

MINUTES OF THE ZONING COMMITTEE
Thursday, May 2, 2024 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: Grill, Hood, Starling, Syed, and Taghioff
EXCUSED: Hackney and Ochoa
STAFF: Tia Anderson, Samantha Langer, Yasmine Robinson, Josh Williams, and Josh Ladd

The meeting was chaired by Commissioner Taghioff.

UST Multipurpose Arena Appeal - 24-029-110 - Appeal by Daniel L. M. Kennedy on behalf of Advocates for Responsible Development of a Zoning Administrator decision to approve a Site Plan for a new multipurpose arena on the University of St. Thomas campus at 2260 Summit Avenue.

Tia Anderson presented the staff report with a recommendation of denial for the appeal of a Zoning Administrator's approval of a site plan. District 14 submitted a letter and made no recommendation, and there were 120 letters in support, and 89 letters in opposition.

Chair Taghioff questioned if service lanes are prohibited in Section 68.402(5) that indicates Transportation, utility and other transmission service facilities and corridors shall avoid... soils susceptible to erosion, etc.

Ms. Anderson said she confirmed with the city's Water Resources Coordinator and Josh Williams, who has an extensive history of working on River Corridor matters, that avoid does not mean the same as prohibit. There are ways to mitigate any potential impacts of soils or high water tables. It is done through the geotechnical report and understanding what soils are present on this site and ultimately within the stormwater pollution prevention plan and those mitigation measures are implemented as part of the development.

Mr. Williams added that the soil data we have available from the DNR of the area where it will be constructed is of normal stability. It is not susceptible to erosion or slippage. As you move into the grotto that may change simply because of the slope. The water table in this area has land that is close to the bedrock, and there are a lot of different confining layers, so from place to place the water table varies, but overall, this area is no different than where the rest of the St. Thomas campus is built.

Daniel Kennedy, 2259 Summit Avenue, Advocates for Responsible Development, said he is going to address ten different aspects to the site plan that are an issue to the community. There is good reason why they have so many members and why they have 300+ of lawn signs around the neighborhood and why almost 500 people have signed a petition opposing this arena in this site located in a neighborhood and on the river bluff. This raises both community and environmental concerns. Mr. Kennedy presented a PowerPoint (submitted into record). Residential properties surround the campus on all sides except for the river. There is no commercial property or buffer. The proposed arena is very close to the Seminary. The road that they want to use isn't even entirely owned by the University of St. Thomas. The setback from the grotto is an environmental concern. The issue of unstable soils and high water table has to

do with the road that is in the area between the arena and the grotto. A road is allowed, but only where there is no alternative. In this case there is an alternative because we have a second avenue that goes to Cretin Avenue. St. Thomas could also move its arena further inland so it didn't have this hardship. That hardship is created by St. Thomas by putting their building so close to the river bluff. Both the height and setback were issues addressed in the CUP, but they were addressed in the wrong way. They allowed something that otherwise was not permitted. If they want a variance, they must apply for one for setbacks and height requirements. A 40' height requirement applies and a 50' setback area applies from all adjacent lines plus two feet for every one foot of height about 50 feet. The ground water is 6 to 12 feet below the ground surface. He noted the issue of pedestrians and vehicles using the same route towards the arena. Mr. Kennedy said there is not a TDMP and the code requires it. The form submitted only states it is going to provide bicycle parking and subsidize bus passes for faculty. These items make no difference in the greater scheme of things for a 5,500 arena. They are creating more demand and subtracting parking from their supply. This is the time to demand a TDMP. The drive from Goodrich isn't central to the issue, but it is important, not just for the bad faith, but for the fact that this application rests on a CUP and that is a condition of the CUP. The Planning Commission shouldn't allow further construction under a CUP that has violations. The CUP states that if they remodel, they must remove that drive and they haven't followed through. Mr. Kennedy spoke to the bluff impacts. There is no disagreement that UST plans to have impervious surfaces within the 40 feet that requires no development. They are proposing sidewalks and a street within that zone, and while roads are permitted, they are only permitted if there is no alternative. There is an alternative available. The whole area is labeled as high soil erosion susceptibility. He showed examples with images where flooding occurred in a parking lot (submitted). He noted his concern for ammonia and ethylene glycol being used for the rink and how highly dangerous they are to people and the environment. He noted the lack of pedestrian safety and the traffic problems at the intersection turning into the arena. There are many other spots where this arena would make sense. Mr. Kennedy stated that the CUP does not apply anymore is because the campus has changed. The floor area of the conditional use has increased by 50% or more and since that has happened a new CUP is needed. You can't continue to develop on 2004 CUP. If the building containing a CUP is torn down and a new building is constructed then you also need a CUP. There is 1.6 million square feet of new construction. They have built so much since 2004 when the last CUP was approved. The plan does not meet the requirements. Alternatives need to be looked at for where an arena of this size could be located.

