



## IN OPPOSITION

Dear St. Paul City Council,

February 14, 2018

Please accept this letter, as detailed below, as my strong and unequivocal statement in **opposition** (both as an affected neighboring landowner and as a life-long Saint Paul resident) with respect to the zoning appeal that is now before you (the “**Appeal**”).

### **I Summary of Opposition and Request for Denial.**

While at first blush I understand that the Appeal, and the issues that underlie it, might appear to the Council to be a labyrinth of petty disputes about property rights and uses, the fact of the matter is that it brings forward important issues about how the City implements and enforces its zoning code and related ordinances and is at the hub of long simmering issues that have important implications for an historic neighborhood and public safety.

Although I will detail for the record a number of the important particulars, history, and context below, I know that your time is precious and limited. Consequently, in summary, I want you to understand that the Appeal should be rejected because:

- The existing use of the subject property as a bar and restaurant, popular though it may be, is directly contrary to the City’s zoning ordinances and was not properly permitted, and the Appeal represents a cynical and manipulative end-run by a powerful and notorious landowner to bully and confuse the City into taking actions that would not only be illegal but contrary to the public good.
- The reasons that the applicant’s original application was denied are well-founded and indeed further demonstrated by the existing conditions created by the applicant’s illegal use of the property – which, while flouting the City’s existing zoning, land use, and alcohol permitting laws, has created an untenable and dangerous parking and public safety problem that is spilling over into the surrounding neighborhood. If the Appeal succeeds, these problems will be exacerbated, not solved.

- Although the history here is complex, and the issues generated by the interaction of the various owners and interests thorny, a simple change to the zoning will not change or simplify that. Indeed, it's no panacea, and any type of comprehensive resolution to the problems plaguing these interrelated properties must begin with the City firmly requiring compliance with the City's ordinances and regulations.

## II. Detailed Reasons, Background and Context in Opposition and Supporting Denial.

First, please accept my apologies for missing the scheduled February 21 meeting set to discuss Mr. Rupp's appeal of the Zoning Administrator's determination that the Commodore Squash Club's former Fitness Center, now owned by Mr. Rupp, was never legally established as a dining room. I will be in Florida for a precious, long scheduled family vacation, and flying back for the meeting would be prohibitively disruptive.

Below, you will find a letter I submitted to Mr. Benner back in November 2017, stating my opinion, and highlighting Architect Thomas Blanck's recollections and words related to the establishment of the finished room as a Fitness Center back in 1987. Also, you will find a previous letter submitted to the City Council on December 7, 2015, in which I pointed out a number of ordinances not being met related to Mr. Rupp's expansion, and where I expressed frustration at my inability to ensure Mr. Rupp had followed all the necessary laws BEFORE his Grand Opening.

**Let me take this opportunity to thank Wendy Lane, the previous Zoning Administrator, for her heroic determination on this matter.** It is not easy to put the brakes on a project that has started rolling. However, in the interest of safety and fairness, it is crucial Mr. Rupp follow the rules, and get the approval of Zoning BEFORE proceeding with plans, construction, and permits for an expanded restaurant. Should Mr. Rupp's appeal be rejected, and he have to resubmit his plans through the Planning Commission, I sincerely hope the horrendous parking and safety issues are addressed before Mr. Rupp is allowed to proceed. Meanwhile, I ask the western portion of his expanded dining room be physically sealed off until zoning and Certificate of Occupancy issues have been resolved.

For the sake of clarity and discussion, I am numbering additional Points which have arisen or I have uncovered since my November 29<sup>th</sup> letter:

- 1) Parking and safety continue to be Major Issues. Almost daily, cars, vans, and trucks will attempt to enter the parking lot via the southern entrance, which was converted into a private entrance for the Association's underground parking in 1996. Unable to proceed or turn around, those vehicles must then back blindly into Western Avenue. According to a January 22, 1997 deposition by Tom Blanck, Tom Beech in 1997 determined that a proper permit for that closure had never been filed, and had one been submitted, he would not have approved it. I recommend the City of St. Paul insist the southern access to the parking be restored to its original 1979 permitted design. Placing a second exit elsewhere would decrease limited parking spaces even more.

