



WINTHROP & WEINSTINE

April 24, 2024

Tamera R. Diehm
Direct Dial: (612) 604-6658
tdiehm@winthrop.com

VIA E-MAIL

Planning Commission, City of Saint Paul
1400 City Hall Annex
25 West 4th Street
Saint Paul, MN 55102

Re: Response to Appeal of Site Plan Approval issued in connection with proposed Arena Project at 2260 Summit Avenue (City File #23-079985)

Dear Members of the Planning Commission:

On behalf of the University of St. Thomas (“**St. Thomas**”), we submit this response to two appeals (collectively, the “**Appeals**”) filed in connection with the April 4, 2024 decision of the Zoning Administrator (the “**Staff**”) of the City of Saint Paul (the “**City**”) to approve the site plan (the “**Site Plan**”) for a proposed multipurpose competition venue and related facilities at 2260 Summit Avenue (the “**Project**”). The Appeals were filed by the Advocates for Responsible Development (“**ARD**”) and by Donn Waage and Virginia Housum (“**Waage / Housum**” and collectively, with ARD, “**Appellants**”) pursuant to Saint Paul Legislative Code (the “**Code**”) Section 61.701.

I. Introduction

The Site Plan, the Project and the Site Plan review process followed by Staff satisfy the standards for approval set forth in City Code Section 61.402(c). As set forth below, the issues raised in the Appeals do not present any error on the part of Staff in approving the Site Plan. St. Thomas appreciates having the opportunity to share additional information and answer questions about the proposed Project. For the reasons stated below, St. Thomas respectfully requests that the Planning Commission deny the Appeals and affirm the decision of Staff to approve the Site Plan for the Project.

A. The Project

This Project is part of an exciting transition. In 2020, St. Thomas became the first collegiate program in the NCAA’s modern era to move from a Division III athletic program directly to a Division I classification. In making this transition, St. Thomas became Minnesota’s first private Division I collegiate athletics program, only the second Division I program in the entire state and the only Division I program in the City. This transition has brought enthusiasm, attention and vitality to both St. Thomas and the City, which has been St. Thomas’ home since the school was founded in 1885.

In connection with the move to a Division I program, St. Thomas is investing in its campus to provide facilities that are consistent with a top-level athletic program. Accordingly, St. Thomas is excited about the development of the Lee and Penny Anderson Arena (the “**Arena**”), a multi-purpose arena that will serve as the home for several St. Thomas athletic programs including both basketball and hockey and support spaces for other athletic programs such as soccer and softball. While the St. Thomas basketball program is already housed on the St. Thomas campus, the hockey program currently uses a high school facility at St. Thomas Academy in Mendota Heights.

The vision to design a single arena with multiple uses will result in the best of all worlds—a state-of-the-art facility where student-athletes and spectators will both enjoy an amazing experience. The Arena project includes a primary ice arena, a second sheet of practice ice with spectator seating, two basketball practice courts, locker rooms, training rooms, and ancillary spaces to support hockey, basketball, and additional sports programs, including soccer and softball. The Arena will also house offices and other workspaces for coaches and supporting staff. Construction will include improved outdoor spaces and pedestrian paths that will allow students and visitors to be integrated with the entire St. Thomas campus.

While the Arena’s primary purpose is to support athletic programs at St. Thomas, the university is committed to ensuring the Arena will serve the larger community as well. St. Thomas athletic events provide a high-quality visitor experience for fans, including families and members of youth sports teams who often attend in groups. In addition, St. Thomas will provide ice time and event opportunities for youth sports and other groups (and members of the public) in Saint Paul.

Importantly, the proposed Arena site is wholly within the existing St. Thomas campus boundaries.¹ No variances are required to construct the Arena and no City subsidies are being requested. St. Thomas, with the assistance of its design-build team at Ryan Companies (“**Ryan**”), has carefully designed the Project to comply with all applicable land use and zoning rules, including the conditional use permits that govern the land use development of the St. Thomas campus. The placement of the Arena in the center of the South Campus was intentional and provides the greatest distance from adjacent residential properties, thereby minimizing the impact of the Arena on neighboring properties and the Mississippi River bluff. The Project was designed to incorporate environmentally-sustainable attributes that support sustainability goals that are important to both St. Thomas and the City.

While ARD and several neighbors oppose this Project, there are numerous neighbors and community members who not only support the development of the site, but also embrace the vitality and economic development that the Arena will bring to the City. As part of the Site Plan

¹ St. Thomas considered eleven (11) alternate sites in the City—and beyond—to build the Arena. These sites include properties along University Avenue, Town and Country golf course, Highland Bridge, sites near Fort Snelling and others. The decision to construct the Arena on the school’s South Campus allows St. Thomas to maintain operations within its current campus boundaries which allows students and fans to easily access the Arena by foot. It also prevents a different, taxable site from being removed from the City’s property tax roles for an exempt use.

review process, the City must consider whether the Project is consistent with the City's Comprehensive Plan. While the Comprehensive Plan consistency is discussed in more detail herein, the City identifies, as a policy goal, the desire to support business, real estate and financial models that keep more money in the local community.² St. Thomas' development of the Arena on its campus will have an incredible economic impact on the local community. A recent economic impact study shows that St. Thomas currently brings \$498.8 million to the City annually and \$124.7 million to its adjoining Saint Paul neighborhoods. The construction and operation of the Arena will bring even more economic activity to the City for years to come.

B. The Process

A Site Plan application for the Arena was submitted to the City on September 6, 2023 (the "**Application**"). On October 3, 2023, St. Thomas and members of the Project team from Ryan participated in a Site Plan Review Committee Meeting with various members of City staff. On October 17, 2023, St. Thomas received conditional approval of the Site Plan ("**Conditional Approval**"). The Site Plan Review Report dated October 17, 2023 (the "**Conditional Approval Letter**") noted:

Site Plan Review decisions may be appealed within ten days after the date of the decision (which is the date of this letter) per Leg. Code Sec. 61.701 – Administrative Appeals, to the Planning Commission. An Appeal of a Site Plan decision shall be filed with the Zoning Administrator.

No appeal of the Conditional Site Plan Approval was filed. On April 4, 2024, a final site plan approval letter ("**Final Site Plan Approval**") was issued by the City and this appeal followed.

Before, during and after the official Site Plan Application and review process, St. Thomas has undertaken substantial community outreach efforts. St. Thomas has a full-time director of neighborhood and community engagement and takes its relationship with the surrounding community very seriously. St. Thomas has engaged neighborhood communities throughout the development of the Arena Site Plan and had many productive conversations about the Project's potential impact on surrounding areas. St. Thomas has participated in seventeen (17) public meetings so far with neighborhood groups, working through the Macalester Groveland District Council, the Union Park District Council and the West Summit Neighborhood Association Committee (WSNAC). St. Thomas has also held several smaller group conversations with concerned neighbors. As you will see in the information below, throughout the development of the Site Plan, St. Thomas has worked to adjust its plans to incorporate the feedback received from neighbors. This collaborative approach has been intended to not only minimize the potential impact of the Arena on the surrounding area, but also strengthen the University's longstanding partnership with its neighbors and the City.

² 2040 Comprehensive Plan, Policy LU-6.

II. Procedural Objections and Limitation of Issues

St. Thomas has two procedural objections with respect to the Appeals. First, Appellants failed to timely appeal the Conditional Approval and are therefore estopped from challenging certain aspects of the Site Plan Approval. Second, many of the issues raised by Appellants are duplicative of issues being litigated between ARD, the City and St. Thomas in a current judicial action.

A. Appellants failed to timely appeal the Conditional Approval.

There is no dispute that the Conditional Approval was an appealable decision. Appellants failed to file a timely appeal in October 2023 and, as a result, items which were not left open in the Conditional Approval are deemed to be final and Appellants have waived their right to challenge them. For example, Appellants question whether the Project should be located on an alternate site. This argument would have been properly—and timely—considered through an appeal of the Conditional Approval, not the Final Site Plan Approval.³

B. The EAW Process addressed many of the environmental objections raised in the Appeals.

Importantly, many of the issues raised in the Appeals are duplicative of issues raised by ARD in its appeal of the City's determination on the sufficiency of the Environmental Assessment Worksheet for the Project dated June 2023 (the "EAW"). Any attempt to "relitigate" arguments raised through the EAW process must be rejected. While the Site Plan approval process allows for consideration of certain environmental impacts, the City—as the Responsible Governmental Unit or "RGU"—has already made certain determinations related to the potential for environmental impact when it accepted the EAW and issued its Findings of Fact in September 2023 (the "EAW Findings"). The Planning Commission, in reviewing the Site Plan Application, must consider the EAW Findings and recognize that extensive environmental review has already been completed outside of the Site Plan approval process.

