

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

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MEMORANDUM

DATE: August 30, 2011

TO: Steve Poor, Planning Supervisor – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Jason Wittenberg, Supervisor, Community Planning & Economic Development - Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of August 15, 2011

The following actions were taken by the Planning Commission on August 15, 2011. 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.

Commissioners present: President Motzenbecker, Carter, Cohen, Gorecki, Huynh, Luepke-Pier, Schiff, Tucker and Wielinski – 9

Not present: Bates (excused)

Committee Clerk: Lisa Baldwin (612) 673-3710

5. 701 2nd Street Apartments (BZZ-5190, Ward: 7), 701 2nd St N and 700 Washington Ave N ([Janelle Widmeier](#)). This item was continued from the July 18, 2011 meeting.

A. Rezoning: Application by Robb Miller, on behalf of T.E. Miller Development, for a petition to rezone the property of 701 2nd St N from I2 to C3A and to remove the IL Overlay District.

Action: The City Planning Commission adopted the findings and **returned** the petition to rezone the property of 701 N 2nd St from I2 to C3A and to remove the IL Overlay District.

B. Conditional Use Permit: Application by Robb Miller, on behalf of T.E. Miller Development, for a conditional use permit amendment to add 100 dwelling units to allow a total of 243 dwelling units in a planned unit development located at 701 2nd St N and 700 Washington Ave N.

Action: The City Planning Commission adopted the findings and **approved** the application for a conditional use permit amendment to add 100 dwelling units to allow a total of 243 dwelling units in a planned unit development for the properties located at 701 N 2nd St and 700 Washington Ave N, subject to the following conditions:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
2. As required by section 527.120 of the zoning code, the development shall comply with the standards for some combination of the following amenities from Table 527-1, Amenities and those proposed by the applicant totaling a minimum of 5 points: Energy Efficiency, Reflective Roof, Shared Vehicle, Heated Sidewalks, Recycling Storage Area, Dual Trash System, Enhanced Landscaping and Other Pedestrian Improvements.
3. As required by section 527.90 of the zoning code, the development shall provide amenities, including the semi-public walkway, proposed for the previous alternatives approvals.
4. The applicant shall implement all amenities as required by section 527.120 of the zoning code by August 15, 2013.

C. Variance: Application by Robb Miller, on behalf of T.E. Miller Development, for a variance to reduce the minimum lot area requirement for property located at 701 2nd St N and 700 Washington Ave N.

Action: The City Planning Commission adopted the findings and **returned** the application for a variance to reduce the minimum lot area requirement by 4.1 percent for the properties located at 701 N 2nd St and 700 Washington Ave N.

D. Site Plan Review: Application by Robb Miller, on behalf of T.E. Miller Development, for a site plan review amendment for property located at 701 2nd St N and 700 Washington Ave N.

Action: The City Planning Commission adopted the findings and **approved** the application for site plan review amendment for the properties located at 701 N 2nd St and 700 Washington Ave N, subject to the following conditions:

1. Community Planning and Economic Development Department – Planning Division staff review and approval of the final building elevations, floor, site and landscape plans.
2. Site improvements required by Chapter 530 or by the City Planning Commission shall be completed by August 15, 2013, or the permit may be revoked for non-compliance.
3. At least two parking spaces shall be designated for visitor parking as required by section 551.765 of the zoning code.
4. To ensure a greater degree of compatibility with the surrounding area and ensure compatibility on all sides, the proposed areas of white cementitious panel on both the front and back of the building shall be replaced entirely with brick.

Staff Widmeier presented the staff report.

President Motzenbecker opened the public hearing.

Robb Miller (T.E. Miller Development) [not on sign in sheet]: Some of the feedback we got when we were here last was that there were some issues with private easements and issues with regards to materials of the building. With the private easements, there are two easements in play on the property, one is with Tower Lofts and one is with Harvester Lofts. On the Tower Lofts easements, the only change that we were making to the existing condition is that we're relocating the drive aisle easement to the other side of the 701 property which is clearly permitted in the easement documents. We did get confirmation from Tower Loft's representative in writing that there are no issues with regards to the easement as it relates to the development of the 701 project. This driveway, this is where the new driveway is proposed. The current access driveway for the property sits in this area here. The second private easement is with Harvester Lofts and they have a pedestrian easement across the southeast portion of our property. There was some question because of a foreclosure as to whether this easement was still in place or not. We have agreed to state the easement is in its entirety per Harvester's request, which will happen after we take title to the property. Another issue that has come up is the Tower Lofts' tunnel. We would prefer for the tunnel to remain open but we do not have any control over access to that tunnel. This is an issue between the City and Tower Lofts and, in my opinion, has nothing to do with the approval of this project. All we can do is design a nice green promenade for the neighborhood between 2nd St and the Tower Lofts tunnel and the rest is out of our hands. The third issue, there were concerns brought up by Tower Lofts, one is that the drive aisle adjacent to the Greenway would be a safer design in the proposed plan so they would like the driveway to remain here. We think it's safer over here and we have support from staff and our traffic consultant that agrees it makes more sense to separate the vehicular and pedestrian access through the site. We have storefront materials that will be lit up at night which we think is a lot safer than having a drive aisle in between our building and the sidewalk. Another issue that came up is the location of our garage entry for the building. In the current plan it's in the back of the site and Tower Lofts had issues with regards to traffic because of this. Our traffic study in our TDMP verifies there will be a very low impact for traffic by having the garage in the back of the building. A lot of our residents will have bikes or they can use the Nice Ride bicycles which are located across the street from our property. In addition, there are two bus routes within a block from the site that will allow residents to not use cars on a daily basis. Our TDMP estimates that the development will have 33 a.m. trips and 40 p.m. trips and Tower Lofts parking area has about 28 stalls and some of these are live/work units so approximately the same amount of trips through this drive aisle will be generated by Tower Lofts. Another issue that came up is winter snow storage near the tunnel entrance which could potentially block access to the tunnel. All of our winter snow storage is temporary and will be hauled away or melted on site. Another issue I wanted to bring up is there is some environmental contamination on the site. This site has contaminated fill and the proposed development will remediate that at no cost to the public. Currently, we're estimating about \$200,000 worth of remediation which is important because whoever ends up developing this site will need to pay for the remediation and include it in their budget. Now with regards to materials, I wanted to give you some updates on what has happened since our last meeting. Ms. Widmeier mentioned some of these, but we doubled the area of metal paneling on the building from 11% to 22% by incorporating metal on our northwest elevation. We've also added a recess to the 2nd St side of the building to allow for articulation of the building and we've added balconies on the 2nd St side to break up the façade and improve the views of the building from 2nd St. We also made a couple changes to the area of our site that runs along the promenade.

