

**From:** cheryl baldwin

**Sent:** Monday, December 05, 2016 3:10 PM

**To:** #CI-StPaul\_Ward4; #CI-StPaul\_Ward1; #CI-StPaul\_Ward2; #CI-StPaul\_Ward3; #CI-StPaul\_Ward5; #CI-StPaul\_Ward6; #CI-StPaul\_Ward7

**Cc:** Henningson, Samantha (CI-StPaul); Xiong, Mai Chong (CI-StPaul); Maki, Taina (CI-StPaul); Kantner, Libby (CI-StPaul); OBrien, Kim (CI-StPaul); Renstrom, Scott (CI-StPaul); Harr, Stephanie (CI-StPaul)

**Subject:** Additional Information and Signed Petition, St. Paul Tennis Club Case #16-097-208

Council President Stark and Councilmembers:

I am submitting additional information regarding the Neighbors' Appeal of the Conditional Use Permit (CUP) granted to the St. Paul Tennis Club by the Planning Commission. Our appeal requests that the CUP be denied and the St. Paul Tennis Club be required to file for a Nonconforming Use Permit for Expansion and Relocation (NUPER) and that the appropriate City review for that permit be completed.

Our appeal will be heard by the City Council this coming Wednesday, December 7, 2016.

Included attachments:

- A petition supporting the appeal, which presently has 56 signatures from neighbors living near the St. Paul Tennis Club. All who have signed are asking the City Council to approve the appeal in order that neighbor concerns over noise, privacy, traffic, parking, etc. may be properly addressed prior to the start of the Tennis Club building expansion project. Since the Tennis Club leadership chose not to follow through with a Board decision to meet with neighbors last summer regarding construction plans, for half of the neighbors signing the petition, this was the first they learned of the project.
- A diagram and data reflecting projecting sound generated from the proposed roof-top deck, a very controversial addition to the Tennis Club's project. Decibel levels which will be generated from the roof-top deck will be higher than what the St. Paul Noise Ordinance allows and would necessitate that the Tennis Club apply for a noise variance.
- Photographs of several residences surrounding the Tennis Club which would be directly impacted by the resulting noise, and lack of privacy from the new pool and buildings, especially the roof-top deck. (See photo names, which are also descriptions of the photo subject.)
- Notes on errors/discrepancies found in the recently released City Council Staff Report, dated November 29, 2016, and the Planning Commission's Zoning Committee meeting of October 20, 2016, of which only three commissioners were present for this matter.

Thank you for considering this additional information. We would very much appreciate your support of our appeal.

Cheryl Baldwin

### Errors/misstatements from Zoning Commission 10/20/16 minutes:

- The approved minutes were not available to appellants prior to filing appeal.
- 5 of the 8 commissioners who apparently were present at the start of the meeting were absent by the time this matter was heard
- Mark Wentzell's statement that a "sound study was done" was an inaccurate quote in the minutes. Listening to the recording of the meeting, he said that *"We did study the sound a bit. I am not a sound engineer but I've worked with them a lot."* He goes on to say he did a simple diagram. He clearly stated two days earlier at the SHA ZLU meeting that a professional sound study had not been done. The Vice-President of the Tennis Club, Eduardo Barrera, stated that the Tennis Club did not do a sound study out of concern that a professional study would cost money they didn't want to spend. It is apparent that there was no professional sound study done given how misleading their diagram is re: one-directional noise for a deck that is equally open on all sides.
- Eduardo Barrera misstatements:
  - Statement that proposed space for new buildings was equal to the current buildings is not true. There is more interior floor space including a commons area and there is much more exterior floor space, including an outside pergola on the lower level as well as the roof-top deck. Given the usage of this facility, exterior space is operating space—even more so than interior space.
  - Said rooftop deck would only be open during pool season. (He has also said it would be open from April-October.) This is not an accommodation for nearby residents, for whom this is the most important period for their own usage, as well.
  - Said no children would be allowed. (Has also said children would be allowed with adults.) Said there is to be serious consequences for not complying but there is no mechanism for ensuring this would happen, unlikely policies will be enforced given dynamics between seasonal junior staff and private club members.
  - Said parties over/above "7 to 9" must reserve space on the deck. Again—no way of monitoring, enforcing; also implicitly acknowledges this will be a destination for member parties as valued amenity.
- Dan Kennedy misstatements:
  - "Most people walk or bike to club" is unproven and unlikely, given small number of bike racks, number of guests/non-member lesson-takers, extensive complaints about parking and traffic even with Linwood School not in session.
  - No City study has apparently ever been done on parking/traffic despite intense usage.

