

February 18, 2017

Dear Alders:

The approval of TIF funding for the Stone House low-income housing at Fair Oaks Avenue will create an environmental injustice situation in our community. Purposely placing housing for low income people 100 feet from a known source of toxic pollution fits the textbook definition of environmental injustice. It also flies in the face of the city's new "equity lens" by creating class and race-based disparities in exposures to environmental hazards.

To be clear, we strongly support the development of needed affordable housing in Madison. However, need does not negate the fact that people living there will be exposed to toxic chemicals emitted from Madison-Kipp's adjacent factories, as well as ongoing factory noise, frequent industrial accidents and fires, and diesel exhaust from large idling semi-trucks. Hundreds of health, odor, and noise complaints in the Kipp neighborhood over the last several decades illustrate the kinds of hazards the people at this housing will experience.

When this project came before the Plan Commission on Dec. 12, 2016, the Commission voted just 4-2 in favor of the project, with one abstention, showing how contentious this project is. Commissioner Maurice Sheppard asked, "*Would we look at putting upscale housing in this area? Residential next to an active industrial use? I don't think we would be talking about this if that were the case. That sort of development probably would not go here.*"

Commissioner (and Alder) King said he was "taken" by Sheppard's question, but felt that "*this isn't a place for high end development*" and therefore Sheppard's statement was a "*false dichotomy*." There was no further discussion about the critical question Sheppard raised—a question central to environmental justice and something city decision makers should be asking when making decisions about all city developments, especially housing.

Commissioners Sheppard and Berger (who also voted against the project) also argued that the project did not meet several of the standards required for a conditional use permit needed to place residential housing in an industrially-zoned area. Zoning codes were designed, in part, to keep residences and industries separate, and one of the conditional use standards that must be met is that the project "will not be detrimental to or endanger the public health, safety, or general welfare." Commissioner Sheppard noted, in terms of this standard, that "*We haven't heard anything tonight that can provide any additional certainty in terms of the health impacts here*" and, advocating for the health-protective "precautionary principle," he added "*it's uncertain, and I would lean more towards there may be possible endangerment of health there.*"¹

John Hausbeck from Public Health Madison Dane County deflected concerns citizens, alders, and Commissioners raised about air pollution from the factory, saying that his agency had no data on these issues, and no authority to assess them—but DNR assured him that Madison-Kipp was meeting all federal, state, and local air standards. Given what we know about current influences on DNR, why would we trust these assurances?²

¹ More details about the knowns/unknowns about the health risks to the residents of the proposed housing are included in MEJO's Dec. 11 2016 letter to the Plan Commission, attached.

The proposed apartments will be across a narrow street from the four stacks on the Kipp roof that discharge fumes from the melting and die casting of aluminum. The discharges from the stacks include fine particles from melting aluminum which are capable of penetrating deep into our respiratory system where they are most dangerous to our health. In 2014, the USEPA, after discovering 5 years of air pollution permit violations by the company, required Kipp to test the Fair Oaks stack for its aluminum melting furnace. The measured particle emissions released from this stack were nearly 200 times the national air quality standard for fine particles. At the Plan Commission meeting, Hausbeck said he was unaware of Kipp's air pollution violations or the stack testing.

Hausbeck also said "*It is my hope that people coming into this new development go in with eyes open, and see what the neighborhood is like*"—suggesting that people could choose not to live there if they didn't want to live next to Kipp. Is he unaware that low income and homeless people, unlike more privileged people, have limited (and sometimes no) choices on where they can live? They also have fewer resources and capacities to obtain information about the health effects of the toxic pollution they will be exposed to at this housing project.

Placing all the responsibility on individuals to make "choices" about where they live, as if all individuals have an equal range of choices, shows a deep lack of understanding of what environmental justice means. It is government's, not individual citizens,' responsibility to make decisions about developments that do not create race and class disparities in exposures to environmental hazards. Creating these disparities, and then expecting the most vulnerable citizens to have the awareness and resources to avoid them, is a disturbing deflection of this responsibility.

City of Madison should be proactive on environmental justice

Neither DNR nor city agencies have any environmental justice policies in place. Given that the current federal and state political climate does not put a high priority on environmental protection, it is more important than ever that city government step up to help protect the most vulnerable people from toxic pollution.

In this light, we ask city leaders to begin developing an official environmental justice policy to guide future city decisions—with the active participation of the public, including community members who are affected the most by environmental pollution.