This corner here has been changed from punch openings to an all glass wall system and we've made some improvements to the patio as well.

Curt Gunsbury [not on sign-in sheet]: I'm going to start with the massing on the building. I want to review our original proposal with what's allowed on the site. Right now we're proposing a building that's six stories high, 73 feet. It adds landscaping and air space for all the neighbors. In a C3A district you're allowed four stories so really all we're asking for is two stories and it's really not even two full stories in height, it's really like 15 feet. What we're allowed in this location right now is a building that stretches throughout this yellow area. If you look at it on the footprints, it ends up covering almost a third more square footage than we have in our current plan. We very consciously pushed our building towards second street to create more air space for Tower Lofts. We pushed it toward the middle of our lot to create air space for our next door neighbors. We assume, eventually, there will be more development to the north so we've also created air space for that neighbor, whoever it ends up being. We think this is good city planning. What's allowed by rights on this site is the volume outlined in black and yellow. You can see where our proposed building is actually kind of swamped by that volume. This building could be built without any variances, without any CUPs and without having to go to the Planning Commission if it was an industrial building or an office building. Since it's five units or more it has to go through the Planning Commission. We think the building fits the site well, we think it works well for the neighbors. We don't think we're asking for much. I'd like to show you some of our neighbors and what they're using for exterior materials right now. We'll start with us. Here is our building as proposed right now with all the changes we've taken since we started the process a few months ago. We're at 22% metal, we're at 21% nichiha which is a recycled resin cement material that's about three times more expensive than cement board, we're at 15% brick and 42% glass. As you can see from our drawing, our base is all modular brick so it's very traditional brick at the first floor. It's 14 feet high so visually it's actually raised up. From the sidewalk it will look like it's about 17 feet high. All you're going to see walking along here is brick. If you do crane your head up or if you're driving down 2nd St, you're going to see the metal here on the north side of the building peeking out from around side the warehouse building that's to our north. If you're coming up 2nd St, you'll see metal peeking around the Mill City Apartments. We have the exact same view on the back of the building because we wanted to honor the neighbors behind us and the attractive building that's there right now. A lot of the buildings in the neighborhood that you guys have approved in the past have cement board or EIFS entirely on the back side of the building; that's not what we're doing here. We're paying attention, dollars, time, effort to the front as we are to the back. This is the River Station Condominiums across the street from us. They are in the historic district, which we are not. We want to make a comparison in the materials that they use. I think the really striking one for you to consider is that 25% of the surface of this building just on the outside sides is concrete block, it's CMU, which I don't think you'd approve today for something in the historic district. This isn't that old, it's less than a decade old. The interior courtyards of all these buildings are EIFS. You have a fake historic façade wrapped in EIFS around the back, that's what exists across the street from us. There is modular brick on this building which is nice because it's traditional and it gives the feeling of the warehouse district. We really think this is a form that is hollow. It has one side that is pretty and many sides that are not. I just changed this because we got a review from our architect of what the Mill City Apartments is. This is directly to our south; this building is 20% concrete block, CMU, 25% jumbo brick, it's not traditional brick so when you're up close it looks like SuperValu or SuperAmerica or something like that and then we have 30% glass and a whopping 25% EIFS. A lot of the concrete block is on the front of the building. If you walk by this building what you would most prominently see is three stories of concrete block. Just to give

you the context of our neighbors, you know that behind us we have the Tower Lofts, the SoHo Lofts, the Harvester Lofts, all old warehouse buildings, materials that we love that we'd love to see more of in the city but they're very expensive to build. Here's the building just to our north, it's Level Three Communications. We don't know how long it's going to be there. It is a hub for a bunch of technology. We do know that these hubs tend to stay in place forever in the city of Minneapolis because you can't put them anywhere else once they're there and there's an enormous amount of investment in the technology that goes into these buildings. It's not that different than a Qwest hub or other hubs you see in our blocks with ugly facades. This building is five percent openings, 30% brick all on the 2nd St side and 65% concrete block. The reason we're doing this exercise with you is that we want you to understand the politics of whatever decision you make today. We know that it's expensive to do brick, specifically on wood frame buildings because ultimately you have to build two structures; one wood frame structure that supports the building and the second is a steel structure that goes into all the studs all the way up to whatever height the brick goes up to. Steel is expensive. There is a tradeoff for what we get to invest in this building. That tradeoff is the decision you have to make as the Planning Commission. Are we making a tradeoff to pay for what we see as environmentally sustainable features in our building or are we paying for lots of exterior brick that we all agree is "fakeitecture" and doesn't even match the neighboring buildings? The cost of the sustainable features we put in here, we easily get to the cost of the brick for the exterior of that building. We heard feedback from the folks in the community that they want an all brick building in the warehouse district but we want to remind you that this is not a historic district and not a historic building. It's a renovation of an existing site that is now under the MPCA's watch and we're paying for all of it and by next summer we'll be generating a couple hundred thousand dollars a year in new taxes. We think we're making a great investment in the city, it's all we've done with our other buildings and it's all we plan to keep on doing. I'm sure we'll be in front of you with other buildings and you can hold us to that standard for as long as we're here. We know for a fact that other developers in the city are not doing these things because they cost a lot of money. A lot of people just can't do it. I think you all know that we're going to price a lot of people out of real estate in the city of Minneapolis if we keep going this way. We know that our housing isn't affordable, it's market rate, it's probably even the top of the market unless you're investing for Project for Pride in Living housing or something like that which we all pay for, nobody's going to be able to afford these materials. Whatever you guys vote for today, we know it's all about the exterior at this point. We just want to be clear that we are taking a political stance here about what you want the future of the city to be.

Thomas LaBossiere (700 N Washington): I'm here representing the Tower Lofts association. In response to the staff report posted online last week we feel the need to express the opinions that were expressed. The report contains more than a dozen references to the connections between N 2nd St and Washington Ave. A connection between these two streets is not possible without the use of the tunnel that is located on the Tower Lofts property. We must respectfully dispute the assertions made in the report stating that the tunnel is anything other than private property. As our legal counsel has stated in a previous letter to both the developer and the Planning Commission, the tunnel is the exclusive property of Tower Lofts. No easement through the tunnel has been agreed upon and no recorded document state or imply that the tunnel belongs to anyone other than Tower Lofts. In order to protect our property rights, the gates to the tunnel has been closed and locked. It will remain so until a resolution can be reached. At this time only Tower Lofts residents have access to the tunnel. Given that the access between N 2nd St and Washington Ave is an integral part of the proposed development, we would like to request that this

item be continued until such a time that a resolution on this matter can be agreed upon. Thank you.