### City Staff report dated November 29, 2016 errors/misstatements:

- Overall: report didn't address appeal points/allegations at all or with adequate specificity to rebut; also errors and contradictions vs. earlier Staff report dated October 14, 2016.
- Under C. Existing Land Use, it identifies "C-Health/Sports Club" in first staff report of October 14, 2016. This designation is found under Division 5,-65.640 **Commercial Recreation, Entertainment and Lodging**. Under C. Existing Land Use in the November 29, 2016 report, it states "swimming pool and tennis club", which is not a code.
  - Sec. 65.643- Health/Sport Club states "A building or portion of a building designed and equipped for the conduct of sports, exercise, leisure time activities or other customary and usual recreational activities, operated for profit or not-for-profit and which can be

open only to bona fide members and guests of the organization or open to the public for a fee.” This correctly describes the Tennis Club.

- Repeated citations of “noncommercial recreation...nonprofit” is inaccurate re: commercial and misleading re: nonprofit
- If applied for today as a commercial use facility, the Club would not even be a conditional use in this neighborhood. So, if grandfathered in as a commercial legal nonconforming use, it is undisputedly a NUPER.
- Misstates zoning citations: This should be Chapter 62 given clear status per first report of this as a legal nonconforming use and applicability of EXACT language of “Intent” paragraph 62.101 and its provision, “under limited circumstances,” for expansion/relocations of same.
- Doesn’t address how City will correct deficiencies in initial site plan even for CUP, much less expanded criteria for NUPER. Not clear re: site plan SPTC has requested—what is different vs. previous request, timeline or review process.

## Sound Level Issues, St. Paul Tennis Club Proposed Rooftop Deck

Neighbors who live in the area surrounding the St. Paul Tennis Club (SPTC) have, for years, tolerated the noise generated from the members of the club and their guests as they play tennis, swim in the pool, and socialize in the surrounding outdoor areas.

However, the proposed rooftop deck **with a capacity of 49 people will add considerably to the current noise levels**, which the other expanded facilities will surely increase, as well. The deck space a) would be **additive to outdoor seating areas** at ground level and b) is already being heralded by members **as a place to hold parties** as an attraction in its own right. The noise will easily carry **into back yards and open second floor windows**.

The SPTC has stated that the **deck hours will be 8 am until 7:30 or 8 pm**—times when surrounding neighbors wish to enjoy the all-too-fleeting joys of a Minnesota summer like gardening, sitting in their backyards after work enjoying a glass of wine or dinner, and entertaining guests on weekends. Competing with even more noise than they already experience from the SPTC during these times **creates an unreasonable burden**. Furthermore, **parents with children and retired people who are home all day will have no respite**, even in their own houses, interrupting nap times and other quiet activities.

The chart and supplemental information on the next two pages page highlight the impact in more detail. Using different scenarios based upon data derived from the SPTC site plan and other neighborhood-specific metrics, along with publicly-available acoustic data, it is clear that:

- **Decibel levels will increase markedly over and above the current probable ambient level of 45 to 55 dBs**—equivalent to normal conversation levels. These do not take into account the **impact of sound reflection caused by the pervasive environment of water, concrete, wood and other construction materials**, which can add considerably to the amplification and overall loudness levels as predicated by models.
  - With **base levels of 36 to 67 dBs**, the **added noise is sufficient to trigger violations** of the St. Paul Noise Regulations as outlined later in this document (65 dBs). If measured “at levels at the point of human activity which is nearest the noise source,” as noted in the table in the code, i.e., at street level, or during meets or club-wide social gatherings, failures to meet the guidelines can be even greater.
  - Further, these levels guarantee, per the code, “**...disturbing or excessive noise which would be likely to cause significant discomfort or annoyance to a reasonable person of ordinary sensitivities in the area.**”
- The hours that the increased noise levels are bound to occur are also within the hours cited by the code (7 am to 10 pm), and **in an R4 residential district, will cause the greatest burden**.
- There is **no way, with its existing staff, the SPTC can control access, usage, behavior or any other variable that could ameliorate the noise impact**.