- 2) On Wednesday, February 1, around 7 pm, Jeff Mulligan, my squash pro, witnessed cars parked COMPLETELY BLOCKING access to the northern exit from the southern part of the lot. Thus, cars were forced to go against the arrows all the way around the west fire lane turn to exit. Thank Heavens I recently installed concrete parking barriers to protect that lane, or there would have been no way in or out of the lot. The 1979 Permitted fire lane in front of the Association Entrance was lost due to the above-mentioned closure in 1996. I do not think one parking lot exit is sufficient for current occupancy safety, and nowhere near close to sufficient for an expanded restaurant. Rapid Tow is authorized to tow any cars in the fire lanes on my side of the lot, and has towed cars blocking traffic by the squash club entrance, but I have no authority over the Association's side.
- 3) According to Public Records, Case 62-CV-14-1723 Judge William H. Leary III of Second District Court Findings of Fact, signed and dated May 14, 2015, determined "On October 23, 2013, Mr. Rupp completed a credit application with American Bank in which he certified that there had never been any judgements against him and that he had not gone through bankruptcy. His representations were false." Furthermore, Judge Stauber on December 27, 2016, in Minnesota Court of Appeals for Case A16-0531 in his Decisions under Breach of Contract on page eleven wrote: "The district court made separate credibility findings in which it found Mr. Rupp was not a credible witness." How this is relevant is that it calls into question Mr. Rupp's testimony and recollection of events from 1976 onward, particularly conversations, letters, and agreements with my deceased father, who undoubtedly would present a very different picture were he alive today.
- 4) Reviewing Mr. Rupp's transference of the Commodore Bar's Liquor License in 1992 to the University Club, I would think some sort of diagram SHOWING IN DETAIL the boundaries of the transferred liquor service area would have been required. How is transferring a Liquor License between properties even possible, and were it, wouldn't that automatically sever any kind of alleged agreement between Mr. Rupp and my father? Moreover, I just can't see how the City would issue me a 3.2 License TWICE when (according to Mr. Rupp) his Liquor License covered my club the entire time. Isn't it impossible for two entities to have a liquor license for the same area? Wouldn't the most recent Licensee (me) have precedence? Am I, even now, able to serve Liquor at the Commodore Squash Club under Mr. Rupp's license?
- 5) Reading the Minutes of the December 4, 2017 Zoning Appeal Meeting, Mr. Rupp states that the Property ID Number for the expanded dining room, 2016 PIN #01.28.23.24.0289, has been combined with his old dining room PIN. However, that does not appear to be true. The address for his PIN is erroneously on 5<sup>th</sup> Street, not 79 Western Avenue North, though the legal description conforms exactly to Judge Leary's 4/11/16 Order (and does not include the old dining room's measurements). This is important. Mr. Rupp has not filed the necessary paperwork with the Ramsey County Property Records Department on Plato Boulevard finalizing the transfer and separation

of Title, drawing into question his ability to “incorporate” with the Association. I would think it also raises the legality of the \$2,000,000 mortgage he pulled on the property. Just what property, exactly? Incidentally, the roofing company had to put a Mechanic’s Lien on Mr. Rupp to get paid, as did the Commodore Association to collect Association Dues. How likely is the Association to approve an expansion outside the boundaries of the original Commodore Bar footprint?

- 6) With all these issues, I think it is time a long-term solution be contemplated. What about redeveloping the entire parking lot site? Imagine multiple levels of underground parking, with retail and residential above, a new squash club on top, and green space for the neighborhood to enjoy? Perhaps thinking big will be the best path forward. Maybe St. Paul is ready.