President Motzenbecker: A resolution of what?

Thomas LaBossiere: It looks like more than a dozen times in the application, the applicant and city have used our walkway as an amenity to the building and it's private property.

President Motzenbecker: So the dispute is?

Thomas LaBossiere: It's private property, they can't use it as an amenity to their building.

President Motzenbecker: We can talk about that in discussion. We had that researched from the City Attorney so there are probably some disputing points of view there and it may end up out of this commission. Thanks for clarifying.

Commissioner Gorecki: Can you explain Andy Gittleman's agreement to an email on August 1 confirming some statements made by Mr. Miller in regards to this issue? It states that Mr. Gittleman was working on the association's behalf at the particular point in time.

Thomas LaBossiere: I am not privy to that conversation. Some other members of the association and you may be able to ask them about it, but I cannot answer that at this time.

Chuck Leer (700 N Washington Ave): I've prepared a letter about the private easement issues and I'll give this to Janelle. I could answer some questions if you'd like about Mr. Gittleman. I should respectfully dispute the comment of the developer that the private easement issues have been resolved, they haven't been. In fact, we left here a month ago with what I thought was clear direction that you wanted these resolved before this meeting and I would say based on my knowledge of this, we're farther apart than we were a month ago. The week following the meeting, the developer made a proposal to Tower Lofts through Mr. Gittleman that there were two options to resolve the easement issue. One they called Option A which even the developer agreed is in violation of the current declaration of easement. The second option, the developer claimed complied with the declaration of easements but the we would dispute that. In the developer's own words, the Option B would lead to delays during the construction period for the vehicles going in and out of Tower Lofts which the declaration of easements does not afford you to do. Secondly, they asserted that they were going to terminate a storm water drainage easement and that they were going to rip it out. When they do that and they resurface, we're going to have some drainage issues at Tower Lofts and we're going to have to take care of those ourselves. It seems that that was their way of inducing us to accept one or the other of the options and again I do not believe... in fact, what Mr. Gittleman did within a couple days of that meeting with the developers is ask them to provide in detail a written proposal of how they were going to suggest handling the easement issues with legal descriptions and a survey because the declaration of easements requires a legal description and survey with 30 days notice and it has to go before the Tower Lofts board and none of this has happened. The private easement matters have not been resolved and this is really out of your jurisdiction. This is between Tower Lofts and the developer but I guess I would urge you not to act on this until they're resolved because until they're resolved you don't know where the drive aisle and egress is going to end up being and it could end up being a waste of time.

President Motzenbecker: Just to clarify, the easement you're referring to is not the tunnel but the piece that comes straight out of that tunnel and towards...

Chuck Leer: Not the tunnel. This is a drive aisle and ingress and egress...this relates to 2nd St.

President Motzenbecker: I wanted to clarify that because we did have a statement from the attorney that related to that and one of the last statements in that email that was dated today at 4:00 p.m. says "this is not a situation where an easement was ever required, it was required public benefit PUD amenity that was also agreed to in the adopted TDMP from that previous Tower Lofts 2004 approval." Locking the gate for the pedestrian walkway kind of violates the terms of that particular PUD. I know there are two properties here and they're kind of working in concert but I'm happy to read this whole thing out for the record if people need me to. I think that is a key piece here and I guess I would look for some guidance from Jason or Director Sporlein as to what we look at with this. I don't know if it needs to be continued for this to occur or if this is something that is out of our purview.

Staff Sporlein: With regard to the particular email that Erik Nilsson, our assistant City Attorney wrote, I would say this is what you consider to be the situation. It could take months or longer if Tower Lofts continues to dispute the conditions of approval and the TDM. You have to consider this the current situation that that's required to be open to the public as an amenity that was approved as part of the PUD and the TDMP. The other issue I can't speak to but continuing these items until some of these are resolved, which could take a long time in the court system, this is our attorney's opinion and they likely had their own. We'll start with enforcement activity and go from there.

Chuck Leer: Everything I've talked about since standing here relates to easement issues that don't relate to the matter you just discussed with Director Sporlein. The tunnel is a completely different matter, that's within the Tower Lofts building itself. This has to do with the vacant property within Tower Lofts right now and getting in and out for the residents of Tower Lofts who park in the back of the building.

President Motzenbecker: We can expect the gate to be unlocked for the future?

Chuck Leer: I can't speak to that, that is a matter that is up to the residents of Tower Lofts and I don't represent the association here.

Sarah Klein (5339 Pleasant Ave): I would like to advocate for smart, green multifamily housing. I own small rental properties, nothing new, very old. I am concerned about how we are developing our city and smart growth. I challenge you to support projects that are environmentally sustainable.

Lindsay Buck (Tower Lofts) [not on sign-in sheet]: Based on the information online, this is a blueprint of the grounds. The areas highlighted in green here are the areas that would need snow removal. The areas highlighted in purple are the areas designated for temporary snow storage. I understand that many of the other areas are going to be heated areas. My first concern is how are we going to prevent the areas surrounding the heated areas from becoming ice skating rinks? My other concern is just based on some rough math, a three inch snowfall is going to make about a three foot pile in these purple areas. How quickly are they going to be able to melt that? It's covering up some parking spaces, possibly covering up access to the tunnel. My last question, I

would like to know more about the contamination on the site. The application was first filed in June and we're just hearing about this contamination now in August. I'm just wondering how severe it is, what it is, if it's anything we need to be concerned about. Thank you.