More than anything, the impact in **normal circumstances would necessitate the SPTC applying for a sound level variance** that would most certainly, in the proposed configuration, be denied due to the extensive opposition, as indicated by the number of signature petitions, by surrounding neighbors and the need to attain 60%

The only recourse for the neighbors impacted by the increased noise is to call the police—day after day—to complain. This unreasonably puts the onus on the neighbors to take affirmative action on something that should have been considered and addressed as part of the site plan review process for a legal nonconforming use. It also puts an unnecessary and misdirected burden on the police—already stretched—to adjudicate something which, had the SPTC consulted with neighbors and done a professional sound study, could have avoided upfront.

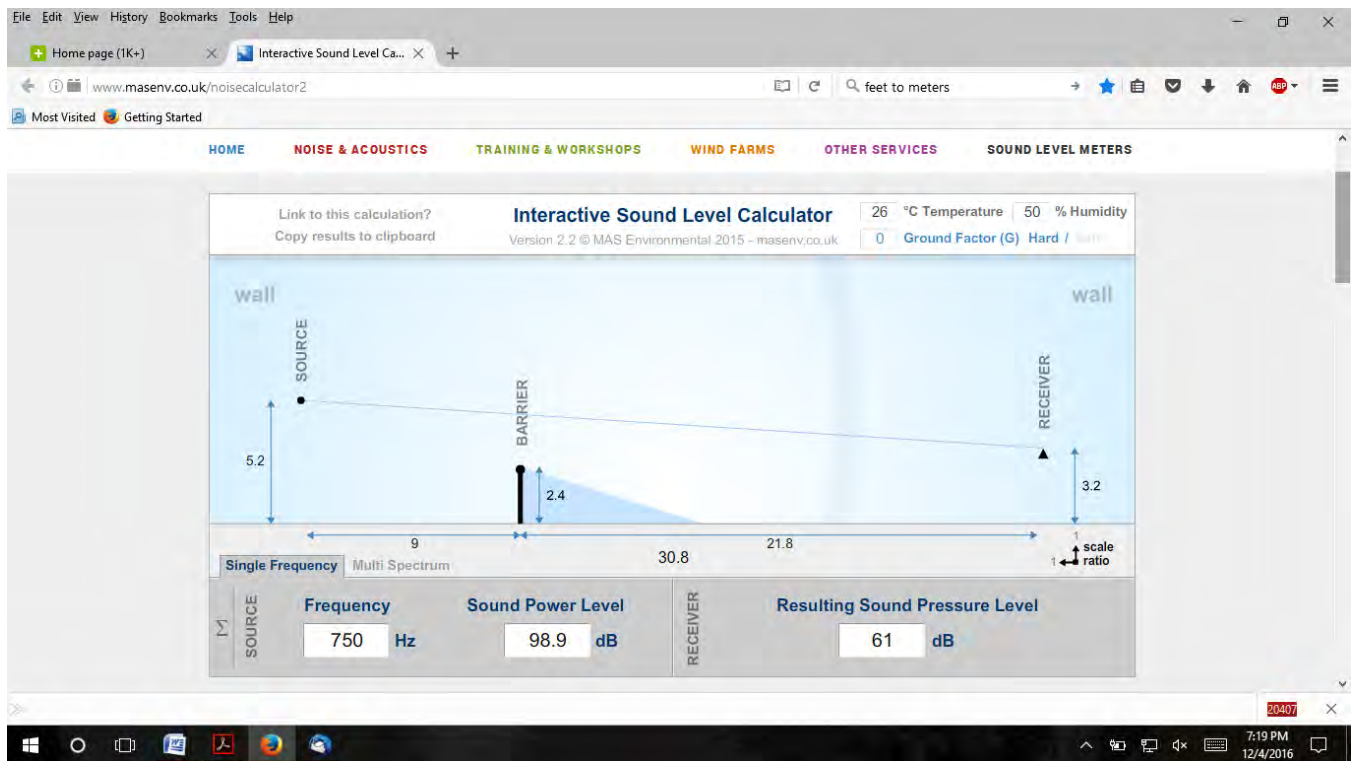
Given that many of those who signed the petition due to their concerns about the rooftop deck as proposed are both members of SPTC and immediate neighbors, it is critical that the City Council **require the appropriate level of review and remediation to ensure that the noise regulations are in compliance for this use**.