Respectfully,

John O’Brien

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N OPPOSITION

Dear Mr. Jerome Benner,

November 29, 2017

Thank you for alerting me to the December 4, 2017 meeting regarding Mr. Rupp's appeal of a zoning decision that the western part of his restaurant was never legally established as a dining room. It wasn't. As the owner of the Commodore Squash Club, a totally separate business sharing a parking lot, I stand in OPPOSITION to Mr. Rupp's appeal, primarily for lack of adequate parking, but secondly because the western room, my old Fitness Center, was never fully permitted as an operational LEGAL restaurant. Thirdly, I protest that Mr. Rupp's Liquor License, which was switched suspiciously to the University Club around 1993, applies to a room he did not own until 2001!

Let me provide some historical background. My father Thomond O'Brien built the Commodore Squash Club, which opened for business in 1976. The northern portion of the Squash Club sits above underground parking for the Commodore Association, but the southern portion was all brand-new construction: outside the parameter of the Old Commodore Hotel. The devastating explosion of the Old Commodore Hotel in 1978 caused my father to rethink all of his plans for the Commodore Complex, and he decided to separate the Commodore Complex into two entities: the Commodore Condominium Association, composed of the former hotel rebuilt as a condominium complex, including the bar and restaurant, and the Commodore Condominium Corporation, which holds the squash club. The new, but empty, unfinished space above the squash courts, which in 1976 he had once envisioned as a possible "future dining room," built at the same elevation as the Old Commodore Hotel's restaurant, remained unoccupied and vacant until 1987. The 1976 permit to build the squash club was not a permit to build a "future dining room." Such a permit would have required many steps, not least of which were a finished

space, a full review of local parking, liquor laws, and zoning/ordinance restrictions, as well as specific plans for a large restaurant.

I quote in part from a Letter written to me and signed yesterday, 11/28/2017 by Tom Blanck, the Architect responsible for designing the Squash Club in 1976, finishing the Fitness Center in 1987, and remodeling the Squash Club in 1995:

"On August 21, 1987, I prepared a drawing that was finalized and approved by me on 9/17/1987. I believe this plan was used for a permit to finish the space labeled "future dining room" on the 1976 drawings of the squash club. The work completed the space as an exercise room related to the club. These improvements were made and inspected by myself. The room functioned for some time as an exercise facility. Certainly, it was an exercise room in 1995 when I further reviewed documents and conditions at the Commodore.

In 1997, I prepared for you a review including several more documents related to the Commodore and at that time made a computation of required parking for the Commodore complex including the squash Club. That survey found there to be a shortage of 80 spaces based on conversations with Tate Halvorson, St. Paul Dept. of Inspections. This computation did not include the exercise room as a dining facility. Such a use would require greater parking."

Mr. Blanck's letter removes any doubt the Exercise Room was ever legally permitted as a finished restaurant, and that there was a severe parking shortage back in 1997. I can testify the parking shortage is exponentially worse now that Mr. Rupp's restaurant has re-opened. Mr. Rupp tore down the intervening historic exterior wall and combined the two rooms to form one HUGE dining room over last few years.

The greatest mistake my father ever made was his decision in mid 1980's to swap the Commodore Bar and Restaurant for a portion of the Minnesota Building, triggering roughly 25 years of lawsuits with Mr. Rupp. In 2001, a Judge ruled that the Fitness Center henceforth belonged to Mr. Rupp. The Judge made no mention of parking in his 2001 decision, and I contend no squash club parking was thus transferred to that room. Furthermore, I submit Mr. Rupp's parking rights as an Owner of the of the Commodore Association do not extend to that space. It has its own separate PIN# 01.28.23.24.0289, and, unless the Association has taken the necessary legal steps to incorporate an expansion of such size, that room IS NOT PART OF THE ASSOCIATION. Even if it were, such a gross expansion would not necessarily include Association easement rights. As an aside, I mention a current online search reveals many Permits have been pulled on my PIN # 01.28.23.24.0290 without my knowledge or permission for recent work done on Mr. Rupp's property.

