tube, so the asphalt is not released into this heater at all. It rotates around and goes back into a storage tank and we can control the heat of the asphalt this way.

**Not Approved by the Commission**

**Commissioner Luepke-Pier:** If you're monitored by the state, what are they monitoring and how are they monitoring?

**Tommy Richardson:** We have a lot of stack tests. The city has been a birddog on this issue and has done all sorts of monitoring. The city comes out when it's a more intense smell. They stand on the bridge and come to the property line and they analyze the odor that is emanating from the facility.

**Commissioner Bender:** Ms. Smith, you said our environmental staff has been involved in this discussion, is that correct?

**Staff Smith:** I've heard through the grapevine, I haven't had direct conversations with that department.

**Commissioner Bender:** I will move staff recommendation (Gisselman seconded). The question in front of us is about the appropriateness of height in an industrially zoned district and I think a lot of questions raised here are really important ones that I know our staff and officials will be happy to follow up on.

**Commissioner Gisselman:** Those of you who have voiced concerns about what is coming out of this existing stack, I think that's a legitimate concern. What we're hearing is that they aren't creating a second stack to create more emissions, their intention is to try to address some of these concerns. Monitoring and working with the MPCA should continue. I think if we denied this application based on concerns over the cleanliness over what's coming out of the existing stack, which would continue anyway even if we denied this application, I think that this body then would be venturing down a path of which I don't think it has purview over.

**Commissioner Luepke-Pier:** In terms of conditional use permits, it does not meet all of the required findings. Finding number two, that it won't be injurious to the use and enjoyment of other properties in the vicinity, will not impede the normal and orderly development of improvement of surrounding properties. It seems as though it might affect the study that's being done now in terms of creating an inaccurate baseline. I think it affects number five, is it consistent with the applicable policies of the Comprehensive Plan. I think that furthering something that's not in conformance with future land use is not consistent with the future vision for the Above the Falls Plan. I also think that when we look at additional standards to increase maximum height, finding number one is access to light and air of surrounding properties. A lot of this has to do with air quality. While we can't regulate through this body, the emissions coming out, we do have a say in things that a reasonable person could infer would have an impact on air quality and since this is specifically being done, doubling the height in the area as a result of air quality issues, I would think that we could pay keen attention to that one. Lastly, limiting the visibility of structures or other development from protected waters. This one is relevant because of what was missing from the staff report. I saw no evidence of even passive means of air quality improvement. There's not a single tree on the site. One of the requirements of the conditional use permit is that it has to bring the property up to standards including trees and landscaping. I realize they're in an industrial area and they're under the bridge in terms of elevation and height, but I don't see any effort made to try to screen the neighborhood from seeing that through the use of taller trees, some of which could do quite a bit to mitigate air quality issues. I don't see any attempt to make any sort of nod to the riverfront in terms of offering alternative compliance to the landscaping requirements from the parking by proposing to put them along the riverfront to serve as a buffer but also as a way to beautify the riverfront and given that that's an area of town often neglected I think that speaks volumes in terms of the willingness to actually take the neighbor's concerned about air quality.

**Commissioner Gagnon:** This is being brought to us to change air quality, but the applicant hasn't done anything to show us that the air quality will change. I know air quality isn't our purview, but if it's for the sole

**Not Approved by the Commission**

purpose of that and that's why we're approving a height variance, it seems to me that it would've behooved the applicant to actually show that they've been measuring and they're going to prove to the neighborhood.

**Commissioner Luepke-Pier:** I think we should let them get the base level established so we can see what the progress is going forward.

**Aye:** Bender, Gisselman,

**Nay:** Gagnon, Luepke-Pier, Slack

**Commissioner Luepke-Pier:** I will move to deny the application based on the findings I cited earlier (Gagnon seconded).

**Aye:** Gagnon, Luepke-Pier and Slack

**Nay:** Bender and Gisselman,

**Absent:** Forney, Kronzer and Tucker