

KENNEDY & CAIN PLLC

DANIEL L. M. KENNEDY, J.D., M.B.A.
dan@lakestreetlaw.com

4103 EAST LAKE STREET
MINNEAPOLIS, MN 55406
PHONE: (612) 728-8080
FAX: (612) 728-8055

November 30, 2016

St. Paul City Council
310 City Hall
15 Kellogg Blvd. W.
St. Paul, MN 55102

Re: Appeal of Planning Commission's grant of CUP to St. Paul Tennis Club, 1055 Osceola Ave.

Dear Council Members,

On October 28, 2016, the St. Paul Planning Commission approved a conditional use permit (CUP) application submitted by the St. Paul Tennis Club (the "club"). On November 7, 2016, four neighbors (the "appellants") submitted an appeal.

This letter responds to the specific issues addressed in the appeal and demonstrates why the St. Paul City Council should deny the appeal.

CUP OR NUPER?

The appellants believe the club should have been forced to apply for a nonconforming use permit for expansion and relocation (NUPER). According to Section 60.215 of the St. Paul Zoning Code, a "nonconforming use" is defined as "A lawful use existing on the effective date of adoption (October 24, 1975) or amendment of this code but that is not now permitted in the district in which it is located." A nonprofit recreational facility is permitted as a conditional use in the R4 zoning district, so its application for a CUP was proper. Additionally, the club is neither expanding nor relocating; it is simply reconstructing its aged facilities. This is normal for a recreational facility, and overdue for one that is 104 years old with a 55-year-old swimming pool. The fact that the club may have some grandfather rights referred to in the staff report does not change the fact that its use is permitted as a conditional use in the R4 zoning district. It might be that a NUPER is an alternative pathway to approve the club's reconstruction, but that does not negate the appropriateness of granting a CUP.

SITE PLAN REVIEW

The appellants allege that the club's site plan has not been sufficiently reviewed. The city has examined and approved the club's plan with respect to all of the issues cited by the appellants, to wit:

- **Historic character:** The city referred this application to the State Historic Preservation Office, which determined that the club's 1961 pool and unwinterized concrete-block building do not contribute to the historic character of the state historic district that envelopes the club's site.
- **Surface water drainage:** The engineered plans direct water away from the neighbor's property and into an approved stormwater retention system.
- **Sound buffers:** Currently, there are no sound buffers, and the club's use will not be changing. The new design, however, would place two new buildings between the pool and the appellants' houses, greatly reducing overall noise carrying to their properties.
- **Sight buffers:** The appellants all live on Linwood Avenue, which is one block south of the club's southernmost property line (see aerial photo). Two of the appellants have properties that extend from Linwood to Osceola Avenue. One of those is at the eastern end of the block, distant from the new facilities. The view to all four houses is blocked by trees, garages, and other houses.
- **Preservation of views, light and air:** The new single-story buildings are no taller than the old building.
- **Vehicular and pedestrian traffic:** There is no reason to expect that the new facilities will alter how the club's members travel to the club, whether by foot, bicycle, or car.
- **Storm and sanitary sewers:** The club's processing of waste water and rainwater has been reviewed and approved by city engineers.

CAPACITY ISSUES

The appellants conclude that the club is expanding. The square footage of the two new buildings is approximately equal to the square footage of the existing building, and the club is not adding any new tennis courts. The pool lanes will be extended to regulation 25 yards and the diving well will be deeper, but longer lanes do not necessarily accommodate more swimmers and the appeal's claimed connection between diving well depth and capacity is nonsensical.

The appellants' other dubious argument is that the club will increase its membership because it has a waiting list. The club's membership is limited by its tennis court usage; with too many members, players could not reserve a tennis court. The capacity has remained roughly the same since the 1970s, when demand for memberships led to the creation of a waiting list. Historically, increases in membership have been driven by facility underuse as families evolve toward fewer children and more single parents. There is always a natural turnover as members move or stop using the facilities; one of the appellants became a member in 2016 and two others are on the waiting list. At any rate, the financial plan to pay for the improvements does not anticipate any increase in membership and the nonprofit club has no profit motive to increase membership.

ZONING CODE STATUS

The SPTC is recognized by the IRS as a 501(c)(7) nonprofit organization. The appellants are simply wrong when they allege that it is not a nonprofit.

SOUND LEVELS

Since 1912, surrounding neighbors have been able to hear sound emanating from the St. Paul Tennis Club. Most of it comes from the swimming pool. People buying houses near the club could anticipate that the club would continue its current use, periodically replacing facilities as they age. Proximity to the club was not a deterrent, but an attraction. Appellants raise unrealistic fears of new sounds emanating from the club. The pool is used for lessons, swim practice, lap swim, open swim, and swim meets; only the swim meets are boisterous, and they occur at 1:00 p.m. on six days in June and July for 90 minutes each. The fact that the appellants claim to be disturbed by tennis players talking 200+ feet away implies that their expectations of sound levels in a city with 40-foot lots are unrealistic. The club's architect addressed their concerns by demonstrating to the Planning Commission how little sound would carry southward toward them. The architect explained that raising the pool deck 2.5 feet for ADA compliance will not affect sound. The rooftop deck replaces patio space lost to the lengthened pool lanes, but is only 11' 4" from grade. The new buildings will provide a screen to block pool sound from traveling south to the appellants' properties. Together, the total sound traveling to appellants' properties should be less than it currently is. And for nine months (when the pool is closed), the only sounds from the club come from tennis players on warm days in the weeks before Memorial Day and after Labor Day.