Challenges to the City's acceptance of the EAW are made to the Minnesota Court of Appeals. ARD filed such a challenge in November 2023 and the environmental review is currently working its way through the court process. While ARD can certainly ask questions about how the Site Plan will address traffic, parking and other environmental issues, it cannot relitigate the adequacy of the EAW, or otherwise sidestep the statutory requirement that these issues are to be heard by the Court of Appeals. Given this, Appellants' arguments that the Site Plan should be rejected because

³ St. Thomas acknowledges that Final Site Plan Approval is required prior to the issuance of building permits and that Final Site Plan Approval cannot be granted until all open conditions listed in the Conditional Approval are resolved. Notwithstanding, to the extent that the City relies on Conditional Approval to satisfy the City's obligation to expressly approve or deny a land use application within sixty (60) days under Minnesota Statutes Section 15.99, it is not appropriate for the City to then consider challenges to items addressed in the appealable Conditional Approval six (6) months following the City's official action. If the City were to view the Final Site Plan Approval as being completely open to review, the City would have failed to approve or deny St. Thomas' Application within the time period required by Section 15.99.

the EAW is insufficient are not appropriately directed to the Planning Commission.⁴ In addition, any other challenges to Site Plan Approval that are simply restatements of issues challenged in the EAW must be rejected and reserved for the EAW appeal which is the proper forum for such arguments.

III. Staff appropriately determined that the Site Plan meets the Code standards required for Site Plan approval.

Section 61.402(c) of the Code sets forth the standards that are to be considered by the Planning Commission in evaluating a request for site plan approval. Specifically, the Code states that “[i]n order to approve a site plan, the Planning Commission shall consider and find that the site plan is consistent with:

1. The City’s adopted comprehensive plan and development or project plans for sub-areas of the city.
2. Applicable ordinances of the City.
3. Preservation of unique geologic, geographic or historically significant characteristics of the city and environmentally sensitive areas.
4. Protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.
5. The arrangement of buildings, uses and facilities of the proposed development in order to ensure abutting property and/or its occupants will not be unreasonably affected.
6. Creation of energy-conserving design through landscaping and location, orientation and elevation of structures.
7. Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.
8. The satisfactory availability and capacity of storm and sanitary sewers, including solutions to any drainage problems in the area of the development.
9. Sufficient landscaping, fences, walls and parking necessary to meet the above objectives.
10. Site accessibility in accordance with the provisions of the Americans with Disabilities Act (ADA), including parking spaces, passenger loading zones and accessible routes.
11. Provision for erosion and sediment control as specified in the Minnesota Pollution Control Agency’s ‘Manual for Protecting Water Quality in Urban Areas.’”

In issuing the Final Site Plan Approval, Staff correctly concluded that all eleven (11) of these standards were satisfied. While the Appeals attempt to identify various areas of concern, the

⁴ See ARD Appeal pp. 16-17.

Planning Commission must review the eleven (11) standards and determine whether Staff erred in fact, finding or procedure when determining that the Site Plan satisfies these criteria. As outlined below, the Site Plan does meet all of the criteria set forth in the Code and, therefore, the Final Site Plan Approval should be affirmed.

1. **The Site Plan, and the Project, are consistent with the City's 2040 Comprehensive Plan.**

The Code requires the Planning Commission to consider whether a proposed site plan is consistent with the City's adopted comprehensive plan.⁵ The Saint Paul 2040 Comprehensive Plan, which was adopted November 18, 2020 and amended June 3, 2022 (collectively, the "**Comprehensive Plan**"), provides a "blueprint" for future development both citywide and in particular areas. Based on the applicable guidance for 2260 Summit Avenue, Staff correctly determined that the Site Plan is consistent with the Comprehensive Plan's policies and goals for this site.

Appellants argue that the Project is not compatible with the Comprehensive Plan because the Project will result in development that is inconsistent with several of the goals stated in the Comprehensive Plan. Specifically, Appellants allege that (a) the amount of traffic associated with the Project violates the City's policy to reduce car usage;⁶ (b) the Comprehensive Plan seeks to have institutional campuses minimize traffic congestion and provide safe pedestrian and bicycle access;⁷ (c) the City seeks to reduce vehicle miles traveled by 40% by 2040 by improving transportation options beyond single-occupancy vehicles;⁸ and (d) the Project fails to adequately implement intersection safety improvements.⁹

However, these arguments misstate the underlying goals of the Comprehensive Plan and should be rejected. To the contrary, the Project is consistent with both the Comprehensive Plan's guiding of this Site and also the City's long range policy goals. Specifically, the site is designated by the Comprehensive Plan as "civic and institutional land use." This use encourages buildings and open space for major institutional campuses. The Comprehensive Plan emphasizes the need for development of facilities to allow high-quality educational institutions to thrive while also connecting to neighborhoods and investing in the local economy.¹⁰ The development of the Arena on the St. Thomas campus is certainly consistent with the Comprehensive Plan's guiding of the property.

In addition to guiding property for a particular use, the Comprehensive Plan identifies more than 200 draft policies, each of which supports the City's goals and values. Policies—which include the areas of Land Use, Transportation, Parks and Recreation, Housing, Water Resource

⁵ Code § 61.402(c)(1).

⁶ Waage / Housum Appeal at 2, citing "the City's policy" generally.

⁷ Waage / Housum Appeal at 2, citing Comprehensive Plan Land Use Policy 54 (LU-54).

⁸ Waage / Housum Appeal at 4, citing Comprehensive Plan Transportation Policy 21 (T-21).

⁹ Waage / Housum Appeal at 7, citing Comprehensive Plan Transportation Policy 7 (T-7).

¹⁰ Comprehensive Plan at 45.

Management, Heritage and Cultural Preservation and the Mississippi River Corridor Critical Area—are high-level statements that are intended to guide City decision-making in a manner that achieves the Comprehensive Plan goals.

In citing specific Comprehensive Plan policies, not only do the Appeals mischaracterize the consistency of the Project with these policy statements, but they also ignore the 200+ additional policy statements, many of which offer support to the development of a project such as the Arena and to which St. Thomas' Site Plan promotes.

The arguments related to inconsistency of the Arena with the City's Comprehensive Plan focus primarily on (i) traffic management, parking demand and pedestrian safety; and (ii) sustainability. Appellants' conclusion that the Project is inconsistent with the Comprehensive Plan policy statements in these areas is simply incorrect and should be rejected.

a. **The Project is consistent with the City's policy goals related to Traffic Management, Parking Demand and Pedestrian Safety.**

Policy LU-54, cited by Appellants, states that institutional land use should ensure the compatibility of campuses and surrounding neighborhoods by managing parking demand, minimizing traffic congestion and providing safe pedestrian and bicycle access. The Site Plan does this by incorporating a number of traffic management strategies. Importantly, the Final Site Plan Approval requires the Project to implement the strategies identified in the Transportation Demand Management Plan (the "TDMP") prior to the issuance of a certificate of occupancy. These strategies include providing bicycle parking and free or subsidized transit passes for St. Thomas' full-time employees.

St. Thomas' strategies related to traffic management and parking have been developed with the benefit of community input and in response to community concerns. Throughout the development of the Arena, and its operation, St. Thomas will implement a number of traffic management tools. Examples include designating parking through event ticketing in advance of events and the development of shuttle and rideshare options that will reduce traffic and parking confusion during event hours.

In addition to implementing the TDMP strategies and soliciting feedback from community members, St. Thomas has hired SRF Consulting ("SRF"), a traffic and engineering firm with expertise in event management, to create an Event Management Plan (the "EMP"). The EMP will be developed by St. Thomas and SRF, in consultation with the City Traffic Engineering and Police Departments. The EMP will clarify how St. Thomas will manage parking and traffic for events at the arena through off-site parking, shuttle operations, rideshare, transit options, and parking assignments for spectators and workers. The EMP will also provide details about how St. Thomas will communicate and notify community members about the schedule of events happening on campus, including email notification, website updates, social media alerts and other communication efforts. The development and implementation of the EMP ensures that St. Thomas

will continue to proactively work alongside City officials to address many neighbor concerns regarding traffic congestion and parking. The EMP will be shared with the surrounding neighborhood and will be subject to revision in response to feedback received following events.

The requirement to develop and implement the EMP was part of the traffic mitigation measures noted in the EAW. The Final Site Plan Approval includes, as a condition, that St. Thomas will submit an EMP that is acceptable to the City. In fact, the Final Site Plan Approval requires that all mitigation measures noted in the EAW be implemented. The City retains control to ensure compliance with these requirements through the issuance of a certificate of occupancy.¹¹

In addition to Policy LU-54, the Waage / Housum Appeal cites Policy T-7 which encourages the implementation of intersection safety improvements and reduction of pedestrian roadway exposure. The approved Site Plan incorporates several pedestrian crossing, curb and signal improvements as part of the development, including:

- updates to the traffic signals at the intersection of Cretin Avenue and Grande Avenue;
- pedestrian crossing bump outs that will be installed at the Cretin Avenue and Goodrich Avenue intersection;
- widening of the sidewalk on the North side of the Grand Avenue / Anderson Parking Facility; and
- installation of sidewalks on both sides of the western drive lane which connects directly to the Grotto area to provide continued community and pedestrian access to this area.

