

Sunday, July 12, 2015

To the Members of the St. Paul Zoning Committee:

We live across the alley from Taco Bell at 565 N. Snelling Avenue. Our address is 1598 Edmund Avenue, St. Paul, Minnesota, 55104. The main two-part response to File No. 15-134559 that we hope to convey and support before and at the Thursday Zoning Committee hearing is:

- 1) No way (because it's July in Minnesota and we barely got a week's notice before the hearing), and
- 2) They've got to be kidding.

The application to rebuild the Taco Bell at 565 N. Snelling is seriously flawed and disingenuous. It is less an application for a fast-food restaurant with a drive-through lane than for a primary drive-through lane with a little afterthought of a fast-food restaurant attached. The new lane would be closer to our property across the alley than the current lane, which already is too close per City code. It will be approximately 23 feet from our property, whereas the current one is approximately 30 feet away. Yet the applicant claims this arrangement will somehow be an improvement for us and that an improvement over a non-code-compliant, grandfathered-in arrangement is the best we can expect for a newly built facility with a newly granted conditional use permit.

Apparently, the person who drafted the application "forgot" about ordinance 65.513(a) when claiming that the new site plan would meet all the standards in 65.513. Did Brian Alton, formerly of the Board of Zoning Appeals for the city, really make such an omission accidentally? Or did he and his client, Border Foods, hope that no one would notice this important detail — much more than a "t" not crossed — and that his friends in City Hall would let it slide by? These are terrible thoughts to think, but we are thinking them.

Likewise, the drawings showing a 4-car stacking lane are laughably inaccurate. Someone needs to sketch in around 8 more cars to show how the lane will look circa 3:00am most nights and some lunch hours. Where do you suppose vehicles 5 to 12 (and sometimes more) will appear on the renderings? Why, they'll be lined up just across from our property, mere feet from our living room and dining room windows downstairs, and the view from our bedroom windows upstairs will be the tops of all those autos. Yes, this new design cleverly moves waiting cars off of southbound Snelling Avenue, where currently they line up and create a road hazard to enter the lane, neatly onto the parking lot. This new design merely trades floor area and a few parking spots it doesn't even need for more drive-through lane in order to more efficiently process more orders for more idling, engine-revving, boom-stereo-playing, horn-honking, pollution-emitting vehicles!

We have endured increasing noise and other forms of nuisance from Taco Bell for the past decade or so, and it has cost us sleep and sanity and money (see **Appendix A** for a rough chronology of "moments" in our history with Taco Bell). This Taco Bell enjoys a great location on a state highway going through our capital city with some 45,000 cars traveling past on a daily

basis. It also has the distinct advantage over competitors of a uniquely unregulated location. Because it has a special use permit from 1973 (the precursor to the conditional use permit) with no conditions on it for some odd reason, it has been able to do pretty much as it wants, especially in terms of hours. (The hearing minutes for this Taco Bell's permit included the restaurant's proposed hours of operation, but those never got transferred to the CUP. No one in 1973 probably imagined that any drive-through in the city near residences would try to remain open, and very busy, all night long and at 7:00am.) Unlike a nonconforming use, which has strict limitations imposed on it, this conforming use gets to flout code in perpetuity, indefinitely — no amortization of use, no expiration date.

So, this Taco Bell came to realize that this is the perfect location to gradually, through hours creep, become the only all-night fast-food restaurant with a very busy drive-through on this part of Snelling in St. Paul, because any new such use would have to submit to public input and city scrutiny and most likely have to close at what most people would term “a decent hour.” It is only closed for three hours a day during the week and two hours a day on weekends, hours during which noisy maintenance and deliveries often take place.

This site, we believe, was never intended to have a high-intensity drive-through as a primary use. It is not a community bank with a teller window open until just 5:00pm and serving perhaps a mere 3 cars per hour. But now that the use is established, is the city obligated to allow it to continue even with a new CUP in the same fashion on a site that is really too small for it and too close to residential property on three sides? (In addition to us there are apartments to the south at Kimball Court and John Snell Apartments on 550 N. Snelling to the east, as well as 1597 Charles behind us to Taco Bell's southwest.)

We think that the answer is no for a variety of reasons. With all the changes to it and to the zoning code, it is past time for a fresh look at what the business does and who it is (in addition to how well it fits in with updated density and other planning goals). What kind of environment has the business created? How responsive has the business been to neighborhood concerns? Yes, the current use was established in 1973, but most of the houses surrounding it were built and their use established some 60 years earlier, some even in the late 1800s. These deserve at least as much consideration.

Since around 2007, we who are closest to it have actively sought and tried remedies for the noise produced by Taco Bell and its customers. Taco Bell has made token efforts to improve only when under pressure, but those efforts have been short-lived. We run out of fingers when counting the number of times the supposedly “broken” speakerbox has been “fixed” only to “break” (and be loud) again the next week, for instance. The most effective remedy is going to be reduced hours of operation, and that is the main condition we ask the Zoning Committee to support. It would give us a bloc of peace that would make normal impacts during normal business hours easier to handle.