The Commodore Association and Commodore Squash Club have enjoyed reciprocal easements since 1980, though the Association recently contested the Squash Club's easement over association property. My attorney Evan Rice is clear that our easement over the association property is secure and legally protected, and I am surprised the Association is taking this position. Though I am not an attorney, I believe an Abuse of an Easement occurs when one or the other party uses the easement in a way contrary to how the usage was intended. Such an abuse could result in the loss of easement rights. My father imagined that a small bar/restaurant's turnover parking needs would at times overflow onto the squash club property, and on occasion squash club patrons would spill over onto association property. Such "friendly" easements would benefit both parties. However, never was the squash club property to be overflow for a huge restaurant and Banquet facility; 1976 "pipe dreams" notwithstanding. Had those dreams come true, I presume additional parking would have been required, perhaps an expanded underground parking garage, or an adjacent parking structure. That my members presently have to park up to four blocks away is absurd, considering I own roughly three fifths of the parking lot. Simply put, parking is totally inadequate for Mr. Rupp's expanded Restaurant and Banquet Room. Even without a squash club, there would be a severe shortage of parking spaces. The entire neighborhood is suffering while cars circle endlessly and futilely in search of parking, mostly for a business which has not been properly authorized and whose Liquor License is suspect.

IT IS MY SINCERE WISH THAT THE CITY OF ST. PAUL DENY MR. RUPP'S APPEAL, ENFORCE ALL PERTINENT LIQUOR LAWS, ORDINANCES AND ZONING RESTRICTIONS, AND SEVERELY RESTRICT MR. RUPP'S USE OF THAT ROOM AT LEAST UNTIL SUFFICIENT PARKING IS

PROVIDED. I FURTHERMORE RECOMMEND A CERTIFICATE OF OCCUPANCY NOT BE ISSUED AT THIS TIME.



December 7, 2015

Dear St. Paul City Council,

My name is John O'Brien, and I am the owner of the Commodore Squash Club. On Wednesday, you heard me speak in opposition to the lifting of Liquor License controls for Restaurants in St. Paul. I am concerned about the effect the proposed Charter Amendment will have on neighboring properties, and what safeguards are in place to prevent abuse by Restaurants granted a new or expanded Liquor License. I explained how I was having a serious issue with just this sort of matter, with Mr. John Rupp expanding the Restaurant which is part of the old Commodore Bar. In my opinion, the Department of Safety and Inspections does not provide adequate protection to neighbors when threatened by lawsuits, and I am concerned an ordinance change will only make it easier for powerful interests to abuse neighboring properties.

Judging by your questions, it was clear to me you knew little about my particular situation, despite more than a year of communication between myself and representatives of the Department of Safety and Inspections: namely Larry Zangs, Kristina Schweinler, and James Perucca. I am grateful you delayed a vote for one week for further deliberation, and I write this so as to present my views on what I see as a serious neighborhood threat.

The reopening of the Commodore Bar next door has put tremendous strain on my parking lot and on local streets. Members have reported having to park four blocks away to play squash. I have engaged attorney Mr. Evan Rice to protect my parking rights at the Commodore Squash Club. The Commodore Association and the Squash Club essentially share cross easements (contested by the Association) related to the common parking lot, of which I own 48 of the 86 slots, with the Association's easement subject to the assignment of slots by me. Last night one of my members had to wait ten minutes to exit the new 15 slot reserved Squash Club parking area, (contested by the Association) blocked in by a stream of cars awaiting Valet Parking servicing the Bar/Restaurant. The parking is about to get much worse. Wedding receptions are now planned for every Saturday through the summer, utilizing the 2400 square foot addition of a new "Banquet Room," cleared just this week by Safety and Inspections.