In conjunction with the Saint Paul Police Department, the EMP will establish safety protocols on the adjacent streets during busy, high-traffic event hours such as the use of traffic control officers at key intersections.

Finally, in addition to these two (2) policy goals cited by Appellants, the Comprehensive Plan includes Policy Goal LU-13 which support strategies to encourage shared parking agreements, car sharing and reduced parking overall. St. Thomas has committed to implementing strategies to encourage these arrangements as part of its TDMP (and EMP), thereby further advancing an important policy goal for the City.

Accordingly, the Site Plan effectively shows that the Project is consistent with the City's Comprehensive Plan policy goals related to traffic management, parking demand and pedestrian

¹¹ See Code § 61.402(f), which notes that the certificate of occupancy "shall not be issued until all items required for site plan approval are completed or an agreement has been made" to provide security to assure the completion of items that take more time, such as landscaping. It is important to understand that a complete EMP cannot and should not be developed until the Arena is operating. St. Thomas has been in contact with the City's Police Department which has recommended waiting until closer to Arena opening to finalize the EMP.

safety which not only refutes the concerns raised by Appellants but also supports the City's determination that the Site Plan is consistent with the Comprehensive Plan.

b. The Project is Consistent with the City's Policy Goals related to Sustainability.

Appellants' argument that the Site Plan is inconsistent with the Comprehensive Plan's policy goals related to sustainability is unfounded and should be rejected.

St. Thomas shares the City's goal of reducing carbon emissions and has, in fact, reduced carbon emissions by fifty-one percent (51%) since 2007. St. Thomas seeks to achieve carbon neutrality by 2035,¹² and the Arena is designed to help St. Thomas meet this goal. The facility itself has been designed as a "green" building for energy efficiency and sustainability, and intends to be Leadership in Energy and Environmental Design (LEED) certified (as a minimum of Silver certification) by the U.S. Green Building Council upon completion. The prime location of the Project on South Campus will eliminate the need for students living on campus, as well as local St. Thomas supporters, many of whom live in the neighboring community, to secure vehicle transportation to these events. Bicycle and other non-motorized transit will be a feasible option for many attendees in these populations. St. Thomas will be providing transit incentives for use of public transportation for attendees traveling from outside the surrounding neighborhoods, including St. Thomas employees who will be frequenting the facility on a regular basis.

As another commitment to sustainability, St. Thomas has responded to concerns raised by community members related to removal of trees as part of the Arena construction. In the EAW, St. Thomas noted that 76 trees were to be removed, and 50 trees to be planted. In response to community feedback, St. Thomas reduced the number of trees to be removed to 69 trees and committed to a 1:1 tree replacement ratio. The approved site plan shows 73 new trees, exceeding the 1:1 tree replacement ratio and providing evidence of the Site Plan's advancement of the City's sustainability goals.

Finally, sustainability means creating infrastructure that will be efficiently used. Policy LU-20 in the Comprehensive Plan encourages private landowners to provide public access to privately-owned open spaces, and facilitate joint use of athletic fields and school playgrounds. As noted in the introduction, the St. Thomas Arena will be privately owned and will primarily serve St. Thomas, but it also will benefit the public through shared use by community groups, therefore benefiting the larger Saint Paul community and positively contributing to sustainability efforts in the City.

As the above evidences, the Site Plan has evolved as a result of community input to further the sustainability goals of both the City and St. Thomas. The Project continues to work toward these goals with the finalization of its EMP, pre-event traffic and parking strategies, and green building

¹² See *Sustainability*, University of St. Thomas, <https://www.stthomas.edu/about/sustainability/> (last visited April 21, 2024).

qualifications. For the above reasons, Staff correctly concluded that the Site Plan is consistent with the Comprehensive Plan, especially as it relates to sustainability.

2. The Site Plan, and the Project, are consistent with the applicable City ordinances and the existing Conditional Use Permits.

Both Minnesota Statutes and the Code authorize the City to designate certain types of development as a conditional use under zoning regulations. Conditional uses may be approved by the governing body or other designated authority by a showing by the applicant that the standards and criteria stated in the ordinance will be satisfied. The standards and criteria shall include both general requirements for all conditional uses, and insofar as practicable, requirements specific to each designated conditional use.¹³

The site of the Project currently lies within a H2 Residential zoning district, as well as an RC-3 River Corridor overlay district. Under the Code, colleges and universities are designated as conditional uses within H2 districts.¹⁴ Land use within the RC-3 overlay district must conform with the permissible uses of the underlying zoning district.¹⁵ Conditional uses are presumed to be permitted so long as the property owner can comply with reasonable conditions that are imposed by the local governing authority. It is also well settled that the more specific requirements of a conditional use permit control over standard zoning regulations.

St. Thomas has operated under conditional use permits since 1990 (the “1990 CUP”), when the Code was revised to allow the Planning Commission to issue “special condition use permits” to existing universities in the City. Revisions to St. Thomas’ permit were incorporated over the years to allow for expansion and construction on the campus. In 2004, as the result of a litigation-based settlement agreement between St. Thomas and two neighborhood associations, the City issued a conditional use permit, effective August 11, 2004 (the “2004 CUP” and together with the 1990 CUP, the “CUPs”) which imposed conditions identical to the terms negotiated through the private settlement. Among other provisions, the CUPs address location of buildings, building height and access. The City did not err in determining that the Site Plan is consistent with the Code and the CUPs.

a. The Proposed Height of the Arena is consistent with Code and CUP requirements.

The ARD Appeal raises the issue of maximum building heights and argues that the Project exceeds the allowable height set forth in Code Section 68.233(a), which addresses height limitations in the RC3 overlay district.¹⁶ Instead, Staff appropriately evaluated the proposed height of the Arena under the terms of the CUPs and determined that the Project complies with the Code and the CUPs.

¹³ See Minn. Stat. § 462.3595; Code § 61.501.

¹⁴ Code § 66.221.

¹⁵ Code § 68.232.

¹⁶ ARD Appeal at 11-12.

It is worth noting that ARD, and its members, made this same argument during the EAW process, noting specifically that the RC3 overlay district establishes maximum allowable building heights. As discussed in the EAW, the existing CUPs govern the site, and although the building heights exceed the maximum height permitted in the RC3 overlay district, “the more specific height requirements of the University of St. Thomas [1990] CUP, 75’ in the western portion of the project site and 60’ in the eastern, are controlling for purposes of height regulation per a long-standing City [of Saint Paul] interpretation.”¹⁷ The issue was also raised in public comments, and the City responded to those comments, explaining that the CUP is controlling.¹⁸

The height of the Arena was also discussed with the City’s Heritage Preservation Commission in November 2023. The current design has reduced the tallest height of the building to approximately 74’-8” at the main entry towers. The basketball practice facility roof is at 66’-0”, the Arena high roof is at 58’-3”, and the fourth level is at 48’. Each of these height measurements is consistent with the requirements of the CUPs.

Thus, this argument that the proposed building height is inconsistent with land use restrictions for the Site is without merit and is not a basis for Site Plan denial.

b. The Goodrich Avenue Access does not impact the Site Plan Approval.

Both Appeals claim that the Site Plan should be denied because St. Thomas fails to comply with access requirements contained in Section 16 of the 2004 CUP,¹⁹ which states:

*At such time as the University remodels or replaces the Binz Refectory or replaces Grace Hall, the loading drive which currently exists between Goodrich Ave. and the Binz Refectory shall be removed, such that there shall be no vehicular access from Goodrich Ave. to any of the University’s buildings on the south campus.*²⁰

Pursuant to this provision, Appellants argue that the loading drive should have been removed when certain work in the Binz Refectory—or the “**Binz**”—occurred in 2022 and 2023 and, therefore, St. Thomas is no longer in compliance with the 2004 CUP. Because compliance with the existing CUPs is a condition of the Final Site Plan Approval, the Waage / Housum Appeal claims that additional development cannot continue until St. Thomas complies with the CUP and removes this access. Alternatively, the ARD Appeal insists that the Planning Commission revoke the 2004 CUP. These claims are incorrect and irrelevant for purposes of Staff and the Planning Commission’s review of the Site Plan.

First, the CUP’s requirements related to the Binz Refectory renovations are not relevant to the Final Site Plan Approval granted for the Arena. The Final Site Plan approved a particular

¹⁷ EAW at 15.

¹⁸ EAW Findings, Appx. C at 63-65.

¹⁹ ARD Appeal at 2; Waage / Housum Appeal at 2.

²⁰ 2004 CUP, ¶16.

development: the Arena. The Binz is an existing building and is not being remodeled or demolished as part of this Project and therefore, any questions or issues related to the remodel of this building and/or the impact of the remodel on the CUPs is outside of the scope of what the Planning Commission should be considering in connection with the Site Plan review. Instead, the Planning Commission must determine whether the development of the Arena is consistent with the requirements of the CUPs.