For years, frustrated city officials as well as a couple of complacent ones have told us “nothing can be done until Taco Bell remodels or rebuilds.” We hope they were not just saying that to placate us, while secretly knowing that just because something could be done when Taco Bell rebuilds, in all likelihood nothing would be. We hope that now, something will “be done.”

Our plight is certainly not all the City's fault, but the City has made some mistakes, or at least has let us down in four distinct ways that have added up — first, in ever allowing a CUP with no conditions (and then not being able to keep track of it, as shown in a couple of communications that constitute **Appendix B** just to illustrate the shaky existential foundation of this Taco Bell); second, in not just re-zoning in 1975, 2004, and 2011 (or any time) such that certain uses would become nonconforming and therefore subject to some oversight instead of left as permitted but nonstandard uses and offering no available recourse for those affected by intensification/expansion, such as Nuisance Exceptions in City code. In this case, we have been paradoxically worse off for the way Snelling was re-zoned, which was intended to improve the neighborhood, not better off.

The third mistake we think the City has made is its treatment of drive-throughs as a use, but we realize that's been problematic for municipalities nationwide. This was the basis for our hearing before the Board of Zoning Appeals in June of 2014, but the argument was a stretch made in desperation: that because drive-throughs now require CUPs, the Taco Bell drive-through should not be able to offer a whole new breakfast menu with 3 whole new hours of operation without seeking such a CUP or being subject to a status change to nonconforming. What is true is that this drive-through lane, for this restaurant, was a later addition that the City just gave a free pass. Fine, that makes sense — as an accessory use. But once the drive-through lane started to be a primary use for many hours of the day? That, we can't help believing, should and could have been stopped or curtailed somehow.

Regardless, now this Taco Bell has a very sweet deal, and it has clung to it, waiting to bring this location up to modern Yum! brand identity requirements just about as long as possible to avoid this very CUP process, we believe. We are very aware that if this new CUP is denied or imposes what Taco Bell considers onerous conditions, this Taco Bell will probably continue to operate in its present form with Yum! blessings until the building just crumbles and the last dollar has been squeezed from it like hot sauce from a little white packet.

We have not even touched on the crime that happens at and near Taco Bell that we feel its business model attracts or its record of police calls to its address. Just last month we personally witnessed a man getting kicked in the head in the parking lot late at night and called in that incident ourselves in case Taco Bell employees did not see it. The police call record for the past three years is attached as **Appendix C**, but it is not our main issue, because we believe changes to hours and perhaps restrictions to on-street parking could reduce police calls as a side benefit.

We also will not have time to create an appendix to illustrate the fourth and final way we feel the City has let us down, and we appreciate this chance to share it briefly here in hopes of instigating some cultural change. It is relevant to the application in being another reason that enforcement in the case of this Taco Bell's noise and other nuisance effects cannot be the answer to all of the problems all day and night; reduced hours is the best answer to many of them. There seems to be a mindset in the City that all "complaints" (which could be reframed as assertions of rights) must come from groups of people rather than individuals in order to have merit. Countless times in our quest to get some enforcement of noise ordinances (and the City seemed to have a hard time even deciding whether it was general noise or zoning-related noise law that needed enforcing,

which would determine both whether the standard was to be “not audible beyond 50 feet” or not above a certain decibel limit and whether the enforcer should be police or DSI), we were told that we should start a petition and get neighbor signatures, etc. That is balderdash and simply a dereliction of public service! We feel that DSI and beat officers fail the citizens of St. Paul if they insist incorrectly that nuisances are only valid if they involve “the power of numbers,” a phrase we have heard repeatedly.

Now, if you will, please take a look at **Appendix D**, a hard copy of an email message (to be forwarded to you all by Senior City Planner Jacob Reilly) that will contain live links to videos that supplement and clarify our testimony. We know that your time is limited, but we hope that you can all view at least some of these videos to get a sense of the types and volume of noise that this Taco Bell and its customers have produced — and that they should not be allowed to continue producing after midnight during the week and 1:00am on weekends (if not earlier) in any new configuration. This hard copy should also contain a couple of photos of our property for reference.

We don't hate Taco Bell. In fact, we are partial to the current Taco Bell building with the Spanish roof and will miss it when it's gone. It's now considered retro. But we do hate an almost 24/7 Taco Bell. We hate what it does to our quality of life and to our property values. The property next to us, 1600 Edmund, was formerly an owner-occupied house. It is now a rental property. The property across the street from us, 1595 Edmund Avenue, was formerly an owner-occupied house, but its run on the real estate market didn't end well. It too is now a rental property. Will ours be next? Will a domino effect take hold of our block, our whole street west of Snelling? A mix is fine, but anchoring homeowners are critical.

Our neighborhood's evolution has kept us here as its very particular character has also somehow deepened. There's a lot to love — for us and for the next owners of our property. We cannot be accused of NIMBY-ism. We have in our extended back yard the old brick multi-story Hamline Hotel now used for low-income housing, and we get along just fine with the residents of it, appreciating them and hoping to contribute to their sense of stability here. In any case, there's just no compelling need for a 22/7 Taco Bell to be in anyone's back yard. A respectful 17/6 one could be welcome, though.