Jacqueline Tofte (Tower Lofts) [not on sign-in sheet]: I believe there is a misunderstanding about the private easements that exist. I don't have a copy of the survey with me, but I have the site plan. The drive easement is easement area number one on the survey. We understand that that can be changed by any property owner and we are totally fine with that. The second easement area follows this dotted line and butts up to another easement which is a parking easement. Easement area number two is for the access of the Tower Lofts live/work units. Access area number one which encompasses the parking spaces is an exclusive easement for Tower Lofts parking. The proposals that the developer has made have to do with how they are going to construct a two story underground parking garage that butts up to the boundary of the easement area two which is right along here. They are suggesting that one of the options is to use a system of holding back the earth so that residents may continue to use the access drive aisle to reach their parking easement area. The second option that they proposed to us is for Tower Lofts residents to abandon their parking spaces, give up the drive aisle access so the developer can do the required excavation that would allow them a more sloped elevation and not the pilings and shoring system. These are the two options that were specifically presented to us without specifics, simply an email to the Tower Lofts to Andy Gittleman I believe and we feel that it's not satisfactory that both of the options they've presented have gray areas that would need to be legally defined. If it's your understanding this is the only easement issue, our understanding is that there are two other easement areas which are under discussion and in play.

President Motzenbecker: If there are any other easement questions, that's seemingly a matter that is private and out of our hands for today. That's not something that we're going to do a lot of discussing because it's something that goes beyond the scope of what we are looking at. We take those concerns into consideration and we understand them and we hear what you're saying, but it's not something that is really dependent on what we're deciding. Any other comments?

Megan Carr (Harvester Lofts) [not on sign-in sheet]: I'm on the board at Harvester Lofts. T.E. Miller's summary that we've been working to resolve our sidewalk easement with Harvester is correct. I would ask that the board consider adding a requirement that they continue to work through that as we have not signed an agreement and have not put it in escrow yet. We have some concern that it won't be finalized. They have worked diligently with Harvester over the last month to try to resolve that. Thanks.

Leslie Smith (680 N 2nd St) [not on sign-in sheet]: I don't know what the timeframe is for construction and when they intend to commence and complete the project. That's all.

President Motzenbecker closed the public hearing.

President Motzenbecker: We have four items, two returns and two items. I'll start. I will have the applicant come back up and we'd love to get some of those questions answered if we could and I think as the commissioners have questions we can continue. If you want to just give us some insight into your proposed timeline and then go from there.

Curt Gunsbury: If we get approvals, we'd like to break ground this fall. We'd conclude construction next summer.

President Motzenbecker: And then a little about site contamination, what it is, etc.

Curt Gunsbury: We know it covers about the northern third of the site closest to the level three building. It's probably back fill. It was probably an old house basement that was about 20 feet deep. There are creosote timbers in it and metals such as lead. The cost of the mitigation is not high enough to get grants so that's one of the considerations for us. We know we can't apply for a grant because it has to be one percent of your project cost. The other question was about snow removal. We have other buildings that we remove snow from either with trucks or we melt it on site. We have a heated system in our Uptown building that actually melted all the snow last winter and we had no problems at all and never had any complaints about ice at all. Any pile of snow that hits a 28 degree day is going to have ice next to it. We all live in Minnesota and we get that. I don't see any difference here if we get three feet of snow there's going to be melting at the edge of whatever parking lot it is. We never had issues of ice on a heated sidewalk. There are city laws for snow removal, it's within 24 hours. We could return the question and ask how they are going to remove their snow because they have no snow storage. They have pretty much used up every square inch of their available space.

Commissioner Gorecki: This is a tight site so how do you plan on doing the construction and how do you plan on excavating the site?

Robb Miller: We would have shoring in the back on the edge of the easement area and the other option would be relocating Tower to our parking lot in the neighbor's lot at 715. It's up to Tower, they can choose whatever option they would like.

Commissioner Gorecki: You've factored both into your construction pricing?

Robb Miller: Correct.

Commissioner Gorecki: Let's revisit the exterior real quickly. I wish there were two or three looks at it. I can't get a great feel for the setbacks on it. I think I'm getting a better feel for the materials and I want to applaud you for your efforts. I'd like to see the second street side. I think that's where we gave you the most direction at the last meeting. I'm trying to get a general sense of what is the depth of your white cementitious board? Is that getting pulled back at all? I can't really tell here.

Robb Miller: If you look right here and right here; it's two feet here and here it's four feet. Does that answer your question?

Commissioner Gorecki: How about if the architect walks us through this a little bit?

Dan Kellen [not on sign-in sheet]: The other question about the panel and brick base, they are in the same on this side. On the back of the building there is about an eight foot plaza deck for the second floor residents. The recesses on either end of the building are carried out from the front and also in the back. Recesses were added since the last design. The metal, as you can see, wraps around the whole north and south end of the building in a similar matter. The glass on the first floor has actually wrapped around the whole base of the building in the public common space so that will actually be lit 24 hours and provide eyes on the pedestrian piece.

Commissioner Gorecki: Can you talk a little about what the black metal strips are at the end of each one?

Dan Kellen: On this end of the building there's actually some balconies and this is actually nichiha panel too in a black color just to give more punch to the recesses. This is the other end of the building. We did take out the three boulevard trees that we're going to be planting to extend the boulevard but then 10 years down the line they will cover up more of the building so we tried to clarify that you can see the brick in the base of the building and the patios.

President Motzenbecker: I'd like more clarification. At committee of the whole we were talking about the paneling. I understand your cost and I think you've made some great points. I don't think we're advocating that you do similar things to what are around you. The thing that I felt is a little lacking is that even though you're not in a historic district and you don't have to do this, a gesture towards what is the major context surrounding you and right on your back side would suggest to me that you would want to do that as even a nod to help kind of bridge this gap that we're seeing not just from our point of view but from some of the residents surrounding point of view. I don't think that I would make you do an entire building of brick, but I would almost rather, especially after going through and seeing a lot of the alternative compliance you're requesting, kind of ask that maybe you make the choice and maybe we flip it out the cementitious panel and brick, wherever there's that it can be brick and you can keep your metal or vice versa. Where there's metal on the corners, that can be brick and you can keep your cementitious panel in the center. I'm interested to hear what my fellow commissioners think about that idea, but as you said it's going to come down to the exterior. I'm a little frustrated with the return piece after we were specifically asking about brick on the building and it's this little slice at the bottom. You may agree with that or not but that's how I'm seeing it and that's my frustration. I think your buildings are great. I think your Solhem building is brilliant for what it does inside. I think a lot of your work as struggled with the outside. I love that you're doing all this stuff and I want you to do more. We're just trying to bridge that gap between context and doing the quality work that you do. I want you to know that I appreciate what you're pushing and I do wish more developers would push those types of things so thank you for doing that.