In response to Commissioner Hood, Mr. Kennedy said what is required by the city for a Travel Demand Management Plan (TDMP) is not what is generally considered with a TDMP. It doesn't discuss the issues that are usually found in the plan and only has information on bus passes and bike parking. He believes it is insufficient.

In response to Commissioner Syed, Mr. Kennedy said they didn't have any conversation with city staff regarding the findings in the staff report.

In response to Commissioner Hood, Mr. Kennedy explained that he is arguing that because the thresholds have been exceeded the 1990 CUP no longer exists and they shouldn't rely on the 0 ft. setback. Specific to the 0 ft. setback, even if it were still applicable, and the CUP was valid, it is not a vehicle to expand powers beyond what is otherwise permitted. It only has the power to

put conditions on it. It granted a variance from 50 ft. to 0 ft. without any requirements of a variance being shown. That portion of the CUP is not enforceable because the city doesn't have the power to do that.

Chair Taghioff said that this CUP seems to be unconventional in that it addresses things that are normally addressed by variances and asked staff to provide background.

Ms. Anderson said that there are two sections of the code to consider. Mr. Kennedy is citing Section 61.503, when a CUP exists and a change is made requiring a new permit. Section 61.504 is pertaining to changes to a CUP when no new permit is required and Section 61.504(e) states a college, university or seminary adds a school building or an off-street parking facility within its approved campus boundary does not require a new permit.

Ms. Anderson said that campus CUPs are different than other CUPs. There are specific standards in the zoning code relative to campuses where it lays out standards and conditions for campuses in residential areas. There are standards and conditions in the zoning ordinance relative to heights and setbacks for campuses. The CUP that exists and has been modified for UST is more specific to their own university campus and sets specific height and setback requirements and acknowledges modification to base standards.

Mr. Williams added that the way the city uses a CUP to define a campus is unique because campuses are a unique use. It allows a bundle of uses that wouldn't necessarily be allowed in a residential area to exist within the campus boundary. The uniqueness to UST's CUP and the provisions within was a negotiated settlement. It has items that wouldn't typically be in a CUP, but it is a CUP that was passed by the Planning Commission and the City Council.

Ms. Anderson said the height and setbacks that are allowed for in the St. Thomas campus CUP are different than what is in the base Chapter 65 code. Since 1990 the UST campus CUP has established the heights and setbacks for that campus boundary. The language in the CUP from 1990 does specifically talk about modification of different heights and setbacks for that part of the campus.

Chair Taghioff asked that staff research and report if a campus CUP can modify these standards and what does the process involve.

Tammera Diehm, Winthrop & Weinstine, 225 South Sixth Street, Minneapolis, said they would forego their full presentation from the appeal put forth by Don Waage and Virginia Housum (ZF #24-029-019) since it will be incorporated into the official record. She does want to respond to a few specific points that were raised during this appeal presentation. There was a comment made during the appeal presentation that they needed to consider whether there was any alternative when they talked about certain things within the bluff development. That is citing the State MRCCA rules, which staff and the DNR have confirmed have not been adopted by the City of St. Paul so they do not apply here. There was a reference to a spring or flooding in the parking lot and that was a water main break. She noted a statement that the city didn't require a TDMP or that one was not provided. They have repeatedly clarified that issue. One was provided in compliance with the city's requirements. In addition, to that, in their submitted written materials they have information on hiring additional consultants to look at transportation

management strategies and plans. There is also an event management plan that will take place at a further state down the road. Ms. Diehm wanted to clarify the discussion regarding the CUP. In St. Paul zoning code, college campuses in residential areas require a CUP. The flexibility allowed through a CUP means that what the city adopts as the conditions have to govern the development of that campus site. She is concerned about some of the questions regarding the CUP in the presentation that was provided thus far. If there is an allegation that the city improperly added conditions to the CUP from 1990 and modified those illegal conditions, two times, most recently in 2004, and now 20 years later they are going to challenge the validity of that city action taken this is not the right venue to do that. There are other forums where the appellants can challenge the validity of the city's issuance of the CUP, but it is not here, it is not in connection with the site plan review, and it certainly shouldn't be 20 years after the fact. It is important to look at the conditions on the permit and evaluate whether the site plan that has been presented is in compliance with the CUP.