ZONING COMMITTEE QUORUM

The appellants assert that the Planning Commission's Zoning Committee lacked a quorum for part of the discussion of the club's CUP application. City staff can better address this issue, but there is no known required quorum for Zoning Committee meetings. A lack of quorum in committee would not matter at any rate because the full Planning Commission has plenary powers to act without a recommendation from its committee.

CITY ATTORNEY'S ADVICE

The appeal asserts that the city attorney gave incorrect advice as to the deadlines imposed by Minn. Stat. § 15.99. With the CUP application filed on July 27, 2016, the city was required to act on the application by September 25, 2016. The city could have extended its time to act until November 24, 2016 by giving notice to the club before September 25, 2016, but did not do so. The club agreed to an extension until October 9, 2016, but the city did not act on the application by that date. The city attorney correctly advised that § 15.99 did not permit the city to postpone consideration of the application.

NOTICE TO NEIGHBORS

The appellants complain that they had short notice of the meeting of the Summit Hill Association (SHA) when it considered and recommended approval of the club's CUP. The St. Paul Tennis Club had no input on the process used by the SHA. The club applied for the CUP in July 2016. Because city staff determined that a pergola in the front yard would require a variance application, the club eliminated the pergola and proceeded with just the CUP application. Other than that pergola, the club's site plan has not changed substantially since July. Those who attended the SHA meeting were well informed and the committee heard the appellants' concerns before voting to favor the CUP approval. Now, more than one month after the SHA meeting, the number of appellants has not increased from the number of neighbors who voiced concerns about the project at the SHA meeting.

CONCLUSION

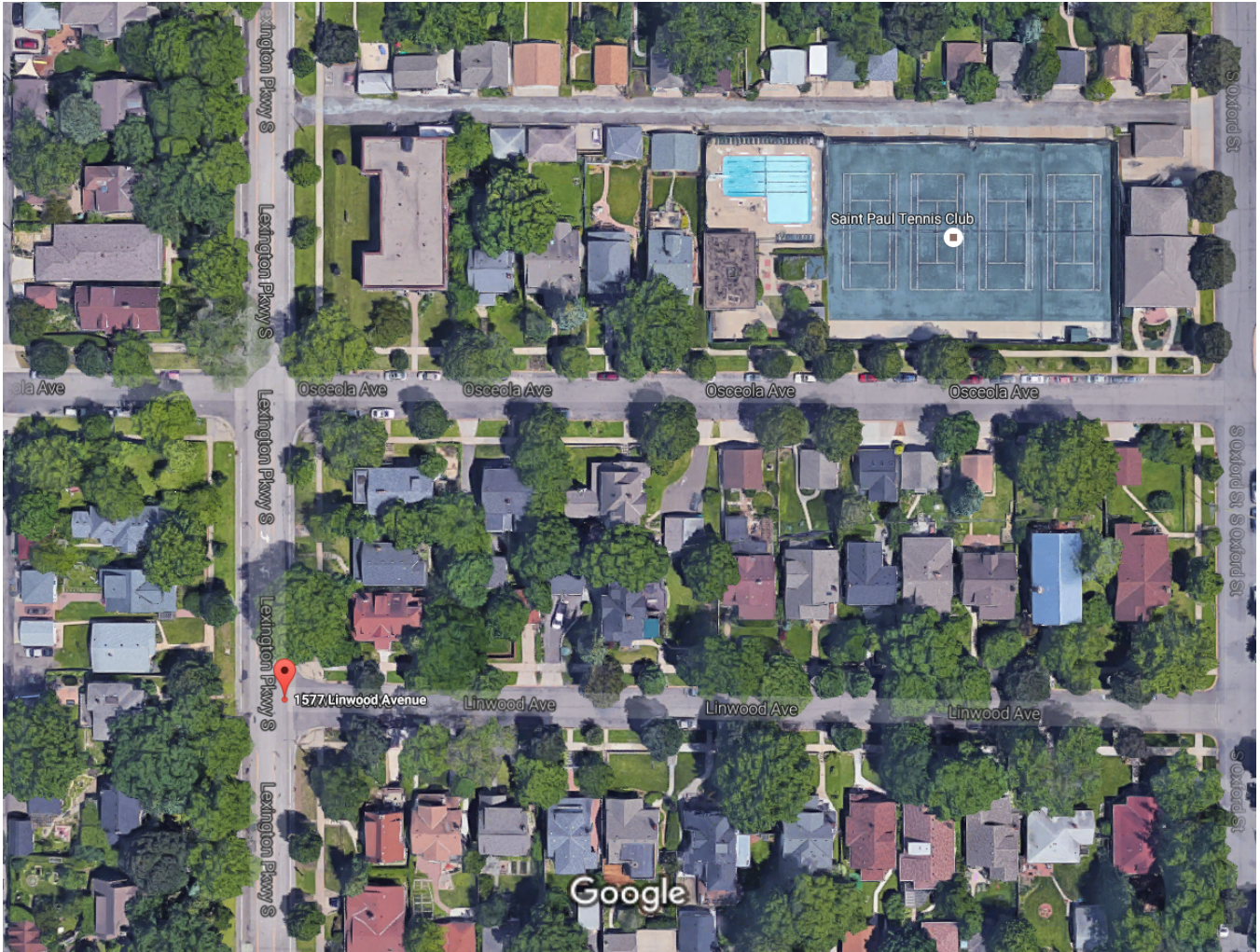
The Planning Commission followed proper procedure in approving the club's CUP application. Its action was based on the merits of the application, specifically the club's ability and desire to replace its aging facilities within its same footprint without seeking any variances. In doing so, the club will position itself for many more years as an asset to the neighborhood.

Sincerely,



Daniel L. M. Kennedy
President
St. Paul Tennis Club

Google Maps 1577 Linwood Ave



Imagery ©2016 Google, Map data ©2016 Google 50 ft