Curt Gunsbury: I just did a quick flowchart for Tower Lofts. Just so we're clear about who we're dealing with. We have 140 homeowners who are divided into several factions. We have one board, the head of the board is Patrick McKinney who you have communicated with. There's one management company and that's the Gittleman Management Company. We felt like we've dealt straight up with these folks all along but there's clearly a lot of fractiousness and it's coming out sideways all over the place. We feel that, legally, we're on strong footings as the city does as well and I think we're doing the best we can and don't feel it will have any impact on the project eventually.

Commissioner Tucker: I will move we return A and C (Gorecki seconded).

President Motzenbecker: Any discussion? All those in favor? Opposed?

The motion carried 8-0.

Commissioner Gorecki: I like the overall development and I like where they're headed. They didn't get as far as I wanted and I thank you for your comments on that. My fear here is that we could potentially approve a project that's going to go into litigation and never get built or at least

won't get built for three to five years. I do have some hesitancy about moving this forward but I think I'm going to do so and with one caveat. I do understand the cost of building a building. I think we have to push the envelope. I think rents in Minneapolis are exceeding what anyone is asking for. I know that Solhem pushed it over \$2.00 a square foot a few years back. I think we're seeing vacancies now hovering around one and two percent. Overall from a development and cost perspective, I think developers have greater financial tools at their means to do more. I think it's our purview as the Planning Commission to push that envelope so what I'm going to ask as a part of the conditional use permit is that item number five and the front exterior between the two metal columns be 100 percent brick and we consistently leave the back side of the building as it is with the balance of metal cementitious panel and brick. I will move staff recommendation for the conditional use permit with that addition.

Commissioner Tucker: Can we have staff throw up the façade so we know which panel we're talking about?

Staff Sporlein: Can we confirm whether the condition should be on the site plan review or CUP for units? I think that's probably more appropriate for the site plan review and not the CUP for units.

Staff Wittenberg: I agree that such a condition would be better placed in the site plan review. If I could refresh commissioner's memories about what the ordinance says about materials, exterior materials shall be durable including but not limited to masonry, brick, stone, stucco, wood, metal and glass. Exterior materials in appearance of the rear and side walls of any building shall be similar to and compatible with the front of the building. I think that typically when we have asked for more brick it's been a situation where brick has been proposed on the front but completely different, generally inferior material, on the rear and sides. In cases like that we've requested that brick be wrapped around to include some of those elements on all sides.

President Motzenbecker: Commissioner Gorecki, would you be willing to withdraw that and place it on site plan review?

Commissioner Gorecki: I would. I will move staff recommendation of a conditional use permit as proposed by staff (Tucker seconded).

Commissioner Tucker: I just want to clarify that last time our concerns about the easement were not the private easements that they've been referred to, but more the public connection between 2nd and Washington and that's what we were really concerned about and we've had the clarification from our own Assistant City Attorney that that exists without an easement. The right to go through there was part of an approval for a different project and our only concern here would be that this project continues that access through the block and that's why we are supporting this CUP application. The other thing we talked about was more brick. I heard that very clearly in the committee of the whole meeting and at the discussion at the public hearing last time.

President Motzenbecker: I think this is appropriate for this location. It upholds a lot of the plans that are going on for this area so I would concur with that. All those in favor of the motion to approve the CUP for the 100 units? Opposed?

The motion carries 8-0.

Commissioner Gorecki: For the site plan review I'd like to add a condition and that condition would be number four that on the 2nd St façade that the areas between the two metal panels be 100 percent brick. (Luepke-Pier seconded)

Commissioner Luepke-Pier: I was very underwhelmed by the cementitious panel on the front, I thought it was overwhelming on the façade and when I heard they moved the three boulevard trees I kind of wished they'd put them back in because I feel like it's just bland and bold. I support the condition on the site plan review.

Commissioner Gorecki: We're not changing the indentation of the building at all. In fact, that stays the same because we want that relief and that shadowing. I want to make sure that that stays the same and that we're clear about that.

Commissioner Schiff: I like Commissioner Gorecki's motion except for the part that would leave the back of the building without brick. I think I will make a motion to amend the motion or maybe a substitute motion to require brick on the front and the back in the same area that Commissioner Gorecki articulated. In the past we've required brick on all sides of the buildings because we don't like this idea that the back of a building is somehow invisible and can't be seen and that you shouldn't be looking at. The view from the back is coming from the people in the historic district and they shouldn't be subjected to this view. I think brick should be required on both sides.

Commissioner Cohen: I am going to be talking about brick. Somewhere I learned there is common brick and facing brick. Are we going to want to have a consistent kind of brick or any kind of brick will do or how do you want to handle this?

President Motzenbecker: I believe the applicant mentioned it was modular brick.

Commissioner Huynh: My only comment would be to leave it at the discretion of the architect and applicant to carry forth their brick choice. I don't believe it's in our realm to dictate the type of brick. I think that what they're probably proposing for brick would work, especially since we will be asking for additional brick to be provided on the project.

President Motzenbecker: The substitute motion is that both areas of white cementitious panel on both the front and back be replaced with brick.

Staff Wittenberg: Can I just ask that the commission clarify, and I'm questioning whether it's in your realm to require brick based on the ordinance language that I read. Are we suggesting that the materials being proposed are not compatible with one another or that they're not durable? I'm looking for our ordinance authority to require that much brick.

President Motzenbecker: I don't see compatibility. Secondly, as I mentioned, we have four items of requested alternative compliance that are not being met and in exchange for allowing those items I think we can have an exchange of a change in materials for those two facades. All those in favor of the motion to add the condition? Opposed?

The motion carried 8-0.

President Motzenbecker: Any more discussion on the item?

Commissioner Huynh: For projects that we get in Minneapolis, it's really nice that we have a market and economy that supports sustainable development. Unfortunately, we're in a situation where you have to kind of choose between exterior modifications and interior modifications for a green building design. I was disappointed to hear it'd have to be an option between either/or and you couldn't do both. I think a lot of projects we see nowadays incorporates both where you have a LEED certified building from the start and you look at that. It's a great project it's just unfortunate that you have a decision to choose either/or. In the long run I think it's more important to fit in with the context and have more brick that is respectable to its neighbors in the warehouse district.

Commissioner Tucker: The requirement for brick has to do with the compatibility of the neighborhood and certainly with the front and back being equal so that the neighbors who look at it from the back have as good a view. Plus, we do have discretion with amenities and particularly in the PUD and we've given up a lot and asking for a little back.