The "Banquet Room," roughly 41 by 58 feet in size, used to be the Commodore Squash Club Fitness Center. Mr. Rupp was awarded the room in 2001, the bitter result of nearly 20 years of various lawsuits with my father, Thomond O'Brien. Over the past two years, Mr. Rupp has torn down much of the intervening wall, which used to be the exterior wall of the Commodore Hotel, thus joining his dining room with his new Banquet Room. The Banquet Room has an elevated area for a stage, and by my estimation will hold close to 300 dancers. You can imagine how many cars will be required for transportation. I point out the Banquet Room is arguably neither part of the Commodore Association, nor part of the Squash Club, and no parking rights were mentioned in the 2001 Decision. Where are those dancers supposed to park?

Mr. Rupp's most recent Liquor License dates from 1992. I quote from St. Paul City Ordinances, section 409 (06), F:

" Premises of license. No on-sale or off-sale license shall be effective beyond the compact and contiguous space named in such license and for which the same was granted, except that on-sale license granted for sales in the dining room of any hotel may permit sales of liquor with meals in additional dining rooms open to the public and specified in the license if meals are regularly served to guests therein."

**I contend that the new Banquet Room, which Mr. Rupp did not own till 2001, is not to be included in his 1992 Liquor License.** A floor plan expansion of nearly 2400 square feet for full liquor service as an operating Banquet Room complete with a stage and live music, is supposed to spark a full review AND NOTIFICATION OF NEIGHBORS. The neighborhood has not been consulted, and would likely disapprove, based on white hot anger over the loss of on street parking.

I quote relevant sections from St. Paul City Ordinances under Section 409. Each section reflects an abuse by Mr. Rupp, and the failure of the City Council to be fully involved:

(1) "Transfer. No on-sale license granted hereunder shall be transferable from place to place (including changes in licensed areas) without the consent of the city council, which consent shall be evidenced by resolution passed by the city council."

(2) "The location of the premises upon which the applicant proposes to sell such liquor and an exact description, including the proposed floor plan and seating capacity, of the particular place within the building structure where such sales are proposed."

(3) "Public hearing; notices. No new license for either on-sale or off-sale shall be issued without a public hearing on the application."

(4) "The licensee shall present with his or her application for permission for a temporary extension either the written consent or nonobjection of the citizens' district council whose geographical area encompasses the licensed premises, or a petition containing a statement in writing with the signatures of sixty (60) percent or more of the owners and occupants of private residences, dwellings and apartment houses located within two hundred (200) feet of such premises stating that they have no objection to the granting of such temporary extension of service area. If such consent or nonobjection is refused or if such petition fails, the city council may by resolution authorize the temporary extension of the service area; and (continuing) The

licensee shall notify, at least ten (10) days in advance of the date of the proposed temporary extension, all owners and occupants who own property or reside within three hundred (300) feet of the property line within which the licensed establishment is located of the proposed temporary extension of liquor service. Such notice shall be typewritten and include the location, date and time of the proposed extension of liquor service. The notice shall specifically state: "If any person has comments about this proposed temporary extension of liquor service, they are encouraged to telephone the public information and complaint office."

As I mentioned in opposition, I am pleased to have the old Commodore Bar reopened to the public. However, a full-service Restaurant, and the expanded Banquet Facility, are causing enormous problems which should require Neighborhood and City Council involvement. Safety and Inspections has failed to protect the public from this unjust expansion. The problem is about to become exponentially worse. Already the increased traffic is horrid, as is the regularly overflowing dumpster garbage, the endless delivery trucks, and the rude employees smoking on Squash Club property, leaving cigarette butts scattered about the front door of my business. In short, this neighborhood, and this long-standing business (1976), is not to be treated this way.

Respectfully, I ask the City Council to hold off approving the Charter Amendment until adequate safeguards are in place to avoid the very sort of abuse I herein report. Furthermore, I request the City Council investigate my particular case, and act to ensure the above-mentioned safeguards from City Ordinances are met.

Respectfully,

John O'Brien  
Owner of the Commodore Squash Club since 1995