Thank you for your attention.

Sincerely,



Kristine Vesley



Mark Vesley

APPENDIX A: Brief Chronology of Our History with Taco Bell

1989: We moved here in 1989, and to the best of our recollection, Taco Bell was open until midnight during the week and 1:00am on the weekend.

1992: There was a gap in the fence behind Taco Bell along the alley through which customers and others on foot could pass, and we observed that this became a site for drug deals and drug use with easy access and/or escape to and from a fairly hidden spot behind the opaque wall. In addition, the fence ended several yards short of Edmund Avenue so that cars could enter and exit the parking lot via the alley, which was not supposed to happen. Our City Council Representative at the time, Paula Maccabee, worked with zoning staff and traffic engineers with the result that Taco Bell was required to replace the old gapped and too-short fence with a new, continuous fence of the proper length. The improvement was dramatic, though at a later time the decorative and screening green vinyl inserts in the chain link fence proved problematic in providing privacy and cover for illicit activity in the alley and were removed.

Circa 2005 -- Taco Bell's hours expanded around this time, to the best of our recollection and records, to closing at 2:00am during the week and 3:00am on weekends.

2006 -- The drive-through ordering kiosk speakerbox seemed to get louder, especially in the late-night hours.

2007-2008 -- We started contacting City Council Representative Russ Stark and city officials when Taco Bell's hours expanded again, to 3:00am during the week and 4:00am on weekends and the noise became almost unbearable from numerous sources. At this point Taco Bell was serving a growing post-bar-closing crowd. We had a frustrating meeting with Russ Stark, his aide Samantha Henningson, DSI staff person Jeff Hawkins, and city attorney Rachel Tierney, who all told us that Taco Bell was zoned business and we were zoned residential and there was no buffer or mixed-use area. We were just unlucky. Jeff Hawkins opened the meeting by declaring that he "would be sad if Taco Bell went away" because he used to work for Public Works and enjoyed stopping at Taco Bell around 2:00 am. We were told by Rachel Tierney, when we asked what our rights were vis a vis Taco Bell: "You have a right to exist." She then said she could relate because she had neighbors who liked to have bonfires, which could become loud at times. We were told that our best option was to call the police for noise ordinance enforcement. We asked if they meant that we should do this every day, as the noise was a regular and predictable occurrence, and we were told yes.

2008-2009 -- We did as DSI told us to do and called police often with noise complaints, usually agreeing to speak in person with officers after they looked into the complaints. We won't go into the details of those encounters here except to note that only one officer was brave enough to tell Taco Bell that its speakerbox was too loud and therefore it would have to close down for the remainder of the evening.

In early 2009, we were contacted by Sgt. Pat Kane about the high number of calls from us. We explained to him what we were told by DSI, and he suggested we meet to discuss the problem of noise and possible solutions. In February of 2009, we met at our house during his shift. He took an interest in the situation and decided to reach out to other departments, including DSI. He went to visit DSI staff in person and later told us he was disappointed that the staff characterized us as chronic complainers. He said he recognized that we were complaining only because so far, nothing had been done. He said DSI staff made reference to our old complaint about the old fence, and he recognized that this had nothing to do with our noise complaint, which deserved separate consideration. He asked DSI to allow him to borrow a decibel monitor and said DSI would not allow him to do this, even though at that time DSI refused to monitor at night when most of our calls occurred.

Sgt. Kane then suggested we try to find a "middle person" and referred us to the Dispute Resolution Center. We contacted the DRC and followed protocol, which was for DRC, not us, to contact the other party, in this case Border Foods. Unfortunately, Border Foods (represented by then District Manager Steve McBride) refused to join us in dispute resolution regarding noise at Taco Bell, saying that our concerns "did not rise to the level of mediation." Sgt. Kane had to take a leave of absence, so we lost some momentum. Sgt. Kane had said that even if he were on his leave, he would attend any DRC meetings with us if it would help.

(We do not have time to go through all our records before the hearing, but at some point after this, DSI did agree to do decibel measurements from our driveway and concluded that Taco Bell's noise was within the acceptable limits, which we and others found very strange given the naked-ear experience of it. Mark Kaisersatt of DSI insisted that "we're good.")

2010 -- Taco Bell's hours expanded to 4:00am on weekdays and 5:00am on weekends.

2012 -- Still amazed that this nuisance was permitted to exist and frustrated on a number of fronts after more talks with licensing and other officials, we considered moving and thought of a clever solution to the problem of trying to sell a house next to a loud, late-night Taco Bell: We offered to sell our house to Border Foods in a letter and were surprised to get a call from Vice President

Barb Schneider the next week expressing interest. We entered negotiations that went on for the entire summer. Border was coincidentally considering a larger campus that would include our property and an alley "vacation" for more land and better traffic flow. Mark and I agreed that preventing speeding in the alley in this way, and diverting through-traffic (use of the alley as a frontage road) could be a boon to the neighborhood. We got as far as the drafting of a purchase agreement by Border Foods that was supposed to be "redlined" over a late-August weekend by our lawyer and our realtor, but the following Monday, Ms. Schneider called to say that site plans had been preliminarily examined by city staff and rejected and therefore Border foods no longer had interest in purchasing our property but that "we might see each other in a couple of years" when Taco Bell went back to the drawing board with a new site plan.