Notwithstanding our objection to the consideration of any work done at the Binz, the permit issued for work at the Binz in 2022 did not constitute a “remodel” as contemplated by the 2004 CUP. Neither the CUPs or the City’s Zoning Code defines “remodel” of a structure, so the language must be viewed in connection with the intent of the 2004 CUP. The work completed in the Binz did not substantially change the primary use or structure of the facility. The Binz continues to serve its primary purpose of providing a dining hall for seminary students. There are no plans to discontinue these services or otherwise substantially alter the use or structure of the facility. The 2022 and 2023 projects served to provide temporary space for certain parts of St. Thomas’ athletic department displaced in the interim period between the demolition of former facilities and construction of the Project. Upon completion of the Project, these athletic uses are intended to vacate Binz and relocate to the Arena. This is not construction constituting the “remodel or replacement” of the facility that was contemplated in the 2004 CUP.

Finally, removal of the Goodrich Avenue access is unnecessary and unreasonable for several reasons. Because the Binz Refectory and Grace Hall continue to be used as they were at the time of the 2004 CUP, the conditions that necessitated the loading drive access remain. The drive still supports the Binz Refectory’s food service and delivery operations, as well as equipment loading for the Brady Education Center. Loading from the North side of these campus facilities is logistically challenging based on existing campus improvements to the North. The drive also serves as emergency access and a fire lane for the Binz Refectory, Grace Hall, and Brady Education Center. Therefore, there are significant safety concerns with removing this access point to the South Campus and the argument that St. Thomas should have already removed this access is invalid.

For the above reasons, Appellants’ arguments related to inconsistency with the Code or the CUPs fail to provide the grounds to justify denial of the Site Plan. The Site Plan adheres to the requirements set forth by the City. Therefore, Staff appropriately approved the Site Plan with respect to this consideration.

3. **The Site Plan preserves the unique geologic, geographic and historically significant characteristics of the City and environmentally sensitive areas.**

Among other things, the EAW examined whether the Project would preserve the unique geologic, geographic and historically significant characteristics of the City and environmentally sensitive areas. In fact, the EAW developed a robust analysis of the environmental impacts, or lack thereof, of the Project. The City relied on the EAW to appropriately determine that, with mitigation pursuant to the criteria of Minnesota Rule 4410.1700, the Project does not have the potential for

significant environmental effects and that it preserves the unique characteristics as required in this part of the Site Plan analysis. As noted above, many of the environmental concerns now raised in this appeal were thoroughly addressed in the EAW. Furthermore, Appellant's assertion of these environmental concerns in a Site Plan appeal is inappropriate. Minnesota Statutes Section 116D.04, Subd. 10 provides that challenges to the sufficiency of, or conclusions derived from, an EAW are to be raised to the Minnesota Court of Appeals. Appellants arguments regarding the EAW or its content should be rejected in this Site Plan Appeal.

Notwithstanding the fact that these issues have been addressed in the EAW, we will address the specific issues raised in the Appeals that relate to environmentally sensitive areas.

a. **The placement of utility infrastructure for the Arena will not unreasonably disturb ecologically fragile soils.**

The ARD Appeal raises issue with the Site Plan's inclusion of transportation routes, utilities and other transmission service facilities and underground infrastructure on "ecologically fragile" soils.²¹ The Appeal cites Code Section 68.402, which specifically speaks to environments with "soils susceptible to erosion, which could create sedimentation and pollution problems, areas of unstable soils which would be subject to extensive slippages, and areas with high water tables."²² The Geotech Report conducted by American Engineering Testing, dated June 23, 2023, did not identify any soils on the site of the Project which are so susceptible to instability that development is unfeasible and therefore, this argument does not apply. As previously noted, soil, erosion and groundwater levels were examined and addressed in the EAW. The City appropriately determined that the EAW sufficiently considered development of this site and the potential environmental effects of such development in issuing its mitigation requirements. The Site Plan Appeals are not the appropriate forum to relitigate the sufficiency of the EAW.

b. **Greenhouse gas emissions were evaluated according to EQB guidance and were appropriately addressed in the EAW.**

The Waage / Housum appeal raises the issue that the EAW emissions analysis omits certain greenhouse gas ("GHG") contributors from the analysis, including refrigeration, coolant, and A/C, and that it failed to follow the Minnesota Environmental Quality Board ("EQB") guidance regarding GHG emissions.²³ As an initial matter, this very argument is an issue in the appeal of the City's final decision on the need for an EIS before the Court of Appeals.²⁴ The Court's opinion will resolve the issue of the sufficiency of the GHG analysis in the EAW. However, to the extent it is necessary to address the argument, GHG emissions were evaluated in the EAW according to

²¹ ARD Appeal at 9.

²² Code § 68.402(b)(5).

²³ Waage / Housum Appeal at 5.

²⁴ *In re City of Saint Paul's Decision on the Need for an Environmental Impact Statement for the Proposed University of St. Thomas Multi-purpose Arena*, No. A23-1656.

EQB guidance.²⁵ As acknowledged in the EAW, cooling and refrigerant systems unrelated to the ice rinks were appropriately considered and ultimately excluded from the EAW calculations, as those systems account for less than five percent (5%) of the total GHG emissions for the building.²⁶ Additionally, the EAW acknowledges that the coolant utilized for the ice rinks is ammonia-based and has zero global warming potential.²⁷ As such, the EAW accurately acknowledged the GHG emissions that Appellant claims were not considered.

Both appeals raise the issue of transportation-generated GHG emissions related to event attendance.²⁸ Again, this issue is currently before the Minnesota Court of Appeals. ARD, as the relator in that appeal, is well aware that the Court will soon be issuing an opinion addressing this very issue. ARD raises many of the same arguments here that it did in the appeal of the EAW, such as its position that *In re Determination of Need for an Environmental Impact Statement for Mankato Motorsports Park*²⁹ requires analysis of attendance related GHG emissions.³⁰ The sufficiency the GHG analysis in the EAW and the breadth of the Court's own holding in *Mankato Motorsports* will be determined by the Court's forthcoming opinion. As such, it is inappropriate to address this issue within this Site Plan Appeal.

However, notwithstanding that this is an inappropriate forum, Appellants' arguments fail. Appellants argue that the GHG analysis did not include the emissions related to event attendance, and further make completely unsupported and speculative statements regarding GHG emissions based on unclear calculations.³¹ The GHG analysis included in the EAW complies with the EQB's guidance for reporting GHG emissions by including Scope 1, 2, and 3 emissions according to that guidance.³² Further, ARD overstates the Court's ultimate conclusions in *Mankato Motorsports*, which involved transportation related to private and charter plane travel, not passenger vehicle transportation.³³

c. The Argument that the Arena is likely to cause pollution is unfounded and not an appropriate basis for Site Plan denial.

ARD argues that the Planning Commission should reject the Site Plan because the Arena is likely to "cause pollution."³⁴ Appellants cite Code Section 68.233(d), which requires adequate

²⁵ See EAW at 31-34, Appx. C; see also Environmental Assessment Worksheets (EAW) Guidance: Developing a Carbon Footprint and Incorporating Climate Adaptation and Resilience (July 2023) (hereinafter "GHG Guidance").

²⁶ EAW at 32.

²⁷ Id. at 32, n. 20.

²⁸ Waage / Housum Appeal at 5-7; ARD Appeal at 21-22.

²⁹ A23-0091, 2023 WL 8177126 (Minn. Ct. App. Nov. 27, 2023) (hereinafter "*Mankato Motorsports*").

³⁰ ARD Appeal at 21.

³¹ See, e.g., Waage / Housum Appeal at 6-7.

³² EAW at 32-33, Appx. C; see also GHG Guidance at 5, 11-13.

³³ *Mankato Motorsports* at *9 ("By declining to consider how regional air travel to the project would affect the project's overall GHG emissions, the city "entirely fail[ed] to address an important aspect of the problem" and ignored evidence in the record." (citation omitted)).

³⁴ ARD Appeal at 13-16.

safeguards, approved by the state pollution control agency, to allow uses that are likely to cause pollution of water.³⁵ Specifically, Appellants argue that chemicals used in the operation of the ice facilities in the Arena could lead to contamination of ground water.

In constructing the Arena, St. Thomas will utilize design features to reduce the likelihood of groundwater pollution resulting from leaks or spills within the facility. Specifically, the Arena will include a subfloor heating system to prevent subfloor permafrost which is a common cause for the failure of ice systems and liquid spills. Construction will include the use of welded joints which have a very low risk of failure. Finally, the concrete in the basement will be sealed and a vapor barrier will be installed beneath the concrete floor slab, making it virtually impossible for any spill to permeate through the basement floor slab and into the groundwater below. The City and State will further review these safeguards for adequacy as part of the building permitting process, which occurs after issuance of final Site Plan approval.