Anthony Adams, Ryan Companies, 533 South 3rd Street, Minneapolis, noted the project timeline. The project received conditional site plan approval in October 2023. St. Thomas has been engaged with the neighborhood often over the past eighteen months. He displayed the steps that the project team followed and that is the current city code process for a TDM measure. Pedestrian, bike, and transit access along with parking and traffic conditions have been considered in the design and planning for the arena project. St. Thomas contracted with ADT to preform soil borings on site. There are two ground water levels that exist throughout the south campus. The first is a shallow layer 6 to 8 feet below grade. It's a perched or trapped ground water level that sits above the shale bedrock. The groundwater is not able to permeate further down into the earth. The second is the permanent groundwater level that is 14 to 16 feet below grade. This is the true groundwater level that essentially daylight into the grotto as the grotto typography drops down towards the river bluff. Mr. Adams said that the foundations of the arena site at about four feet below grade so it will be above the perched or trapped groundwater level. There is a small basement level, but with the removal of other buildings there will be a reduction of basement levels by 40% with the proposed arena project. With the removal of the existing buildings that have basements within the groundwater level they will be backfilling those with clean sands which allows groundwater to move freely through them. In addition, the groundwater level essentially reaching the shale bedrock allows the perched or trapped water to migrate down into the earth. Mr. Adams showed pictures of the grotto area (provided in their submitted presentation) and they are within 74' of the bluff line. The current ordinance is that structures cannot be within 40 feet of the bluff. Mr. Adams referenced the Anderson Parking facility addendum and said it was a change from the EAW. The EAW transportation study was the initial base line study. It was not the final proposed traffic conditions of the project. The transportation study identified through the findings of fact mitigation measures that the project must implement. The project was reviewed through site plan review process and identified a change of how visitors are accessing the arena from the Anderson Parking Facility. The Anderson Parking facility access addendum analyzed the various crossing conditions and the results of the addendum, which are also part of the site plan review approval, are that the addendum mitigation measures match the EAW results.

Ms. Anderson said there are setback provisions in the 1995 CUP that increased the minimum setbacks over the 1990 CUP. Ms. Anderson said there is a section that allows for the Planning Commission to modify a CUP; Sec 61.502 states the planning commission, after public

hearing, may modify any or all special conditions, when strict application of such special conditions would unreasonably limit or prevent otherwise lawful use of a piece of property or an existing structure and would result in exceptional undue hardship to the owner of such property or structure; provided, that such modification will not impair the intent and purpose of such special condition and is consistent with health, morals and general welfare of the community and is consistent with reasonable enjoyment of adjacent property.

Mark Manderschied, 2136 Goodrich Avenue, Saint Paul, spoke in support of the appeal. He said the 2004 CUP was the settlement of a lawsuit. The Summit Avenue Residential Preservation Association sued the city and university and there was a settlement. The 2004 CUP has a different status than any other CUP in the city. He also talked about the 2004 CUP as it relates to the Goodrich Avenue access. Paragraph 16 provides that such time as the University remodels or replaces the Binz Refectory the loading drive shall be removed. Shall is an imperative. There has been a building permit pulled to remodel a portion of the Binz building to accommodate athletic offices, team rooms, and addition of unisex restroom. There was over \$900,000 in work that was completed in January 2022. If you are thinking about granting what the University wants, a condition should be added that they remove the driveway from Goodrich Avenue to Binz building.

Gayle Brentzman, 151 Woodlawn Avenue, Saint Paul, spoke in support of the appeal. The proposed arena is seated in the Mississippi River Corridor Area and will use an ammonia-based refrigeration system for its ice rinks. The ammonia has been classified as hazardous by OSHA, EPA, CDC, among others. In case of a leak, it is highly toxic to humans and directly toxic to marine life and vegetation. Ammonia is designated as a hazardous substance under the Federal Clean Water Act and because it is so soluble in water it does not layer and traditional methods of clean up are ineffective for contaminated water. Ammonia is heavier than air. Improper handling can lead to loss of ammonia gas into the atmosphere and will settle in low areas of surrounding landscape. OSHA strictly mandates construction and maintenance of ammonia refrigeration facilities. It requires mandatory staff training, protective gear, safety valves, and alarms. The Minnesota Department of Health requires certification of all indoor ice arenas and requires records of ice maintenance equipment, air quality records and compliance to standards. These are requirements, not practices, instituted out of UST benevolence as it sounded in the appeal response. OSHA's accident website lists 94 incidents of leaks dating back to 1985 with 15 fatalities. There are many other injuries and deaths of people not working at the facilities where the leaks occur. This should not be sited in the Mississippi River Corridor Area.