2013: We were busy and did not seek relief from or remedy for noise from Taco Bell aside from the occasional call to police, knowing that in most instances, nothing would be done about speaker system noise and most customers producing noise would be gone by the time officers arrived.

2014: In late February, we read in *The Pioneer Press* that Taco Bell/Yum! Brands intended to launch a new breakfast menu in the spring with extended hours at most locations. We decided we had to check in with our contacts in the city to see if this expansion, too, would be permitted without any public input. We were told that it would be. Feeling that this was "the last straw," we decided to hire an attorney to investigate our options. He researched changes in zoning code and determined that this Taco Bell's drive-through, as of 2011, had been nonconforming in not having obtained a conditional use permit. The Zoning Administrator did not agree with his reasoning, and he appealed her decision to the Board of Zoning Appeals in June. The vote was 5-4 in favor of the status quo of Taco Bell being allowed to operate and expand its hours at will.

Although we lost that appeal, we did take advice we got to start documenting nuisance activity at Taco Bell. A city attorney who had been present at the BZA hearing also contacted our attorney and said he thought we had some valid points and that he would look into a possible public nuisance charge against Taco Bell. We met with him in August and agreed to the plan he proposed. He said he thought it would take a few months to prepare and present it and that if we were unhappy with the results of this work, we could still appeal our BZA decision to the City Council and that meanwhile it would be considered "stayed." We heard from him sporadically in the fall, and then once in December, telling us he was going to meet with the Zoning Administrator about delivering the charge to the Planning Commission, which was her administrative duty per City code. We never heard from him again and in the spring of 2015 informed him through our lawyer that we were terminating the case and dropping the stayed appeal and would like our appeal filing fee returned.

Meanwhile, Officer Charles Graupman from the Police Department sent Taco Bell a first notice for excessive consumption and negotiated some helpful changes with Taco Bell such as moving deliveries from the parking lot to the street, which greatly reduced the banging and clanging we heard inside our house during deliveries. The illegally early garbage pickups were also changed to a later time, which also helped by increasing the small window of non-noisy time in the Taco Bell parking lot.

2015: In July we got a notice regarding the upcoming hearing before the Zoning Committee of the Planning Commission and obtained Taco Bell's application packet and guidelines for submitting testimony, which we are doing now. We noticed a discrepancy in the application.

Appendix A
(5 of 5)

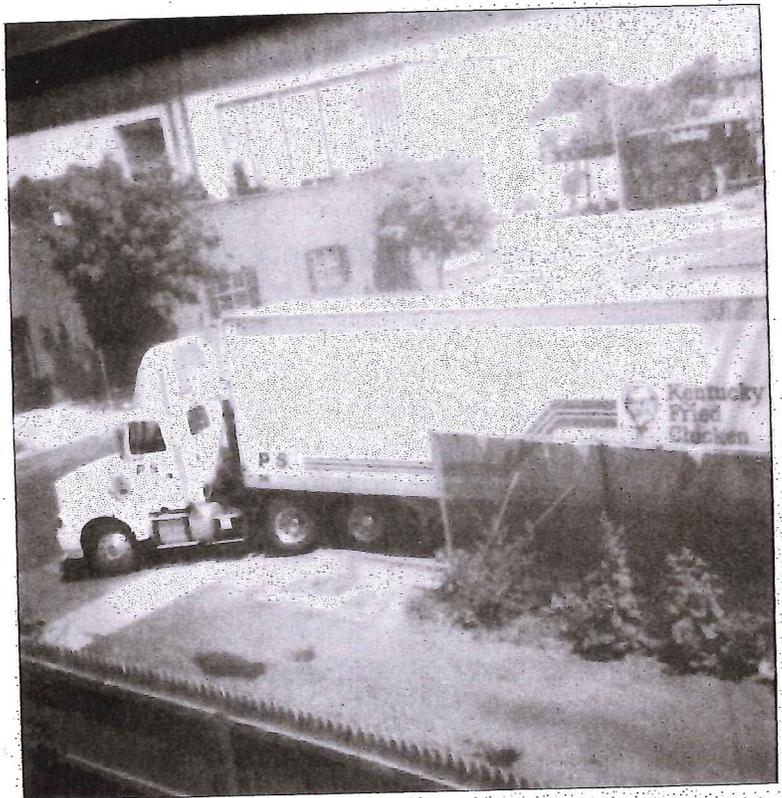
Photo taken in 1992, not long after we moved in, showing a giant semi delivery truck trying to cram itself into the Taco Bell parking lot backwards via Edmund Avenue, running over the curb illegally.