In addition to design features, St. Thomas will implement operational safety measures to protect groundwater. St. Thomas' Director of Environmental Health and Safety, in consultation with other industry professionals, is developing an Ammonia Plant Safety Program which will address ammonia safety at the facility. The key components of this safety program will include, among other things, written processes to ensure preventative maintenance and response protocols, training for operators to manage the systems, continuous monitoring requirements related to potential ammonia leaks, dedicated exhaust systems, integration with building alarm system and written standards for responses to all levels of alerts or alarms. St. Thomas currently uses ethylene glycol in heating and cooling systems on campus to prevent systems from freezing. St. Thomas' centralized energy management system continuously monitors these closed-loop systems for leaks. Facilities maintenance staff are trained professionals with experience operating and maintaining these types of systems.

For the above reasons, the Project incorporates a wide range of protective measures to avoid and eliminate the occurrence of leaks or other pollution from the Arena's operation and fear of pollution is not justified grounds upon which to deny the Site Plan.

d. The Site Plan adequately protects the Mississippi River bluff area.

Given the location of the Project on St. Thomas' South Campus, ARD asserts that the Site Plan violates requirements related to development near the bluffs along the Mississippi River.³⁶ Because regulation of the Mississippi River corridor occurs at the federal, state and local level, it is important to identify those requirements that apply to the site of the Project.

³⁵ ARD Appeal at 13.

³⁶ ARD Appeal at 4.

i. Federal MNRRA

At the federal level, the National Park Service implemented a Comprehensive Management Plan related to the Mississippi National River and Recreation Areas (“MNRRA”). While the purpose of this plan is to protect the corridor in the City and along the metropolitan area, the Comprehensive Management Plan self-identifies as “illustrative” in nature and seeks only to provide guidance and flexibility for local and regional authorities to adopt and tailor to their unique community needs.³⁷ Therefore, the Comprehensive Management Plan, while instructive, does not independently establish any requirements for the site.

ii. State MRCCA

The Mississippi River Corridor Critical Area (“MRCCA”) was established by Governor’s Executive Order 79-19 to ensure compliance with MNRRA at the state level. Pursuant to Minnesota Statutes Chapter 116G, the Minnesota Department of Natural Resources promulgated new rules for compliance with MNRRA and MRCCA in Minnesota Rules Chapter 6106 in 2017, in place of the original Executive Order. These rules established new MRCCA districts to guide land use and development activities. The site of the Project would now be located within the CA-RTC River Towns and Crossings district, which is characterized as historic downtown areas, limited nodes of intense development at river crossing, and institutional campuses that predate the MRCCA designation and include taller buildings.³⁸ The rules establish certain dimensional requirements. Specifically related to the location of structures and impervious surfaces,³⁹ the CA-RTC district requires a setback of 75 feet from the Mississippi River and 40 feet from the bluffline.⁴⁰ The “bluffline” is delineated from the top of the bluff.⁴¹

Appellant argues that “MRCCA rules provide that no development (including impervious surfaces) may exist within 40 feet of the bluffline.”⁴² However, the ARD Appeal fails to acknowledge that (i) all structures (as defined by the rules) within the Site Plan are located outside the required setback and (ii) Minnesota’s rules exempt certain uses from the setback requirements. When compared with MRCCA “Bluff Impact Zone” GIS data, current depictions of the proposed development clearly show that all structural components of the Project exist outside the bluff setback. “Structures” are specifically defined to exclude aerial or underground utility lines, such

³⁷ See Comprehensive Management Plan for the Mississippi National River and Recreation Area, 3 (1994).

³⁸ Minn. R. 6106.0100, subp. 5.

³⁹ See Minn. R. 6106.0050, subp. 29 (“‘Impervious surface’ means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples are rooftops, decks, sidewalks, patios, parking lots, storage areas, roads, and driveways, including those with concrete, asphalt, or gravel surfaces.”).

⁴⁰ Minn. R. 6106.0120, subp. 3.

⁴¹ Please note the distinction between “bluffline” and “bluff impact zone” as defined in Minn. R. 6106.0050, subp. 9 (“‘Bluff Impact Zone’ means the bluff and land within 20 feet of the bluff.”).

⁴² ARD Appeal at 5.

as sewer, electric, telephone, gas lines and utility line towers, poles and other supporting appurtenances.⁴³ Therefore, this infrastructure remains in compliance with the setback.

Additionally, Minnesota Rule 6106.0180 exempts certain uses from the setback requirements. Public transportation facilities, which are defined as transportation facilities dedicated to the public use, such as roadways, transit facilities, railroads and bikeways, may exist within 40 feet of the bluff if certain criteria are met.⁴⁴ Public transportation facilities are to be designed and constructed to give priority to providing scenic overlooks, safe pedestrian crossing and facilities along the river corridor, providing access to public riverfront land, and allowing for use of the land between the river and the transportation facilities.⁴⁵ Where public transportation facilities intersect or abut two or more MRCCA districts, the least restrictive standards apply.⁴⁶

The proposed sidewalks between the Project and the “**Grotto**” are intended to serve as a “public transportation facility.” The Grotto is located in the upper reaches of a ravine that starts on the St. Thomas campus and ends about a block downstream at the Mississippi River. It provides a quiet, contemplative space for the community to enjoy and features walkways, stations of the cross, statues, and a stone bridge, which was last improved in 1994. The Site Plan’s proposed sidewalk will connect public roadways adjacent to the Project to the bluff impact zone, where the Grotto is located, as well as to the CA-RN River Neighborhood district lying to the Northwest of the Project. Its primary purpose allows use of private St. Thomas property between the bluff and the public rights-of-way for public access. It will be open to pedestrian and bikeway traffic, as St. Thomas intends to maintain the community’s accessibility to the Grotto. For these reasons, the Site Plan is consistent with MRCCA requirements related to development near the bluff.

iii. Municipal River Corridor Overlay

The 2017 MRCCA rules promulgated by the Minnesota Department of Natural Resources require all municipalities to adopt zoning regulations consistent with the purpose, scope and standards set forth in the MRCCA rules.⁴⁷ It is important to note that, although the City of Saint Paul is in the process of formal adoption of new ordinance language consistent with Minnesota Rules Chapter 6106, it has not yet completed the adoption into its local ordinances.⁴⁸ Per the Rules, the City of Saint Paul’s existing MRCCA ordinance adopted pursuant to Governor’s Executive Order 79-19 remains in effect until new MRCCA zoning is formally adopted.⁴⁹

⁴³ Minn. R. 6106.0050, subp. 74.

⁴⁴ Minn. R. 6106.0050, subp. 57.

⁴⁵ Minn. R. 6106.0130, subp. 7.

⁴⁶ Minn. R. 6106.0130, subp. 7.

⁴⁷ Minn. R. 6106.0060, subp. 3.

⁴⁸ See *Property owner information – MRCCA*, Minnesota Department of National Resources, Mississippi River Corridor Critical Area Program, https://www.dnr.state.mn.us/waters/watermgmt_section/critical_area/property-owner-information.html (last visited April 22, 2024).

⁴⁹ Minn. R. 6106.0070, subp. 2(B).

According to the City of Saint Paul’s existing MRCCA ordinance in Code Chapter 68, the site of the Project is located within the RC3 River Corridor Urban Open overlay district. Use of land and location of new buildings and structures within the RC3 overlay district conform with the standards of the underlying zoning district and Code Section 68.400.⁵⁰ Code Section 68.402(4) provides that “bluff development” shall take place at least forty (40) feet landward of all bluff lines. This is consistent with MRCCA requirements, though the Code discusses the proposed improvements differently than the state rules.⁵¹

Despite this terminology, the Code separately provides separate regulation for “transportation, utility and other transmission service facilities and corridors” to avoid areas of certain dangerous environmental conditions, such as steep slopes, intrusions into ridge crests and high points, and areas of unstable soils.⁵² This distinct transportation- and utility-related regulation implies that these facilities are separate from the “development” referred to in the bluff setback requirement. This would be consistent with MRCCA requirements as well, as it is clear that the State of Minnesota does not intend the setback requirement to prevent aerial or underground facilities infrastructure, public sidewalks for access to the bluff, and similar improvements. Even at the time of the College Zoning Committee’s recommendations, as pointed out in the ARD Appeal,⁵³ sidewalks appeared to exist within or just at the setback area, based on Map 3 included therein. There are currently utilities and impervious surfaces existing within the 40-foot setback that will be removed as part of the Project. The inconsistency between the term “development” and actual improvements on the property suggest that these types of facilities should not be interpreted as subject to the Code’s bluff setback.

Based on the above, design of the Project and Site Plan have contemplated all levels of regulation of the Mississippi River corridor. St. Thomas understands the geographic nature of its historic South Campus, and the unique concerns and responsibilities that coincide with operating near the bluff line. The Site Plan is consistent with these regulations.

4. The Site Plan protects the adjacent and neighboring properties through reasonable provisions for surface water drainage, sound and sight buffers, preservations of views, light and air and those aspect so design which may have substantial effects on neighboring land uses.