## Projected Decibel Levels of Incremental Noise Resulting from Rooftop Deck

Scenarios, Surrounding Residences:	Height of SPTC Fence (M)	Distance from Rooftop Deck (M)	Elevation from Street Level (M)	Minimum Sound Pressure Levels for Scenarios (dB)*
South, Adult Standing in Yard	2.4	30.8	3.2	61.0
South, Open Second Floor Window	2.4	45.4	7.2	60.5
West, Adult Standing in Yard	2.4	15.6	1.8	62.0
West, Open Second Floor Window	2.4	14.7	5.8	67.2
North, Adult Standing in Yard	2.4	28.6	1.8	57.1
North, Open Second Floor Window	2.4	56.7	5.8	55.6
East, Adult Standing in Yard	3.7	67.6	1.8	35.7
East, Open Second Floor Window	3.7	67.1	5.8	54.0

**\*NOTE:** These levels are baseline and DO NOT account for amplification caused by the extensive water (from the pool) and hard surfaces from the pool deck, tennis courts and the buildings, themselves, which will cause sound to travel faster and amplify loudness.

### Source of Sound Pressure Level Data:



## Sound Level Variables, SPTC vs. Surrounding Residences

### Sound dynamics:

- People speak louder with higher background noise (Source: [http://www.engineeringtoolbox.com/voice-level-d\\_938.html](http://www.engineeringtoolbox.com/voice-level-d_938.html))
- Alcohol causes people to speak louder (Source: Hayne, Rumble and Mee, "Prediction of Crowd Noise," proceedings of ACOUSTICS 2006 conference)
- Water and hard surfaces cause sound to travel faster and also amplify loudness (multiple sources)

Rooftop deck building distance to SPTC fence/back yards/second floor windows, respectively: (Source: Google Maps Distance Calculator)

- Back yards to south: 9.0 M/30.8 M/45.4 M
- House to west: 12.9 M/15.6 M/14.7 M
- Back yards across pool and alley to north: 21.8 M/28.6 M/56.7 M
- Apartment building to east: 65.8 M/67.6 M/67.1 M

### Fencing:

- North, west and south SPTC boundaries: 8'/2.4 M (Source: SPTC site plan)
- East SPTC boundaries: 12'/3.7 M (Source: SPTC site plan)

### SPTC building with rooftop deck:

- Elevation of 2<sup>nd</sup> floor: 12' (Source: SPTC site plan)
- Elevation of top of deck guard rail: 15'6" (Source: SPTC site plan)
- Average height of American adult male: 5'10" (Source: halls.md)
- Projected height of noise source: 12'+5'=17'/5.2 M

### Elevation levels of surrounding residences:

- Back yards to south: 4'6" grade from street
  - Ear height, standing in yard: 4'6"+5'10"=10'4"/3.2 M
  - Height, second floor open windows: 4'6"+19'=23'6"/7.2M
- West, north and east yards: street level grade
  - Ear height, standing in yard: 5'10"/1.8 M
  - Height, second floor open windows: 19'/5.8 M

### Sound levels:

Background noise level, recreation areas: 45-55 dB (Source: [http://www.engineeringtoolbox.com/voice-level-d\\_938.html](http://www.engineeringtoolbox.com/voice-level-d_938.html))

Raised to very loud adult voice per individual (typical of crowd settings): 76 to 82 db at 1' (Source: [http://www.engineeringtoolbox.com/voice-level-d\\_938.html](http://www.engineeringtoolbox.com/voice-level-d_938.html))

Total sound level for 49 voices: 92.9 to 98.9 dB at 1' (Source: [http://www.engineeringtoolbox.com/adding-decibel-d\\_63.html](http://www.engineeringtoolbox.com/adding-decibel-d_63.html))

Human voice frequency, loud voices, median: 750 hZ (Source: <http://www.primacoustic.com/saturna/science/>)

### Ambient conditions:

- 80° F/26° C, 50% humidity, hard surfaces (concrete, wood, water)

## **St. Paul Zoning Code Noise Regulations (Abridged for Relevant Sections for This Use)**

### **Sec. 293.02. - Noise as a public nuisance.**

#### *(a) Generally.*

(1) It shall be unlawful for any person to make, continue, permit or cause to be made, continued or permitted within the city, any loud, disturbing or excessive noise which would be likely to cause significant discomfort or annoyance to a reasonable person of ordinary sensitivities in the area.

(2) The characteristics and conditions which shall be considered in determining whether a noise is loud, disturbing or excessive for the purposes of paragraph (a) of this section, shall include, without limitation, the following:

a. The time of day or night when the noise occurs.

b. The duration of the noise.

c. The proximity of the noise to a sleeping facility and/or a residential area.

d. The land use, nature and zoning of the area from which the noise emanates and the area where it is perceived.

e. The number of people and their activities that are affected or are likely to be affected by the noise.

f. The sound peak pressure level of the noise, in comparison to the level of ambient noise.