This reminds us that even then, Taco Bell's use of the site was fairly intense and that Taco Bell always really required more space.

air fence →



Holiday
↓



alley
↘

6/29/92 Snelling +
Edmund

APPENDIX B: The Elusive Original CUP for 565 N. Snelling's Current Use

It turns out that the original Conditional Use Permit, or Special Use Permit, for the Taco Bell at 565 N. Snelling is somewhat similar to what are called "virtual particles" in physics. It seems this magical permit both *existed* and *did not exist* at the same time! But, like most of physical reality, the gross manifestation of Taco Bell seems solid and immutable and permanent. It is approaching actual permanence as a structure and an idea, having resisted entropy and escaped Planning Commission approval for more than 40 years now.

This SUP, typewritten in 1973, is the ticket to Taco Bell's "right" to maximal use of its property, neighbors be damned. As such, it is gold to Border Foods. On the other hand, since it has absolutely no conditions on it, it is as worthless as a used burrito wrapper to neighbors and community members who would like the opportunity to know about and respond to plans by Taco Bell to make changes in its operations. No conditions, which are parameters defining the nature and extent of the permitted use? Then no hearings or public input.

Considering how important to Taco Bell's recognition by the City of St. Paul this permit was and remains, it is amazing to the layperson that for many years, no one knew for sure if it was needed or whether or not it existed. Zoning officials seemed to agree that if it did not exist, it was not needed, but that if it was needed, it did exist.

An illuminating email message from Patricia Smith in the zoning department in 2008 said that "at some point the zoning administrator decided that some of these restaurants (Clark's Submarine, Burger Chef, Wendy's, Arby's, McDonald's, and Zantigo {note: precursor to Taco Bell}) were not fast food restaurants, and therefore they only needed a site plan review (not a special use permit)." She said she tried to find out when the drive-through service was added, but "wasn't able to find a record of that in our old history cards."

As of April 18, 2014, current Zoning Administrator Wendy Lane corroborated Patricia Smith's 2008 statement, writing the following to our attorney:

"The Taco Bell fast food restaurant is a use permitted in a T2 district although a conditional use permit was never obtained because one was not required at the time the use was established. It is not a nonconforming use and therefore, it is not subject to Sec. 62.106." {our italics}

But this weird virtual particle of a permit suddenly appeared upon "further research" by zoning department staff within the next couple of weeks in the spring of 2014! (Basement archive? Dusty old metal file cabinet? Where on earth could it have been all those years, and did Taco Bell even have a copy?)

In the staff report for the Board of Zoning Appeals for our June 2014 appeal of a decision regarding Taco Bell's possibly nonconforming status following a 2011 change making drive-through lanes a conditional use (file no. 14-289691), item 6 states, "It must be noted that at the time the letter from the Zoning Administrator was written, the conditional use permit for the subject property had not been found. *Upon further research, the 1973 conditional use permit was located and has been provided to the appellants.*" {our italics}

WE GET THE IDEA THAT WHETHER OR NOT THE CUP EXISTED, THE DRIVE-THROUGH WAS A PERMITTED USE PIGGYBACKED ONTO THE PERMITTED FAST-FOOD USE, NOT A NONCONFORMING USE. THAT WAS IMPORTANT TO THE VERY SPECIFIC BZA CASE FOCUSED ON THE EXPANSION OF USE.

STILL, THIS MISSING AND SUDDENLY APPEARING SUP/CUP IS NOW THE BASIS FOR MOST REGULATIONS OR LACK OF REGULATIONS APPLYING TO THIS TACO BELL. THIS MISSING AND SUDDENLY APPEARING SUP/CUP HAS BEEN THE BASIS FOR TACO BELL'S FREE PASS ON RELEVANT CITY CODE. THIS MAKES THE CITY LOOK REALLY DISORGANIZED. THIS MAKES GRANDFATHERING-IN WITH NO TIME LIMIT LOOK LIKE A VERY BAD IDEA.

HALLELUJAH FOR THE CHANCE TO REVISIT THIS TACO BELL AS IT SUBMITS A NEW SITE PLAN FOR APPROVAL WITH VARIANCES AND A NEW CUP FOR ITS DRIVE-THROUGH LANE.

Copies of the emails from Patricia Smith and Wendy Lane and p. 5 of the staff report follow, along with copies of copies of the elusive 1973 SUP and the hearing minutes that preceded it from the BZA hearing packet.

Appendix B
(3 of 7)

From: Russ Stark Russ.Stark@ci.stpaul.mn.us
Subject: Fwd: Re: zoning question
Date: January 9, 2008 at 4:33 PM
To: kves@earthlink.net
Cc: jwang@hamlinmidway.org

Samantha Henningson 1/9/2008 2:23 PM >>>
Patricia,

Thank for your thorough response. The history is helpful in moving forward.

Jeff, what are next steps to resolve this issue?