The Site Plan protects the adjacent and neighboring properties through a number of efforts, including but not limited to the following:

- placement of the building interior to the South Campus property to be away from neighboring properties and partially screened by existing buildings or vegetation;

⁵⁰ Code § 68.232.

⁵¹ See Code § 60.205 (defining “Development” within the River Corridor districts as the making of any material change in the use or appearance of any structure or land, along with several examples thereof).

⁵² Code § 68.402(5).

⁵³ ARD Appeal at 6.

- placement of major mechanical equipment (i.e. generators, chillers, boilers and ice plant equipment) behind the tower features integrated into the building and/or behind raised parapets to help with both noise and visual impact;
- commitment to analyzing noise from the building during the design process and to complete a noise study to ensure mitigation of noise impact on surrounding properties;
- exterior lighting that has been designed to meet the LEED's Sustainable Sites Light Pollution Reduction Credit; and
- surface water will be captured and treated to both city and watershed district standards, actually slowing and controlling the release rate to the Grotto.

Surface water at the site is currently concentrated and discharged into the Grotto via a pipe at uncontrolled rates. Although the Project will be increasing the total land area of water flowing into the Grotto by approximately 0.75 acres, St. Thomas is taking extensive measures to improve the water quality and flow rate entering the Grotto. St. Thomas will implement measures to release the water at a slower, more controlled rate, thereby further protecting the ravine from erosion. By capturing and holding back a large quantity of surface water in a north stormwater treatment system, filtering the water through a manufactured treatment device with enhanced filtration media, the system's more consistent release of that water will actually result in a decreased flow rate into the Grotto by three to five cubic feet per second, resulting in significant improvement to water quality and flow towards the Mississippi River. The ARD Appeal ignores these positive design contributions.

ARD also raises issues related to the Public River Corridor Views (“PRCV”) and the development's compliance with MRCCA, noting that the Arena will interfere with public river views.⁵⁴ This issue of PRCV under the MRCCA was directly addressed in the EAW.⁵⁵ As explained in the EAW, the Comprehensive Plan identifies PRCV within the MRCCA, and in this instance, the EAW specifically evaluated the Arena's impact on all relevant PRCV.⁵⁶ The EAW concluded that “[a]ccording to the PRCV map, the project site is not located within the view range of an identified view locations.⁵⁷ Therefore, the project will not have an impact on identified significant public views, which is consistent with Policy CA-11.”⁵⁸ Further, the City responded to public comments raising the issue of impact to views and explained that the Arena will not significantly change the views from the identified public views in the vicinity.⁵⁹ Again, any challenge with respect to this issue should have been raised in an appeal of the City's decision not to require an EIS pursuant to Minnesota Statutes Section 116D.04, Subd. 10.

⁵⁴ ARD Appeal at 12-13.

⁵⁵ EAW at 29-30.

⁵⁶ Id.

⁵⁷ Id. at 30.

⁵⁸ The EAW noted that Policy CA-11 “is intended to protect and minimize impacts to PRCV from public development activities.” EAW at 30.

⁵⁹ Findings of Fact, Appx. C at 69.

The thoughtful design of the Site Plan, and revisions to the Site Plan in response to neighbor concerns⁶⁰ show that the development has been designed in a way to protect the adjacent and neighboring properties through reasonable provisions for surface water drainage, sound and site buffers, thereby exceeding the requirements of Site Plan Approval.

5. **The arrangement of the building, uses and facilities of the proposed development are such that abutting properties and/or occupants will not be unreasonably affected.**

The Site Plan is thoughtfully designed to ensure that abutting properties and/or occupants will not be unreasonably affected in a number of ways. As previously noted, the placement of the Arena in the center of the South Campus provides the greatest distance from adjacent residential property lines.

Each side of the Arena is thoughtfully designed to minimize impact. The main entry to the Arena is located on the north side, which is screened by the Schoenecker Center building, helping to control noise from attendees and block views from Summit Ave. The north façade includes symmetrical towers that frame a 3-story glass entry that act as functional screen walls to the rooftop mechanical units on the roof. The Arena building height is lower than the recently constructed Schoenecker Center to the north across the South Campus Quadrangle. The western façade includes a lowered parapet, upper roof volume, a stepped back second and third floor, and a first floor bump-out to provide a smaller scale at the ground floor for pedestrians walking near the Grotto and to respect the architecture and scale of the seminary across the street. The south side of the Arena steps down in elevation adjacent to Grace Hall, while providing a raised parapet for screening of mechanical equipment, and the auxiliary ice sheet elevation is approximately the same height as the existing Anderson Parking Facility to the east. Finally, the east façade provides a prominent gable end that frames the terminus of Grand Avenue, the ridge and eave of the sloped roof on the north side sit a full story lower than the adjacent Schoenecker Center, Owen's Science Hall, and O'Shaughnessy Hall. The location of the Arena is next to the largest parking resource on campus, the Anderson Parking Facility.

These important—and thoughtful—design features support approval of the Site Plan.

6. **The Site Plan effectively incorporates energy-conserving design.**

As noted in Section I.B. above, the Site Plan materials note St. Thomas' intent to obtain LEED certification for the Arena, highlighting St. Thomas' commitment to maximizing energy conservation through design. In addition, the Site Plan incorporates energy-conservation through the use of the following:

⁶⁰ In response to concerns expressed by neighbors regarding the back of the Arena from Goodrich Avenue, St. Thomas agreed to plant additional vegetation on the south façade to increase screening, provide a nicer aesthetic, and minimize impact to river corridor views, consistent with Comprehensive Plan Policy CA-10.

- Energy efficient lighting
- Energy efficient building envelope
- Low-flow indoor plumbing fixtures
- High-efficiency boilers for domestic hot water
- Lower carbon structure and materials selection through incorporation of products with recycled content and/or sustainable manufacturing methods
- Low GWP refrigerants for cooling system
- Air curtains at all loading dock doors to reduce infiltration
- High Solar Reflectance Roof Membrane to reduce cooling loads
- Use of natural materials that are locally sourced (ex: stone)

Also previously noted, St. Thomas shares a similar carbon neutrality goal with the City's Climate Action and Resilience Plan, adopted by the City Council in December 2019 (the "**Climate Plan**"). The Climate Plan's guiding themes surrounding transportation and mobility focus on increased safe and reliable access to City destinations without the use of private vehicles, commitment to reducing transportation costs, and increased active transportation options, among other items.⁶¹ As discussed related to other factors of the Site Plan review process, the location of the Project and St Thomas' transportation efforts support all of these guiding themes.

For these reasons, Staff correctly determined that the Site Plan and Project are consistent with energy-conserving design and the Planning Commission should affirm this determination.

7. **The Site Plan addresses safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets.**

The Site Plan adequately addresses safety and convenience of both vehicular and pedestrian traffic. Importantly, the proposed termination of Grand Avenue will prevent vehicular and pedestrian conflicts at the north of the Arena. This is in addition to the improvements already noted to traffic signals at the intersection of Cretin and Grand Avenues and pedestrian improvements at the intersection of Cretin and Goodrich Avenues.

In addition, the Site Plan incorporates the requirements for mitigation noted in the EAW that was completed for the Project. Notwithstanding, the ARD Appeal raises issues related to the sufficiency of the transportation study that was completed in connection with the Project proposal and the Waage / Housum Appeal questions the adequacy of the mitigation measures that were imposed by the City through the EAW process. Each of these will be addressed below.

⁶¹ See Climate Plan at 45.

a. **The Transportation Study**

The ARD Appeal raises the issue of the sufficiency of the Transportation Study prepared as part of the EAW.⁶² ARD's arguments relate to the methodology of the Transportation Study, including number of vehicle occupants, available on-street parking counts, event attendance determinations, frequency of events, and other events on campus.⁶³ Appellant's arguments simply rehash its challenge to the City's decision as RGU to rely on the Transportation Study to decide that an EIS is not required, and reiterates the same arguments it made in its appeal of the City's decision.⁶⁴ As such, the Court of Appeal's forthcoming decision on the appeal of the EAW will address these issues. Since these concerns attack the validity of the EAW itself, as opposed to merely the conclusions to be drawn from the information provided by the EAW, it is particularly inappropriate to relitigate these issues in a Site Plan appeal and the City should reject the request to do so.

Further, and notwithstanding that these issues will be fully resolved by the Court, Appellants offer no countervailing evidence that the Transportation Study is flawed. Instead, Appellants only offer speculative assertions, misrepresentations, or conclusory statements. Speculation and unsupported, conclusory statements that the Transportation Study is flawed are insufficient to show that the EAW is inadequate.