#### *(b) Noisy assembly.*

(1) *Defined.* The term "noisy assembly" shall mean a gathering of more than one person in a residentially zoned or used area or building that would be likely to cause significant discomfort or annoyance to a reasonable person of ordinary sensitivities present in the area, considering the time of day and the residential character of the area, due to loud, disturbing or excessive noise.

(2) *Permitting noisy assembly.* It shall be a violation of this section for any person having dominion, care or control of a residentially zoned or used area or building knowingly to permit a noisy assembly.

(3) *Remaining at a noisy assembly.* It shall be a violation of this section to participate in, visit or remain at a gathering knowing or having reason to know that the gathering is a noisy assembly, except any person(s) who has/have come to the gathering for the sole purpose of abating the noisy assembly.

(d) *Amplified sound.* It shall be a violation of this section to play, operate or permit the playing, use or operation of a radio, loud speaker, or other device used for the amplification of sound, unless otherwise permitted by law, located inside or outside, the sound of which carries to points of habitation or adjacent properties, and is audible above the level of conversational speech at a distance of fifty (50) feet or more from the point of origin of the amplified sound.

#### *(f) Penalties.*

(1) A violation of any section of this chapter is a misdemeanor, and a sentence of not more than ninety (90) days in jail, or a fine of not more than one thousand dollars (\$1,000.00), or both, may be imposed.

a. Each day a violation of this ordinance is committed or permitted to continue shall constitute a separate offense and may be punished separately.

(C.F. No. 02-653, § 1, 8-14-02; C.F. No. 05-264, § 2, 4-27-05; Ord 15-67, 12-2-15; Ord 15-70, 12-9-15)

**Editor's note—** C.F. No. 02-653, § 1, adopted August 14, 2002, amended the Code by repealing former §§ 293.02—293.04, and adding a new § 293.02. Former §§ 293.02—293.04 pertained to noisy assembly; motor vehicles; and horns and audible signaling, respectively; and derived from Ord. No. 16915, adopted May 20, 1982; and Ord. No. 17448, adopted April 28, 1987.

**Sec. 293.07. - Noise source limitations.**

(a) No person shall operate or cause to be operated on any property or properties any source of noise or sound in such manner as to create a sound level outdoors which exceeds the limits set forth for the receiving land use classification in Table 1 below when measured at the point of human activity which is nearest the noise source.

**Table 1. Sound Level Restrictions for Receiving Land Use Classifications As Determined by the Location of the Receiver**

Noise Receptor	Land Use Classification	Time	Sound Level Limit (One hour L10 dBA)
<hr/>			
Class I	I-1, I-2 and I-3	At all times	80 dBA
Class II	R-1 through R-4, RT-1, RT-2	7:00 a.m. to 10:00 p.m.	65 dBA
	RM-1 through RM-3, P-1 and PD	10:00 p.m. to 7:00 a.m.	55 dBA
Class III	B-1 through B-5, B-2C and OS-1	At all times	70 DBA

**Sec. 293.09. - Variances.**

(a) *Authority.* The city council shall have authority, consistent with this section, to grant variances from the sound level restrictions contained in section 293.07 and section 293.02(d).

(b) *Application.* Any person seeking a permit shall file an application with the department on a form prescribed by it. The application shall include the following information:

- (1) Name of responsible person.
- (2) Dates during which the variance is requested.
- (3) Location of all particular noise sources and times of operation.
- (4) Nature of noise sources and equipment involved.



(5) Reasons why a variance is sought.

(6) Steps taken to minimize the noise level.

(7) A noise impact statement, if required by the department.

(c) *Fee.* The application shall be accompanied by the payment of a fee, which fee shall be listed in chapter 310 of the Saint Paul Legislative Code.

(d) *Notice:*

(1) The department shall notify by mail all property owners within three hundred (300) feet of the sources of noise for which a variance is requested, measured from the property lines of particular noise sources. If the department finds, however, that more than one hundred fifty (150) property owners are within three hundred (300) feet of noise sources included in a variance application, it may, in its discretion, notify the management company or president of a common interest community for any multifamily dwelling units. The department may notify a management company or president of a common interest community by electronic mail if notice is actually received and the department obtains confirmation of delivery.

(2) The notice shall include a statement describing the variance request, the date of the public hearing before the city council on the variance request, and a statement that written comments or objections may be filed with the department within fifteen (15) days of the notice.