In the meantime, if this project goes forward, the City should take advantage of its position as a lender and investor in this proposed development and do everything it can to make sure the development does not exacerbate environmental problems or negatively impact future residents, who will be living on top of a polluted site and next door to Madison's most notorious polluter.

Given that this project will receive state funding, per the Wisconsin Environmental Protection Act (WEPA), it should require an Environmental Assessment or Environmental Impact Statement. Moreover, the city is investing \$1,683,000 in the project; the city can require conditions of its choosing in the required EA/EIS.

In fact, Condition 22 for TIF funding, "Environmental Assessment," says the "Developer shall provide the City an environmental assessment of the Property which is acceptable to staff." This item should be amended to include specific requirements to fully assess the extent of environmental contamination at the site as well as contaminants emitted from the Madison Kipp Fair Oaks factory

(on city-owned land), and their potential effects on future tenants' health. More specifically, the EA requirements should include:

1. Tests for the full range of pollutants that, given the location's history, could be present in soils, groundwater, and vapors, at the site, including: PCBs, dioxins/furans, PAHs, chlorinated and other halogenated solvents, petroleum compounds, and metals. Testing should be widespread and deep enough to fully characterize the extent of pollution on the site.
2. Appropriate, thorough assessment of the potential for chemical vapor intrusion at the housing buildings in the future (following [EPA's 2015 OSWER guidance](#))³ and how vapor intrusion will be addressed if tests indicate potential for it to occur. (If there is any evidence that vapor intrusion could occur, pre-emptive mitigation should be included in construction plans for the housing.)
3. Thorough assessment of the impact of the project's dewatering system on Starkweather Creek (if it is discharged there) and groundwater. This should include estimates of the volume of the water likely to be pumped up and discharged, the types and levels of contaminants in the water that will be discharged, effects of the discharges on the creek, and effects of the pumping on groundwater.
4. A full assessment of the impact of the storm water runoff on Starkweather Creek that will occur during the demolition of the existing structures at the site, construction of the housing, and after the housing and associated structures (e.g., parking garage) are finished. This should include assessments of the types and levels of contaminants likely to be in this runoff (including those listed in #1, as well as phosphorus, total suspended solids, and chloride).
5. A comprehensive assessment of the types and levels of chemicals and particulates emitted from the Fair Oaks Kipp factory stacks, vents, and open loading dock doors, and how these chemicals could affect the health of the people living at housing 100 feet away.
6. Full assessment of the ongoing noise and truck traffic at the Kipp Fair Oaks factory (numbers of trucks per day, current decibel levels, etc.), and their effects on the health of the people who will live at the housing.
7. A review of the numbers and types of worker accidents, fires, and spills at the Kipp Fair Oaks factory (which the city's Fire Department/EMS services must respond to), and OSHA records for the factory. Residents at the affordable housing project will be observing these fire and emergency incidents from their homes across the street. As residents living next to Kipp's Waubesa factory can attest, these are stressful (and sometimes dangerous) experiences.⁴
8. A description of the emergency plans and neighborhood risk communication requirements for this housing in the case of fires, explosions, or toxic chemical releases at the Kipp Fair Oaks facility.

Further, we ask that city staff clarify and share publicly the set of standards it will use to assess the adequacy of the environmental assessment the developer submits to them.

³ <https://www.epa.gov/sites/production/files/2015-09/documents/oswer-vapor-intrusion-technical-guide-final.pdf>

⁴ See Kipp's health & safety record, attached. In 2000, a fire at the Waubesa factory caused a spill of 50,000 lbs. of molten aluminum that traveled very close to neighboring residents' yards. Adjacent residents were not notified of this incident, though the factory closed for several days. In late 2014, an explosion at the Waubesa factory sent molten aluminum through the factory roof and into the yard of a Marquette St. resident. The Madison Fire Department was not notified of this incident, nor was the neighborhood.

We understand that the city plans to hand over decisions about the environmental and health risks at this site to DNR after the sale of the site is final. Given that in recent years the state DNR is increasingly abdicating its responsibility to protect the environment and public health, the City should rise to fill this gap and take every opportunity at its disposal to protect the common good.

If the City doesn't fully assess and address the potential environmental and health risks to the people who will live at this housing, which it is funding substantially, it is exposing itself to legal liabilities in the future, and is purposefully creating class-based environmental health risk inequities in our community.

Thank you for considering our recommendations.

Sincerely,

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