As its appeal relates to traffic, ARD makes numerous complaints regarding the adequacy of the Transportation Study, including that the Study (i) overestimates student attendance; (ii) utilizes an incorrect average vehicle occupancy ("AVO") figure; (iii) uses an incorrect traffic growth figure; and (iv) does not consider side street traffic, including in the winter.⁶⁵ Yet, in each instance, the Transportation Study includes an explanation of each assumption. Such reasoned assumptions cannot be displaced by unsupported speculation.

i. **Student Attendance**

The Transportation Study provides that student attendance figures are based on the number of student section seats currently proposed for the Project.⁶⁶ Further, the Study determined student transportation assumptions based on the number of students within three quarters ($\frac{3}{4}$) of a mile of the Project and the number of transit passes owned.⁶⁷ The Study's conclusion that 1,200 students would attend is then based on a maximum capacity event.⁶⁸ ARD's argument that this number is overinflated simply because 2,600 students live on campus is neither an accurate accounting of the Transportation Study's assumptions, which plainly factors in students who do not live on campus,

⁶² ARD Appeal at 17-26.

⁶³ Id.

⁶⁴ ARD Appeal at 23-26.

⁶⁵ ARD Appeal at 18-20.

⁶⁶ EAW, Appx. D at 23.

⁶⁷ Id.

⁶⁸ Id. at 24.

nor is it supported by contradictory evidence. ARD's argument is based on unsupported speculation.

ii. Average Vehicle Occupancy

The Transportation Study explained that the AVO of 2.75 is based on “data collected at multiple events at Allianz Soccer Stadium, local event studies, numerous technical resources, and event travel characteristics around the Twin Cities and country.”⁶⁹ The Study thus took into account sporting events in much the same geographic area as the Project. To the contrary, ARD relies on a lower figure from the Minnesota Department of Transportation, without citation to determine to what extent such a figure applies or if it relates to event traffic at all.⁷⁰ Vague allusions to alternative AVO figures do not call into question the Transportation Study's use of an AVO derived from data specific to event travel in the same geographic area of Saint Paul.

iii. Traffic Growth Assumptions

The Transportation Study explained that its operations analysis to generate pre- and post-event traffic conditions included a one quarter percent (0.25%) growth rate for year 2025, as well as trip generation estimates for the Highland Bridge development.⁷¹ Yet, ARD disregards the explanation in the Transportation Study to incorrectly assert that a 0.25% growth rate is inaccurate since it is too low to account for the Highland Bridge development, ignoring that the Study separately estimated and assessed the trip generation impact of Highland Bridge.⁷²

iv. Side Street Traffic

ARD's arguments related to side street traffic assert that attendees will not know where they are going to park, that cars will not be able to pass each other on side streets, and that cars parked on side streets were not accounted for when determining pre- and post-event traffic level.⁷³ These arguments rely on nothing more than speculation or misunderstand the purpose of the pre- and post-event traffic modeling assumptions. ARD points to nothing in the record to support its position that attendees will not know where they are going to park or how winter conditions will impact side street traffic, nor does ARD provide any evidence of its own to contradict the Transportation Study. Further, the operations analysis of the Transportation Study was designed to evaluate a worst-case scenario by routing all event traffic to the University's campus parking facilities and on-street parking locations adjacent to campus, thus maximizing the traffic related

⁶⁹ Id. at 23.

⁷⁰ ARD Appeal at 18.

⁷¹ EAW, Appx. D at 29.

⁷² ARD Appeal at 18-19.

⁷³ ARD Appeal at 19-20.

impacts to the study area.⁷⁴ The Study further limited Cretin Avenue to one lane to account for on-street parking.⁷⁵

b. Traffic Demand Management Plan and EMP

Appellants inaccurately state that the City “violated its own ordinance” by not requiring further TDM strategies for this Project.⁷⁶ As previously noted in Section III.1.a herein, the Site Plan incorporated a TDMP as required by Code Section 63.122(c). Due to the location and design of the Project and predominant use of the Arena, St. Thomas’s mitigation strategies were limited to “Visit-End Uses” related to bicycle parking and free or subsidized transit passes. However, as detailed above, St. Thomas is voluntarily implementing additional traffic demand management strategies and will continue to work with the City on event management planning. These strategies will continue to evolve as the Project proceeds and the Arena begins to operate.

c. Mitigation

The Waage / Housum Appeal cites rules related to the need for an EIS to argue that mitigation of traffic and parking concerns incorporated into the Final Site Plan Approval is inadequate.⁷⁷ Yet again, the question of whether the EAW’s required mitigation is sufficient is before the Court of Appeals in ARD’s appeal of the City’s decision on the need for an EIS, and will be resolved in the Court’s forthcoming opinion. This is not the appropriate forum to relitigate these issues.

Notwithstanding that this issue will be resolved by the Court of Appeals, the Waage / Housum Appeal references only the monitoring provision of the required mitigation in the City’s Findings of Fact while ignoring the remaining required mitigation measures and that the Project is subject to ongoing regulatory authority.⁷⁸ Contrary to this mischaracterization, the City’s EAW Findings established a mitigation plan that includes the monitoring that Appellant noted, in addition to requiring the University (i) to develop an EMP plan with the Saint Paul Police Department to include strategies for traffic control that are directly tied to event size and timing; (ii) establish incentives for use of public transportation and rideshare platforms; (iii) implement a parking system application process to inform patrons in advance when lots are sold out or full for major events; (iv) provide off-site parking and shuttle service to the Arena; (v) maintain a list of other events held at the Arena, including type, number, frequency, and timing; and (vi) inform the community of upcoming events.⁷⁹ Furthermore, Minnesota Rule 4410.1700, subp. 7(C) requires the City to consider the extent to which any impacts related to the Project are “subject to mitigation by ongoing public authority.” Such ongoing regulatory authority will effectuate the required

⁷⁴ EAW, Appx. D at 29.

⁷⁵ Id. at 29-33.

⁷⁶ Waage / Housum Appeal at 2.

⁷⁷ Waage / Housum Appeal at 9-10.

⁷⁸ Waage / Housum Appeal at 9-10.

⁷⁹ Findings of Fact at 4.

mitigation measures, for instance, by requiring that these measures are implemented before the City will issue a certificate of occupancy.⁸⁰

Given the extensive implementation of traffic considerations within the design and Arena operation process for the Site Plan, and the Site Plan Approval's requirement that St. Thomas implement an EMP, Staff were correct to conclude this the Site Plan satisfies this factor of the Code.

8. The Site Plan identifies satisfactory availability and capacity of storm and sanitary sewers, including solutions to any drainage problems in the area of the development.

The Site Plan addresses the availability and capacity of storm and sanitary sewers and provides solutions to any drainage issues and therefore, this Code provision required for Site Plan approval is met by the Site Plan.

a. Stormwater

As a preliminary matter, it is worth noting that the Capitol Region Watershed District (the "CRWD") is charged with ensuring that the Project is not negatively impacting downstream waters or wetlands, that the Site is treating stormwater runoff to required local, state and federal standards, and that the development is not causing erosion of soil to downstream waters. The CRWD signed off on the proposed design and issued permits for construction of the stormwater management facilities, which permits are a requirement for Final Site Plan Approval. The CRWD also conducts weekly site inspections during construction to ensure the Project is managing erosion of soils and adequately providing for the transport of sediment.

As noted earlier, the Geotech Report conducted by American Engineering Testing (AET) dated June 23, 2023 did not identify soils dangerously susceptible to erosion or areas of unstable soils. The CRWD also found that proposed runoff rates for the Project do not exceed existing runoff rates for the 2-, 10- and 100-year critical storm events, acknowledging stormwater drainage is routed to a well-defined receiving channel.⁸¹ Even so, the approved stormwater management plan for the Project limits/eliminates the potential for erosion. While the proposed development increases the amount of impervious area, the incorporation of new stormwater treatment measures such as state-of-the-art filtration treatment devices that absorb contaminants and filter particulates from stormwater, results in an improvement to current storm water conditions on the site,

⁸⁰ Findings of Fact at 4-5. It is worth noting that mitigation measures can be reviewed but not actually implemented until the Arena is fully functioning. An effective mitigation plan will provide opportunities to address ever-changing conditions. For example, one aspect of the current plan is to promote the use of ride share options. If Uber and Lyft leave Minnesota, an alternate ride share operator will need to be identified, or the mitigation plan will need to be updated to address these changing conditions.

⁸¹ Capital Region Watershed District Permit Report # 23-023 at 3 (December 13, 2023).

improving the quality of rainwater before it reaches the Mississippi River.⁸² As previously noted, these Site Improvements will improve the flow of discharge to the Grotto by decreasing the flow rate by three to five cubic feet per second because the planned treatment measures will release the water at a more consistent rate. This will successfully improve existing drainage in the development area.

b. Sanitary Sewer

The Site Plan includes three (3) sanitary sewer services connecting into two existing municipal sewer lines, one at Summit Avenue and another at Cretin Avenue, both of which currently service buildings that will be demolished as part of the Project. The EAW reviewed wastewater management and determined that there is sufficient sewer availability for the existing municipal infrastructure to service the demand of the proposed development.⁸³

Based on the above, there is no question that the Site Plan identifies satisfactory availability of storm and sanitary sewers, including solutions to any drainage problems in the area of development.