Commissioner Luepke-Pier: I think that at the end of the initial presentation we were kind of put on a scale saying we have to make a decision or bold statement whatever we do regarding whether we were going to go for a sustainable design or a good looking design and I think that that just perpetuates a myth that sustainable design is so expensive that you can't do it in a well intentioned, meaningful and aesthetic way. I'm proud to be making a statement that says you can do both at the same time and I hope that this commission isn't afraid to make that kind of statement and not fall prey to the unfortunate myth that you have to have an either/or situation.

President Motzenbecker: For the final vote on the site plan with condition four? Opposed?

The motion carried 8-0.

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

250 South Fourth Street, Room 300
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MEMORANDUM

DATE: September 13, 2011

TO: Steve Poor, Planning Supervisor – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Jason Wittenberg, Supervisor, Community Planning & Economic Development - Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of July 18, 2011

The following actions were taken by the Planning Commission on July 18, 2011. 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.

Commissioners present: Cohen, Gorecki, Huynh, Luepke-Pier, Schiff, Tucker and Wielinski – 7

Not present: President Motzenbecker (excused), Bates (excused) and Carter (excused)

Committee Clerk: Lisa Baldwin (612) 673-3710

4. 701 2nd Street Apartments (BZZ-5190, Ward: 7), 701 2nd St N and 700 Washington Ave N ([Janelle Widmeier](#)).

A. Rezoning: Application by Robb Miller, on behalf of T.E. Miller Development, for a petition to rezone the property of 701 2nd St N from I2 to C3A and to remove the IL Overlay District.

Action: The City Planning Commission **continued** the petition to rezone the property of 701 N 2nd St from I2 to C3A and to remove the IL Overlay District to the August 15, 2011 Planning Commission meeting.

B. Conditional Use Permit: Application by Robb Miller, on behalf of T.E. Miller Development, for a conditional use permit amendment to add 100 dwelling units to allow a total of 243 dwelling units in a planned unit development located at 701 2nd St N and 700 Washington Ave N.

Action: The City Planning Commission **continued** the application for a conditional use permit amendment to add 100 dwelling units to allow a total of 243 dwelling units in a planned unit development for the properties located at 701 N 2nd St and 700 Washington Ave N to the August 15, 2011 Planning Commission meeting.

C. Variance: Application by Robb Miller, on behalf of T.E. Miller Development, for a variance to reduce the minimum lot area requirement for property located at 701 2nd St N and 700 Washington Ave N.

Action: The City Planning Commission **continued** the application for a variance to reduce the minimum lot area requirement by 4.1 percent for the properties located at 701 N 2nd St and 700 Washington Ave N to the August 15, 2011 Planning Commission meeting..

D. Site Plan Review: Application by Robb Miller, on behalf of T.E. Miller Development, for a site plan review amendment for property located at 701 2nd St N and 700 Washington Ave N.

Action: The City Planning Commission **continued** the application for site plan review amendment for the properties located at 701 N 2nd St and 700 Washington Ave N to the August 15, 2011 Planning Commission meeting.

Staff Widmeier presented the staff report.

Commissioner Wielinski: Can you explain to me what a semi public walkway is?

Staff Widmeier: A public walkway is a public dedication such as a street and that's not intended, this would still be maintained by the property owner. They would basically be saying it is acceptable for the public to walk through here.

Commissioner Wielinski: Would they be making that noticed somehow so that people know they can walk through there?

Staff Widmeier: I can let the developer and applicant respond to that, but it's currently used by the neighborhood so I think it's known by the community that they can use it.

Commissioner Tucker opened the public hearing.

Rob Miller [not on sign-in sheet]: I'm with T.E. Miller Development. We have made several changes to our submittal based on feedback from Committee of the Whole and based on feedback from the neighbors in the area. Some of the main things we got feedback on were that there was too much party paneling on the building, the building was too monolithic, people had strong opinions about the red metal paneling and people asked for a wider sidewalk in the Greenway area that Janelle mentioned earlier. This is our original submittal. We've attempted to incorporate several changes that we believe address all of those concerns. The first is with regards to materials. We were asked to add more metal paneling to the building, which we did. We incorporated another column of metal on the east side of the property adjacent to the

Greenway. We're proposing to use a material called nichiha in lieu of party paneling. It's also a cement board material but it is a LEED certified material and aesthetically we believe it's superior to hearty. I also want to mention that the building is still 65 percent glass and has floor to ceiling windows throughout and the first floor around the Greenway area is floor to ceiling glass and is also the rest of the first floor is all brick. That's it for materials. What we tried to do is create two distinct areas to break up the façade of the building, one is the metal column that you see here and the other here. We added a recess point to separate those two different materials and in the nichiha we put in a running bond configuration to make it less monolithic and we also added some balconies in the center of the building to break up the broad façade. We made this first floor all glass and it will kind of act as a glowing box on the southeast elevation adjacent to the Greenway. There are also some color changes. We eliminated the red metal paneling that people had some strong opinions about and put in a different, more rust colored material, here. The brick base on the first level of the building is similar in color to some of the brick in adjacent buildings, including the Tower Lofts building. We also did widen the sidewalk in the Greenway area from five feet to six feet. That is it for changes.

Commissioner Gorecki: I see the changes you made along the back side of the building, which I think for the Tower residents will be greatly appreciated. I don't see how you've broken up the 2nd St side which is probably more important and I think it's going to be seen by quite a bit more people. Can you walk us through how you broke it up on the 2nd St side? It still looks very monolithic, it looks one tone, you have a little bit of a block on the end but short of that it looks like one flat building.

Curt Gunsbury: It is very much the same building on the 2nd St side. I think the main change is color. When you look at the buildings behinds, specifically the Tower Lofts and Harvester building, they really bump up against each other. An interesting thing about the warehouse district is how these very different uses are smacked up against each other. We tried to recreate a little bit of that with the color and it carries through now to the back of the back of the building which really makes it look like a different use. The brown building looks like a different use than the white building which is a lot like how Harvester lines up against the Tower Lofts and other buildings in the area. I don't really have a good answer for you. We went to three different architecture firms after we've received comments from the neighbors and from the North Loop Association and Lisa Goodman. We really tried hard. I think the problem is that this is a long narrow building, a blade of a building. I don't know how to dress it up. None of these architects had good ideas about how to dress it up. All of them pretty much said to play with the form the way that it is. It is monolithic, that's what all these buildings in the neighborhood area. The ones that try to use what we call "façade-omy" don't really succeed very well in the neighborhood. We figured it's better to go with one strong form than to break it up into something that really doesn't work.