Thanks, be well,
Samantha

Ward 4 Legislative Aide
City of Saint Paul
651-266-8641

Patricia James 1/9/2008 12:48 PM >>>

Samantha (and Tom and Jeff H.),
I've looked up the zoning history for this site, and it's quite complicated. It looks like a number of fast food restaurants tried to open up at this site in the 1970's and were turned down because they wanted access from Edmund. Then at some point the zoning administrator determined that some of these restaurants (Clark's Submarine, Burger Chef, Wendy's, Arby's, McDonald's, and Zantigo) were not fast food restaurants, and therefore they only needed site plan review (not a special use permit), and finally that the ban on access from a residential street didn't apply. This decision was appealed to the Board of Zoning Appeals in 1979 by the planning administrator. I don't see the record of the outcome in the files I found, but obviously at some point these establishments were determined to be fast food restaurants since they are all classified that way today.

confusion
as to need
for/existence
of SUP

In any event, it looks like the Taco Bell (formerly Zantigo) opened in 1979 at that site under (as far as I can tell) the determination that they weren't fast food.

I don't know when the drive-through service was added (I wasn't able to find a record of that in our old history cards). However, today's standards for drive-throughs for fast food restaurants state:

(c) Speaker box sounds from the drive-through lane shall not be plainly audible so as to unreasonably disturb the peace and quiet of abutting residential property. (Sec. 65.513)

I would assume that the existing Taco Bell would need to comply with this standard, even if the drive-through predates the regulation. Plus, as these folks found out, the City has a noise ordinance.

I'm sending this to Jeff Hawkins in DSI, since he does zoning enforcement for the City. Taco Bell should be able to take care of this noise issue on a consistent basis. The DSI enforcement folks can work with them to ensure this. Jeff can let you know about specific enforcement steps that can be taken if this continues to be a problem.

Patricia

Appendix B
(4 of 7)

DEPARTMENT OF SAFETY AND INSPECTIONS
Ricardo X. Cervantes, Director



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

Via Email: (MarkThieroff@siegelbrill.com)

April 18, 2014

Mark Thieroff
Siegel Brill PA
100 Washington Ave. S., Suite 1300
Minneapolis, MN 55401

Re: 565 N. Snelling Ave.
Taco Bell

Dear Mr. Thieroff:

In response to your recent letter regarding Taco Bell at the referenced site, this property is located in a T2 traditional zoning district. A fast food restaurant with drive-through service is a use allowed in a T2 district; a conditional use permit is required for a new fast food restaurant with drive-through service.

The use of this property as a fast food restaurant was established in 1973 as a permitted use in a commercial zoning district; no conditional use permit was required at the time. When the new zoning code was adopted in 1975, the property was rezoned to B3, which allowed a fast food restaurant but required a conditional use permit for a new fast food restaurant. As part of the Central Corridor and Traditional Neighborhood Zoning Study, this property was rezoned from a B3 to a T2 zoning district in 2011. The Taco Bell fast food restaurant is a use permitted in a T2 district although a conditional use permit was never obtained because one was not required at the time the use was established. It is not a nonconforming use and therefore, it is not subject to Sec. 62.106.

Sec. 61.503 specifically states the circumstances under which a new conditional use permit is required for those uses that required a conditional use permit. Changing the hours of operation for Taco Bell's drive-through service is not a circumstance listed that requires a new conditional use permit. The city has no authority to require Taco Bell to be reviewed by the Planning Commission neither for a conditional use permit nor for a nonconforming use permit.

Sincerely,


Wendy Lane
Zoning Administrator
651-266-9081

c: Councilmember Russ Stark

4. In a letter dated March 31, 2014, an attorney representing Kristine and Mark Vesley, neighbor's to the subject property and the appellant's here, alleged that Taco Bell was a "nonconforming use" and that by extending its drive-through hours (opening at 7 a.m. rather than 10:00 a.m.) the earlier opening hours constitute an illegal expansion of the subject restaurant's nonconforming use status. See, Exhibit No. 2. The Vesleys contend that the expanded drive-through service hours requires planning commission approval under Sec. 62.106.(d).

5. In response, the Zoning Administrator issued a letter dated April 18, 2014, stating that the use of the property as a restaurant with drive-through service was a conforming use and not a nonconforming use. See, Exhibit No. 3. The Zoning Administrator noted that in the T2 zoning district, a restaurant with drive-through service is a permitted use. The letter further noted that if a new drive-through service is proposed, a conditional use permit would be required for the drive-through.

6. Leg. Code § 61.503 lists the circumstances under which a new conditional use permit is required. Changing the hours of operation is not one of the circumstances listed. It must be noted that at the time the letter from the Zoning Administrator was written, the conditional use permit for the subject property had not been found. Upon further research, the 1973 conditional use permit was located and has been provided to the appellants.

7. The appellants disagreed with the Zoning Administrator's April 18, 2014 determination regarding the use status of the subject fast food restaurant and on April 28, 2014, filed an appeal of the Zoning Administrator's decision claiming that the Administrator is in error and that the subject fast food restaurant is in fact a nonconforming use under the T2 zoning classification and that expanding the hours of operation of the drive-through service requires planning commission approval. See, Exhibit No. 4.