Karen Alf, 2252 Fairmount Avenue, Saint Paul, spoke in support of the appeal. They have supported the University of St. Thomas all along, but this arena is too big for the area. She stated her concerns about the dangers of ammonia being used at the facility, the traffic and parking, emergency vehicle access, and the greenhouse gasses.

Lynette Sikora, 173 Montrose Place, Saint Paul, spoke in support of the appeal. The dynamic water table at the site is not addressed in the EAW and it should be studied. When the Schoenecker Center was built groundwater was diverted and redirected on campus and through the neighborhood. You will find water where it never was before and whenever UST builds this phenomenon occurs. Acres of soil to the west of the Seminary have become so wet and soggy they will barely support grass. The groundwater is only 6 to 8 feet below the surface at the

arena site a second water table is found deeper within the bedrock. The groundwater and shale bedrock work in tandem to support the structure of the soils. Without water the shale cannot hydrate and will compress and crack. There is a spring on the site and on September 11, 2020, a sink hole opened on the site and almost consumed a car. UST has referred to this as a broken water main, but the DNR map specifically shows a spring. Changes in groundwater will cause the shale bedrock to swell or shrink causing cracks or shifting the rink slab. The UST filings state they will protect against the leakage of ammonia and Ethylene Glycol while building a solid foundation for the arena but no foundation will support the loss of support from below. Shale is a notoriously unstable bedrock.

Steve Sikora, 173 Montrose Place, Saint Paul, spoke in support of the appeal. He stated his concerns regarding the traffic engineering. It hired a reputable firm to do a study yet the report is inadequate. UST underplayed the facts and the assumptions put forth at the beginning of the study, namely the size of events, frequency of events and the actual number of parking spaces available on campus. In doing so it narrowed the scope of the study to a few small capacity sized events which in turn led to the conclusion of fewer cars and lower impacts to the environment. Most of the events that will take place in this venue are ignored in the study as if less than anything than a full house has zero impact. UST shared a clarifying statement with the neighbors this week that didn't lay out any detailed information. It offers little and promises nothing. At a community meeting we were told that no traffic management plan was required until just before opening.

Marguerite Spencer, 2117 Dayton Avenue, Saint Paul, spoke in support of the appeal. Over the years she has seen UST gently expand in a respectful manner and it has made many modifications to its construction projects to maintain their proportionality to the area. I believe this project is grossly disproportionate and unharmonious. The footprint of the facility, number of full capacity events, vehicular traffic, lack of additional parking is untenable in a neighborhood site. Given the increased density along Marshall Avenue she finds it unconceivable that an arena with 5,497 filled seats can meet the city ordinance requiring no off-street parking. In terms of ticket holders receiving designated parking, we might ask UST to provide evidence of its feasibility. In terms of pedestrian safety traffic control officers are really meant for sites like the Xcel Center and Target Field, not in our neighborhoods. It is important to maintain the Mississippi River beauty and meaning. This site plan may cause unnecessary and permanent damage especially with the always expanding Highland construction down the road.

Michael Fellner, 1996 Fairmount Avenue, Saint Paul, spoke in support of the appeal. He said he wanted to address the offensive remarks made by the President of the student council that essentially said that residents should love it or leave it. It was offensive, outrageous and you owe an apology to everyone in the neighborhood. Most students that come to St. Thomas don't end up in St. Paul and we end up supporting St. Paul and St. Thomas. This is an untenable spot for this arena and it will cost the city.

Terry Brueck, 2279 Summit Avenue, spoke in support of the appeal. He questioned the process and asked why we are here appealing a decision that was already made by the Zoning Administrator. He would have like to have seen a public hearing before the Zoning Committee in the first place to allow everyone to voice their concerns before a decision was made. It has been a one-way conversation with St. Thomas with them allowing little feedback at other meetings.

Ms. Anderson stated that site plan review is a function of the Planning Commission hence an appeal is becoming before you. A resolution delegated authority of review to the Zoning Administrator unless the Planning Commission requests to see it before them. These are more technical plans that require technical expertise from across departments across the city to review and ensure consistency with policy. An appeal exists for this process to be challenged.