(3) No sound level variance may be granted that would locate the source of any amplified music, announcements, or cheer stations on Spring Street or Chestnut Plaza.

(4) Additional notice will be provided following the provisions for early notification in Administrative Code Appendix A-11 within two (2) business days of receipt of a completed application.

(e) *Action on application:*

(1) Within thirty (30) days of receipt of the application, the city council shall hold a public hearing on the application.

(2) After a public hearing, the council may by resolution grant, deny, modify or revoke the variance request.

(3) The variance may be granted or modified only if the council finds that full compliance with the requirements of this chapter would constitute an unreasonable hardship on the applicant, on other persons, or on the community. The council shall balance the hardship to the applicant against the adverse impact on the health, safety and welfare of the persons affected, the adverse impact on property affected, and any other adverse effects of granting the variance.

(4) The variance may be granted subject to conditions, including restricting the hours of operation of the noise source, a time limit for duration of the variance, or attempts the applicant shall make to bring the noise source into compliance with this chapter.

(5) If a variance is granted, the applicant may be required to pay the city's cost of monitoring sound levels and compliance with other conditions.

(6) Emergency variances, in which immediate work is necessary to restore property to a safe condition or when immediate work is required to protect persons or property from imminent exposure to danger, may not be restricted in hours of operation, and may supply the information stated in the application in paragraph (b) after the work has begun.

(Ord. No. 16915, 5-20-82; Ord. No. 17448, § 1, 4-28-87; Ord. No. 17614, § 1, 11-22-88; C.F. No. 02-653, § 1, 8-14-02; C.F. No. 07-149, § 70, 3-28-07; C.F. No. 08-213, § 1, 3-26-08; Ord 12-61, § 1, 11-7-12; Ord 15-67, 12-2-15; Ord 15-70, 12-9-15)

**Note—** Former § 293.11. See editor's note, § 293.06.



## Petition to Support Neighbors' Appeal

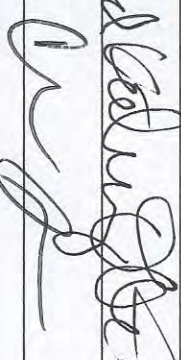











<b>Petition Summary</b>	Neighbors want the City to address their concerns about increased noise, traffic and parking, loss of privacy and other issues associated with the St. Paul Tennis Club's building project, which will include a significantly larger (40%), elevated pool and an open rooftop deck (capacity 49 people).
<b>Action Our Petition Asks For</b>	We, the undersigned, support the appeal to the City Council by Neighbors of the St. Paul Tennis Club asking that the Club be required to apply for a Nonconforming Use Permit for Expansion and Relocation, and for City staff to conduct a full investigation to fulfill all of the requirements related to such a permit in order to prevent increases in noise, traffic and parking problems, loss of privacy, and potential drainage issues within the neighborhood.

Printed Name	Signature	Address	Email Address	Phone
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Printed Name	Signature	Address	Email Address	Phone
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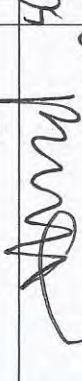


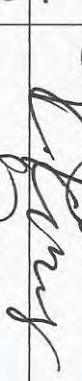




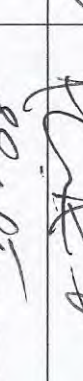

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Printed Name	Signature	Address	Email Address	Phone
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JIM KENNEDY	Jim Kennedy	201 Lexington Plz S	THEKENNEDY.TV	651-400-0846
LESLIE KENNEDY	Leslie Kennedy	201 Lexington Plz S	LKENNEDY@COMCAST.NET	
Shayne Blackson	Shayne Blackson	1052 Fairmount Ave		



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## Petition to Support Neighbors' Appeal

<b>Petition Summary</b>	Neighbors want the City to address their concerns about increased noise, traffic and parking, loss of privacy and other issues associated with the St. Paul Tennis Club's building project, which will include a significantly larger (40%), elevated pool and an open rooftop deck (capacity 49 people).
<b>Action Our Petition Asks For</b>	We, the undersigned, support the appeal to the City Council by Neighbors of the St. Paul Tennis Club asking that the Club be required to apply for a Nonconforming Use Permit for Expansion and Relocation, and for City staff to conduct a full investigation to fulfill all of the requirements related to such a permit in order to prevent increases in noise, traffic and parking problems, loss of privacy, and potential drainage issues within the neighborhood.

[illegible]



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