Commissioner Gorecki: I just have to say that I don't think you're there. There's a number of ways you could break up this building and you can do it with material, you can do it with form, you can do it with pushing balconies back and forth, building back and forth. I think you achieved that on the back side but I think it was relatively simple to do on the back side. I think you needed some creativity and real depth to get there on the 2nd St side and I'll argue that that's the more important side. I guess I'm not willing to just say that you tried. I think you need to go back to the drawing board and look at the 2nd St side and come back with something that I think the neighborhood would appreciate and deserve in the way of a stronger design.

Bob Wheaton (618 Washington Ave N): I'm on the board of directors with Harvester Lofts. We strongly embrace the growth and development of the north loop warehouse district in particular as it relates to the positive impact it has on businesses in the area. We need to encourage responsible growth and development over the long term. As it relates to the proposed structure itself, on page 18 of the July 18 CPED planning division report, it states "exterior materials of surrounding development include brick, metal, concrete and glass. The proposed building materials and the abundant amount of windows on each elevation would be compatible with the appearance of the surrounding development." In my opinion, contrary to that statement, the proposed structure is to be primarily low coarse contemporary glass and metal design. I guess there's been a slight adjustment in terms of the brick appearing on part of the building. Basically the building is really glass and metal which is really inconsistent with the area between Washington Ave N and the river which is primarily brick and stone. That's our biggest concern about the way the site plan is set up right now. It's going to have a negative impact on the aesthetics of the whole area between Washington and the river. Based on the proposed site plan, we propose that the project not move forward at this point. We should note that on July 14th, on that evening, T.E. Miller Development did send an email to the Harvester Lofts board members to propose a meeting take place today at 4:30 to discuss alternative design. Knowing that the public hearing is happening today at 4:30, we respectfully declined because there was clearly no time to discuss and receive input from any absent Harvester board members and potentially any Harvester residents. I hand delivered a letter on July 7 to the City Council staff outlining our concerns about the design, including a few other items. I do have a copy of the letter with me if you need it to place it into the record.

Megan Carr (618 Washington Ave N): I am on the board as the treasurer of Harvester Lofts. We support development behind our building. We have been in discussions for the last two months with T.E. Miller regarding this property and an easement we did prior to the foreclosure on this property. To our knowledge, they will not support reinstating that easement. It appears as though through documentation that the city has received, that T.E. Miller is in support of putting an easement across that property or some sort of memorialized agreement indicating that there would be an open walkway for the public that is contrary to everything they have told Harvester Lofts. I'm here today to say that I hope you can work to resolve the easement issue that they've clearly been indicating to the city they may be willing to put on but contrary to what they've been providing to Harvester Lofts.

Commissioner Tucker: Are you for or against the easement?

Megan Carr: I'm for the easement.

Patrick McKenny (700 Washington Ave): I'm on the association for Tower Lofts. My concerns are with the staff report. Currently, we believe that it contains some factual and legal errors that need addressing and correction, specifically in reference to the easement agreement. The easement agreement is not referenced properly in the current report. Based on these errors, we think it's most appropriate that we ask you to deny the plan request as there is no easement implied or otherwise through the tunnel that currently belongs to Tower Lofts. In addition to that, no easement agreement has been proposed or agreed upon between Tower Lofts and the interested developers. On top of that, we believe that with the 35 page report that was posted on Thursday, it's a very detailed report and there's a lot of information, given that today is only a few days later, we feel it'd be most appropriate to spend a little bit more time reviewing the report to make sure that any issues, questions or concerns are addressed thoroughly and appropriately.

We, too, received an email late Thursday night asking for a meeting today at 4:30. In interest of time for the public hearing, we declined to discuss it further. We wanted to make sure that if there were any questions or concerns that came up from that particular meeting that there would be an appropriate timeframe to respond to those questions and possibly work towards some better answers. When you combine all of that and the confusing language that's included in the staff report, we just don't think it's an appropriate time to move forward with an approval on this particular plan.

Matthew Scheidler 700 Washington Ave): I'm a board member of Tower Lofts. I'd like to talk about the process. We look at the warehouse district, it is just a wonderful success story by any metric. It's a flourishing neighborhood. We want development, we want growth and we want good neighbors. We've heard quite often from the developers that they want to be good neighbors. As potential neighbors, sometimes we felt like a box on a checklist, that technically they met with us, they did make a presentation at one of our board meetings, however, there wasn't a lot of back and forth and not a lot of substantive conversation. There's a lot of confusion surrounding the details. With all due respect to Ms. Widmeier, she kind of glanced through the easements and some of the things that still need to be settled, most especially the Tower Lofts walkway. The developers did send us a draft of their plans before we met at Tower Lofts, however, the plans were changed the exact same date, just as today we saw a whole new façade. The changes have come very quickly. This whole process has felt rushed to us at Tower Lofts. Garage placement has changed, materials have changed and we've voiced concerns but we have not had another follow up meeting with the developers. As Mr. McKenny just mentioned, meeting today was just not practical. Whether or not we personally agree with the materials, with the garage placement - that's not the issue. The issue as board members, is to advocate for our 136 homeowners and that's impossible without information. We have to collect accurate information, we have to communicate accurate information, dialogue, debate, filter, synthesize and we have to represent the wishes of the folks at Tower Lofts and we can't do that without the information.

Thomas LaBossiere [not on sign-in sheet]: I'm a homeowner at Tower Lofts. I'm here to talk to you about the finishes of the proposed building. It's pretty evident that this building is very monolithic and doesn't fit into the neighborhood. There are a couple developers that have come into North Loop, which I consider the whole North Loop a historic district, we're not sandwiched between two historic districts, it's all historic. Chuck Leer and Kit Richardson have both come in and done two different types of buildings, Chuck Leer's are re-use buildings and Kit Richardson's are very new and modern. What they've done is they've gone to the neighborhood and brought buildings in and brought developments in that fit. They're aesthetically pleasing and are an asset to the neighborhood, not an eye sore. The developer has been sneaky and if the City Council doesn't reel them in and show them how the city of Minneapolis works, they're just going to keep doing this until it's built and we have eye sore in the North Loop.