Virginia Housman, 2229 Fairmount Avenue, Saint Paul, spoke in support of the appeal. She said the communication with St. Thomas has been completely one way. The meetings were structured where people could not effectively ask questions in front of other people by sending people to stations. It was all planned and structured to frustrate any input from the neighborhood.

Catherine Plessner, 2038 Summit Avenue, spoke in opposition to the appeal. She thinks we have hope in our city. I hope we can all support each other and grow as a city.

Mr. Kennedy responded to testimony. He said a slide that St. Thomas displayed showed that the roadway on the west side of the arena is within the 40 ft. required setback area and that is development within the 40 ft setback area and not allowed by the code. Mr. Kennedy stated that UST claims that the pedestrian access at Grand and Cretin is consistent with EAW, but it was not part of the EAW. The initial plan reviewed with the EAW included a pedestrian skyway connection to the arena that was later removed from the plans. The city never approved the EAW because it's not what a responsible government unit does, it acts on it or it doesn't. This body does not have to accept anything regarding the EAW except its own evaluation. There are numerous problems cited in the record to show that the EAW is not something we should uphold. The groundwater is an issue and it will have impacts on nearby residents. Six to eight feet is not far enough down to avoid impacts of construction. Mr. Kennedy said the Planning Commission, after a public hearing, may modify any or all special conditions to a CUP. A variance says the Board of Zoning Appeals and the Planning Commission shall have the power to grant variances from the strict enforcement of the provisions of this code. Mr. Kennedy said it was stated that a TDMP is not required because they are not adding parking. That is exactly the reason a TDMP must be required. This body should be requiring parking. The TDMP form states there should be a parking spot for every 250 GFA. That's over 1,000 parking spaces and there is no parking being added they are only taking away parking.

The public hearing was closed.

Commissioner Kristine Grill moved denial of the appeal of a site plan approval. Commissioner Starling seconded the motion.

Commissioner Hood said it does appear that the work done on the Binz building was out of compliance with the CUP. The language in the CUP states that it may be grounds for revoking, but that is a process that would need to go through the Department of Safety and Inspections (DSI), and that this point it appears no an application has not been filed so legally speaking the CUP remains in place. He also noted that the city should clarify its requirements for a TDMP so the public is aware of exactly what is required. He said it appears that the staff report is correct.

Chair Taghioff said that Section 68.402(b)(4) states that bluff development shall take place at least 40 feet landward of all bluff lines. There was a suggestion that the sidewalk might encroach into those 40 feet, and he would like to know if a sidewalk is considered development.

Ms. Anderson said sidewalks are generally not considered development. She added that 68.402(b) is about placement of structures and structures are defined as anything that is constructed or erected and located on or under the ground or attached to something fixed to the ground. There is special definition when we look at River Corridor development that looks at more broadly making material changes to what is there. This is an area where there is already sidewalks and walkways. There will be replacement sidewalks to be put in this area.

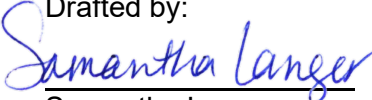
Chair Taghioff asked about Section 68.212(d) No use shall be permitted which is likely to cause pollution of waters, as defined in Minnesota Statutes, Section 115.01, unless adequate safeguards, approved by the state pollution control agency, are provided.


Ms. Anderson said she did talk about the stormwater pollution prevention plan and best management practices that are being put in around erosion sediment control and stormwater management. One thing to mention is she worked with our building official to address the concerns that were raised about pollutants that are hazardous materials that are used in ice arenas. More information is available on page 5 of the staff report that shows these materials are highly regulated by many agencies and ultimately DSI is responsible for overseeing of the installation, permits and inspections. This meets the adequate statement clause.

In response to Commissioner Hood's inquiry regarding MRCCA DNR legislation, Mr. Williams said we currently have Chapter 68 in our code that we are following and the new DNR rules specify anything that we currently have in ordinance remains until such time as we adopt a new ordinance. We have a draft of the new rules that is going through the system and has not been adopted by City Council.

The motion passed by a vote of 4-0-1.

Adopted Yeas - 4 Nays - 0 Abstained - 1 (Taghioff)

Drafted by:

Samantha Langer
Recording Secretary

Submitted by:

Tia Anderson (May 17, 2024 08:17 CDT)
Tia Anderson
City Planner

Approved by:

Simon Taghioff (May 30, 2024 00:26 GMT+2)
Simon Taghioff
Chair









ARD UST Appeal ZC Minutes

Final Audit Report

2024-05-29

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