9. The Site Plan offers sufficient landscaping, fences, walls and parking necessary to meet the above objectives.

The Site Plan includes ample examples of landscaping and screening to meet the objectives set forth above.

In addition to the screening added to the South façade in response to neighbor suggestions, St. Thomas has developed extensive landscaping plans that include the planting of new trees near the Mississippi River bluff on the west side of the site, near the South Campus quadrangle on the north side of the building, and in the northeast arena plaza near the terminus of Grand Avenue. Throughout the site, St. Thomas has continued to expand existing pollinator paths on campus, incorporate native landscaping, and replant oak tree saplings that were propagated from other oak trees on campus. The Site layout also locates the potentially unsightly components of the project, such as the loading dock and the University's recycling center, interior to the site screened by existing buildings such as the Binz Refectory (screening the loading dock) and the Anderson Parking Facility (screening the recycling center).

As its appeal relates to parking, ARD makes numerous complaints regarding the adequacy of the Transportation Study, including that the Study (i) does not accurately assess availability of on-street parking; (ii) does not accurately count the number or attendance of events; (iii) does not account for other events on campus; (iv) does not account for the Schoenecker Center; and (v) does

⁸² The construction of the Arena increases the impervious surface by approximately 1.04 acres but with the proposed improvements to storm water facilities, the site will treat approximately 5.28 acres of impervious surface runoff that is not being treated onsite today.

⁸³ EAW at 18.

not consider the impacts of the cost of parking. As noted above, ARD's objections to the Transportation Study are part of the EAW litigation and should not be addressed in this proceeding. Moreover, this submission provides extensive information regarding the measures that are being implemented by St. Thomas to address parking and transportation. Notwithstanding the earlier arguments, the following information responds to ARD's assertions.

a. On Street Parking

The Transportation Study involved two separate parking utilization counts conducted from Monday, February 27, 2023, to Friday, March 3, 2023, and from March 30, 2023, to Saturday, April 1, 2023.⁸⁴ However, because there was a snowstorm on Friday night, March 31, 2023 that occurred after the Friday afternoon counts, ARD argues that the entirety of the parking counts are suspect.⁸⁵ It is simply not reasonable to assert that eight days of parking utilization counts are invalidated by a late season snow storm overnight between two afternoon parking counts. Additionally, the Transportation Study specifically states that the snowstorm did not affect the representativeness of the traffic data gathered on those dates.⁸⁶ Therefore, ARD's argument on this point falls flat.

b. Event Attendance and Number of Events

The Transportation Study accurately establishes the frequency of what it calls "worst-case" attendance scenarios (i.e., maximum capacity (5,500 attendee) games on a weeknight) at one (1) to two (2) times per year, "if at all."⁸⁷ The Study further establishes that a typical event would be around 3,000 attendees, which is based on a conservative average attendance of men's sports and a maximum attendance for women's sports.⁸⁸ These figures are based on data collected for numerous similar programs during the 2022-2023 regular season.⁸⁹ Yet, ARD continues to represent that a University spokesperson said that there would be 35 "sell out" games at the Arena.⁹⁰ As the University has corrected numerous times, including to the Court of Appeals, the University spokesperson mistakenly stated "at capacity events" when referencing the number of anticipated well-attended events (i.e., four (4) to six (6) at-capacity events plus more typical events with approximately 3,000 attendees).⁹¹ ARD also speculates as to other events to be held in the

⁸⁴ EAW, Appx. D at 11.

⁸⁵ ARD Appeal at 24.

⁸⁶ See EAW, Appx. D at 4 ("Results of the review. . . indicate that March 30, 2023, was representative (if not slightly higher) of an average day for the study area, therefore, no adjustments were made to the counts."), and 11 ("However, the storm started after the Friday afternoon counts and the Saturday weather (40 degrees and sunny) generally cleared the roadways by the time of the Saturday afternoon counts, therefore, the parking counts as it relates to event availability are considered representative of typical conditions for the campus area.").

⁸⁷ EAW, Appx. D at 21.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ ARD Appeal at 24.

⁹¹ See *Lee and Penny Anderson Arena FAQ*, University of St. Thomas, <https://www.stthomas.edu/neighborhood-relations/briefings/lee-penny-anderson-arena/>.

Arena, citing nothing within or outside of the record to support its assertions. Such speculation does not provide the basis for an appeal.

c. Other Campus Events

Similarly, ARD speculates that the University would simultaneously schedule large events in multiple spaces on campus, such as the Arena, the Anderson Student Center, and other athletic competition spaces.⁹² Yet again, ARD does not provide any evidence that the University would do so. St. Thomas is very experienced at managing event schedules as this is something they have effectively done for years. ARD's argument is not only premature, but it also ignores the fact that the scheduling of multiple, large events would likely be addressed by the EMP the City establishes in consultation with the Saint Paul Police Department and Public Works, as required mitigation adopted by the City.⁹³

d. Schoenecker Center

The Transportation Study accounted for the elimination of parking spaces associated with the construction of the Schoenecker Center in its parking utilization counts and parking analyses, a fact well established in the Study and the EAW appeal before the Court of Appeals.⁹⁴ Further, as addressed in the City's responses to public comments and reiterated in during EAW appeal, the City acknowledged and provided support for its determination that the demand for parking on campus is driven by enrollment, and thus the Schoenecker Center did not impact demand.⁹⁵ It is surprising, then, that ARD again raises these issues here.⁹⁶ The Transportation Study included both the elimination of the parking spaces and the impact to parking of the Schoenecker Center in its baseline figures, contrary to the mischaracterization of ARD.

e. Impacts of Costs of Parking

ARD again speculates that attendees will utilize free, on-street parking over paid parking, and thus the campus parking may not even be utilized.⁹⁷ It bears repeating that unsupported speculation cannot be the basis of an appeal. ARD's failure to present any evidence to justify its conclusory statements does not overcome the well-reasoned assumptions in the Transportation Study. The City should reject ARD's offer to rely on unsubstantiated fears in place of a developed study.

Because the Site Plan offers sufficient landscaping, fences, walls and parking necessary to meet the City's objectives, the Site Plan should be approved.

⁹² ARD Appeal at 25.

⁹³ See EAW Findings at 4.

⁹⁴ EAW, Appx. D at Fig. 3.

⁹⁵ EAW Findings, Appx. C at 55-56.

⁹⁶ ARD Appeal at 25.

⁹⁷ ARD Appeal at 25-26.

10. **The Site Plan provides accessibility in accordance with the provisions of the Americans with Disabilities Act (ADA), including parking spaces, passenger loading zones and accessible routes.**

The Appeals raise no concerns related to compliance with the American with Disabilities Act (“ADA”). The Site Plan provides accessibility in accordance with the provisions of the ADA in all respects.

11. **The Site Plan provides for erosion and sediment control as specified in the Minnesota Pollution Control Agency’s ‘Manual for Protecting Water Quality in Urban Areas.’”**

St. Thomas submitted sufficient evidence of erosion and sediment control in its application for CRWD Permit #23-023. In its report, the CRWD found that the Project’s erosion and sediment control measures are consistent with the best management practices demonstrated in the Minnesota Pollution Control Agency (the “MPCA”) manual *Protecting Water Quality in Urban Areas*.⁹⁸ This finding included protection of adjacent properties, wetlands, waterbodies and water conveyance systems from erosion, sediment transport and deposition. The report also determined that a National Pollutant Discharge Elimination System (NPDES) permit is required due to the size of the area affected by the land-disturbing activity.⁹⁹ The Project received an NPDES permit from the MPCA based on the Stormwater Pollution Prevention Plan (SWPPP) established in conjunction with the approved project plans. The Appeals did not raise concerns related to compliance with these MPCA requirements. Therefore, the Site Plan is consistent with this factor of the Planning Commission’s review process pursuant to the Code.

IV. Conclusion

The Project, which is proposed to be constructed without variance or public subsidy, will result in the creation of a new, state-of-the-art multi-purpose Arena that will benefit not only the St. Thomas community but the Saint Paul community as a whole.

As demonstrated above, and in the Site Plan Application materials, the Site Plan, the Project and the Site Plan review process followed by Staff satisfy the standards for approval set forth in City Code Section 61.402(c). The Appeals fail to provide any evidence of error in the City’s determination that the Site Plan complies with the requirements of the Code.

Accordingly, St. Thomas respectfully requests that the Planning Commission deny the Appeals and affirm the decision of Staff to approve the Site Plan for the Project.

⁹⁸ Capital Region Watershed District Permit Report # 23-023 at 5-6.

⁹⁹ Id.

Planning Commission, City of Saint Paul
City File #23-079985
April 24, 2024
Page 30

Very truly yours,

WINTHROP & WEINSTINE, P.A.



Tammera R. Diehm

cc: Ms. Tia Anderson: Tia.Anderson@ci.stpaul.mn.us
Ms. Abigail Crouse: crou5420@stthomas.edu
Mr. Robert K. Vischer: rkvischer@stthomas.edu

28735143v9