Jacquelyn Tofte (700 Washington Ave): I'd like to address the error that was addressed in the addendum to the staff report which we received today. It was very confusing for us when we first read the staff report. It took us three days to uncover the potential source of this error. We believe that staff may have acquired a copy of a proposed easement survey which was prepared in May of last year describing a proposed pedestrian easement across the 701 property. Negotiations with the owner of the property failed over the course of the summer so the pedestrian easement never materialized. It's important to reference the error above related to Tower Lofts with the history of the 701 property. We've experienced a very turbulent past and

it's been very traumatizing for many of the residents of the Tower Lofts and neighboring lofts that events that have actually endangered the safety and peace of mind of Tower Loft homeowners. As a result, Tower Lofts elected to install a wrought iron gate at the entry of the tunnel, which was keyed for private use of Tower Lofts residents. We did at that same time inform the North Loop neighborhood of the circumstances which required us to establish our property rights as well as the ability to close the tunnel in response to circumstances that are not in Tower Lofts best interest. I will submit a photo of the current Tower Lofts tunnel entrance along with our request for correction of the staff report, which implies that an access agreement exists. I will attach the proposed easement survey as a document. We would also like to express serious concern about the site plan that has been proposed for this project. The concept of a pedestrian walkway from Washington to 2nd St has existed since 2005 when Tower Lofts opened. In all versions of the concept today, which include a development proposal two years ago and our own visionary proposal which was submitted as a part of the North Loop Small Area Plan, the location of an access drive aisle adjacent to the pedestrian walkway has been consistent. It is the presence of the drive aisle here that has made the Tower Lofts tunnel work as a safe passageway for the neighborhood. We disagree with the staff perception stated in staff comments on page nine that the proposed walkway would improve pedestrian safety. Removing vehicular traffic from the equation, we feel that the public safety, especially through the tunnel, would be compromised. With a prospect of entering into discussions with this or any future developer regarding an access easement through the tunnel, we need to be very clear that issues of public safety are paramount in our mind. For this and other reasons which Tower Lofts has discussed at length with the developer, we request support from the city in revising the proposed site plan accordingly. This is the very first plan which emerged from the developers. It is a plan to which we were prepared to respond when they came to visit us at Tower Lofts. We understand that an exact version of this plan may not be possible. One response to their plan was that instead of the parking here, they did delegate that entirely to a landscaped walkway which we were pleased about, but since that time the building has shifted 25 feet this direction which allows only a 27 foot path between the street and the Tower Loft entry. With landscaping, and even through their proposed lighting, we feel that the vehicular traffic along this easement which has existed since 2005 as well, with the loss of vehicular traffic we feel that that jeopardizes the safety of people who use this walkway at night. Staff also offers further comments on page nine, paragraph two, which we did not agree with that the semi public pedestrian walkway proposed by the developer as a connection between 2nd St and Washington Ave would fulfill the intent of one of the North Loop Small Area Plan's priorities which we understand is a requirement for amending the conditional use permit to allow two additional stories. The developer just last week indicated to our attorneys that he would like to again a pedestrian easement through the Tower Loft tunnel which entering into such an agreement would not be taken lightly by Tower Lofts. It seems unfair to assume in advance that an agreement would be reached and therefore we question whether it is fair to count on this particular plan priority as a condition for the approval of the conditional use permit that allows two extra stories beyond the four as of right stories.

Chuck Leer [not on sign-in sheet]: We own a live/work unit in Tower Lofts. The key points are that there is misinformation in the staff report, there are private easement issues that have not been addressed, the review process has not worked with the neighbors. [tape ended]... on the approval of this application or set of applications before you today. I just want to touch on three items that I would consider to be misinformation in the staff report. First, on page two, it says "under the existing zoning of I2 and ILOD, the proposed number of dwelling units could not be established." I know a little bit about this area because I was there as the developer of Tower Lofts in 2004. Although there are a complicated set of regulations and requirements, you can

establish the number dwelling units, it's somewhere between 40-50 depending on how you calculate certain items and what meaning of certain words is. As of the time prior to the submission of this application 40-50 was what could be built on this site. That was how many units could be built when we developed Tower Lofts. That's what we thought was going to be back there, a building similar in size to the Mill City Apartments. That's what the people who bought units in Tower Lofts thought was going to be back there. Now there is a proposal to double the size of the building from 40-50 units up to 100 units. Second piece of misinformation in the report is that the applicant has indicated the drive access easement will be shifted to the north end of the site to align with the proposed driveway location. That's not a staff error, that's an assertion by the developer that he can do something that he does not have the power to do. Yes, there are private easement agreements and I know those well too because we helped prepare those agreements. They were prepared in a context, they were very spare in the language, we didn't go into great detail in them because we wanted a cooperative spirit between whoever was going to develop that site and the Tower Lofts. At the time we drafted these I thought that we would be developing the 701 site but what happened in the course of our project is I had investors who decided they wanted some of their money back so we ended up selling the site. We sold the site under a set of regulations and we knew that these easements were in place and they were protections for Tower Lofts that appropriate development would take place. The third piece of misinformation I would cite is on page ten of the report, the maximum floor area. It states that the gross floor area of the Tower Lofts building is 227,860 square feet. What this shows is that per the Tower Lofts approved site plan from April 8, 2004, the building area is stated at 291,519 gross square feet, yielding an FAR of 4.17. On page 28 of the staff report, it says "the commission may authorize an increase in FAR only up to 3.78. It would appear the applicant would need to reduce the size of their building to comply with the law. I think that this underscores the fact that it's the intuitive sense of many people who live in the neighborhood that this building is just way too big. There's too much density on the site. The source of our building permit is B221647. It was issued by the city on September 15, 2004.

Commissioner Tucker: Does that 291,000 include off-street parking, enclosed parking?

Chuck Leer: I don't know, it's from the site plan. This is the final site plan review document. We could also spend a lot of time dealing with the confusion of the private easement agreements. I don't know how much you want to get involved in those. This is between two private parties and not a public entity, but those issues need to be worked out between the applicant and Tower Lofts.

Commissioner Tucker closed the public hearing.

Commissioner Schiff: Partly because of the comments made eloquently by Commissioner Gorecki earlier, I'm going to move a postponement. It's clear there are easement issues here that need to be worked out and we're not the body to do that. We're not going to become party in an easement, that's up to you all to sort out but we can delay the project until that has been dealt with. Eventually we'll have a deadline for our approvals. We can't deny it because of the materials that have been proposed, however, we can require compatibility with surrounding materials and that's called "design by committee". That's where we start telling you what the building needs to look like. I encourage you to heed the advice that's been given and come up with a new design that breaks up the façade particularly on the north and east elevations. I'm going to move a two cycle postponement to August 15, 2011. (Gorecki seconded)

The motion carried 6-0.