8. Based upon the foregoing staff recommends that the Board finds that there was no error in the Zoning Administrator's decision. The original fast food restaurant use was a permitted use with a conditional use permit. All subsequent fast food restaurants have operated subject to the original conditional use permit. The subsequent addition of the drive-through service was in all likelihood done after the property was rezoned to B3 but required no additional zoning permitting because the drive-through service complied with the standards and conditions for fast-food drive-through windows in a B3 zoning district. Therefore, the drive-through service was a permitted use subject to a conditional use permit and the property held conditional use permit. Thus, the property was a conforming use. The 2011 amendments to the zoning code which changed the zoning classification of the subject property did not change the underlying classification of the use: the fast-food restaurant with a drive-through window remains as a conforming use and is not subject to the review required for the expansion of a nonconforming use.

CUP
had
not
been
deemed
needed
until
found
=
chaos
and
shaky
ground

Exhibit No. 1

14-289691

ST. PAUL ZONING BOARD

A special use permit was approved for the facility as indicated below. Along with respective copies of this form containing the information presented below, copies of the final plan were delivered to the Division of Housing and Building Code Enforcement, to the Division of Operations of the Department of Public Works and to the applicant.

Date : November 21, 1973

Zoning File number: 7545

Applicant's name : Construction 70

address: 1430 W. County Road C 55111

Purpose : Fast Food Restaurant

Location : Southwest corner of Edmund and Franklin

Legal description : Lots 1-4, Block 2, R. W. Thompson's Addition; Lots 1-4, Block 1, Stierle, McConville & Seeger's Highway Addition.

Plans approved : 11/12/73

Final plans dated : 09/11/73
received :

Comments :

SPECIAL USE PERMIT APPROVAL

56

Exhibit No. 1

19-28964

Appendix B
(7 of 7)

MINUTES OF THE PUBLIC HEARING BEFORE THE BOARD OF ZONING ON THURSDAY, SEPTEMBER 6, 1973, AT 2:00 P.M.

PRESENT: Messrs. Norton and Cochrane; Messrs. Hillits, Maddox and Rupp of the Board; Mr. Rosetter and Mrs. Barriault of the Planning Department Staff.

CONSTRUCTION 70 (7545): An application for a permit for a fast food restaurant on property located on the southwest corner of Edmund and Snelling.

Mr. Rosetter read the staff report for this matter. He explained the changes that had to be made to the plan to meet design standards and explained why they had to be made. He said he also requested a 4-foot high screen fence on the alley line because of the residential area behind it. The Traffic Engineer also wanted some traffic control devices installed if the driveways remain the way they are.

Mr. Gordon Weber, representing Zapata, briefly explained the operation and said this would be an improvement over the car wash that was in there.

Mr. Hillits asked if the car wash will be removed.

Mr. Weber said the building will stay but the pumps will come down.

Mr. Rupp asked about the hours.

HOURS Mr. Weber said they would be 11 in the morning to 11 at night during the week and 11 to 1 or 2 a.m. on weekends, depending on the business they get.

Mr. Merrill Robinson, representing Hamline Community Association, said they have a policy of opposition to fast food restaurants going in the area.

Mr. Maddox asked if a higher redwood weave fence would be better.

Mr. Robinson said if this did go in, he would like to see a 6-foot fence or shrubbery.

Mr. Weber said he could see no problem with this. He said they usually place shrubbery behind the fence.

Mrs. Norton wondered how high the house behind it was, how much a 6-foot fence would hide the business.

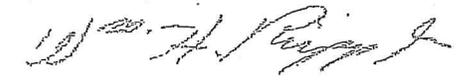
Mr. Weber said they would plant trees in there now and eventually they would buffer the area better than a fence.

Mrs. Cochran moved they recommend approval of the permit subject to the recommendations of the staff. She said she shared the feelings of Mr. Robinson, but they do want to meet all the requirements. The motion was seconded by Mr. Maddox. The motion carried unanimously.

Submitted by:


Paul L. Rosetter

Approved by:

 58
William H. Rupp, Jr.

**Saint Paul Police Department
Address/Intersection Report**

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
15144205	07/09/2015 13:33:00	565		DRUGS-NARCOTICS	GOA
15139080	07/03/2015 17:19:42	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15138661	07/03/2015 02:19:31	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
15138564	07/02/2015 23:46:58	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15138333	07/02/2015 19:53:08	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15135352	06/29/2015 15:24:09	565		DRUGS-NARCOTICS	ADV
15134116	06/27/2015 23:03:41	565		INVESTIGATE-AND ALL OTHER	Unfou
15133342	06/27/2015 02:31:58	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15130527	06/24/2015 00:50:08	565		DISTURBANCE-DISTURBANCE CALLS	Unfou
15130127	06/23/2015 16:21:28	565		DISTURBANCE-DISTURBANCE CALLS	GOA
15129724	06/23/2015 06:46:01	565		DISTURBANCE-DISTURBANCE CALLS	GOA
15126802	06/19/2015 15:37:31	565		INVESTIGATE -JUVENILE	GOA
15125178	06/17/2015 19:23:32	565		MISSING PERSONS	ADV
15123521	06/15/2015 19:21:50	565		DISTURBANCE-FIGHTS	GOA
15122366	06/14/2015 02:40:11	565		INVESTIGATE -JUVENILE	GOA
15122166	06/13/2015 22:05:00	565		AGG ASSAULT-W/KNIFE,CUTTING INSTRUMENT,ETC	RR
15121435	06/12/2015 22:48:46	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15121024	06/12/2015 13:29:13	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15120231	06/11/2015 12:54:49	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
15119849	06/10/2015 21:53:54	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15118905	06/09/2015 22:59:59	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15118642	06/09/2015 16:57:22	565		INVESTIGATE -JUVENILE	GOA
15118370	06/09/2015 11:26:05	565		POLICE VISIT-PROACTIVE POLICE VISIT	ADV
15112995	06/02/2015 22:30:39	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
15112769	06/02/2015 17:51:28	565		POLICE VISIT-PROACTIVE POLICE VISIT	ADV
15111277	05/31/2015 21:10:41	565		DISTURBANCE-FIGHTS	GOA
15110777	05/31/2015 03:27:30	565		OTHER ASSAULTS	GOA
15101687	05/19/2015 16:09:06	565		INVESTIGATE -JUVENILE	ADV
15099768	05/17/2015 03:48:47	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV

Saint Paul Police Department Address/Intersection Report

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
15088573	05/03/2015 00:25:55	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15084085	04/27/2015 14:57:23	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
15082771	04/25/2015 16:47:25	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15077892	04/18/2015 21:44:27	565		DISTURBANCE-FIGHTS	CAN
15076578	04/17/2015 09:50:49	565		INVESTIGATE-AND ALL OTHER	ADV
15075581	04/16/2015 00:58:09	565		DISTURBANCE-DISTURBANCE CALLS	CAN
15066465	04/03/2015 03:14:47	565		DISTURBANCE-DISTURBANCE CALLS	GOA
15060057	03/24/2015 23:21:22	565		DRUNKENNESS	ADV
15059220	03/23/2015 22:45:40	565		INVESTIGATE -JUVENILE	ADV
15059100	03/23/2015 19:13:20	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
15057088	03/20/2015 20:56:53	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15049039	03/10/2015 15:42:01	565		PREVIOUS CN	PCN
15043772	03/03/2015 10:26:00	565		TRAFFIC ACCIDENT-PERSONAL INJURY	RR
15041765	02/28/2015 12:53:51	565		911 HANGUP	GOA
15037493	02/22/2015 13:38:29	565		TRAFFIC ACCIDENT-PROPERTY DAMAGE ACCIDENT	ADV
15034489	02/18/2015 05:17:24	565		ASS-ASSIST FIRE/AMBULANCE	ADV
15010179	01/16/2015 00:00:00	565		WEAPONS-POSS FIREARM BY FELON	RR
15003363	01/06/2015 01:07:46	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15003303	01/05/2015 22:56:15	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15000796	01/02/2015 05:17:37	565		DISTURBANCE-DISTURBANCE CALLS	CAN
15000770	01/02/2015 03:04:47	565		TRAFFIC VIOLATION-OTHER PARKING VIOLATIONS	ADV
14276799	12/24/2014 16:51:00	565		WARRANT-OOC WARRANT SERVED	RR
14266158	12/09/2014 16:09:21	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	CAN
14264468	12/07/2014 02:08:07	565		INVESTIGATE-CIVIL PROBLEM	ADV
14249158	11/15/2014 16:19:01	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
14246941	11/12/2014 16:36:39	565		DISTURBANCE-FIGHTS	GOA
14244951	11/09/2014 15:30:32	565		INVESTIGATE -JUVENILE	GOA
14240478	11/03/2014 19:58:52	565		INVESTIGATE -JUVENILE	ADV
14226106	10/17/2014 02:10:35	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14210909	09/28/2014 02:28:25	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA

Saint Paul Police Department Address/Intersection Report

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
14209649	09/26/2014 21:30:06	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14209606	09/26/2014 20:56:35	565		DISTURBANCE-DISTURBANCE CALLS	CAN
14207624	09/24/2014 17:14:42	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14198134	09/13/2014 20:43:07	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14195673	09/11/2014 00:51:58	565		DRUNKENNESS	CAN
14192296	09/06/2014 21:19:33	565		CHECK WELFARE	ADV
14192053	09/06/2014 17:01:39	565		DISTURBANCE-DISTURBANCE CALLS	CAN
14191639	09/06/2014 02:42:19	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
14188599	09/02/2014 19:01:48	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
14186320	08/31/2014 01:48:16	565		FAMILY/CHILDREN-MENTAL/VULNERABLE ADULT	ADV
14183973	08/28/2014 14:27:13	565		DWI-COMBINATION OF ALCOHOL AND DRUGS	GOA
14168782	08/11/2014 03:18:50	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
14167062	08/09/2014 01:55:02	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14166065	08/08/2014 01:11:16	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
14161547	08/02/2014 22:00:32	565		ASS-ASSIST FIRE/AMBULANCE	SNR
14156604	07/28/2014 02:14:00	565		INVESTIGATE-AND ALL OTHER	RR
14155512	07/26/2014 18:14:42	565		ASS-ASSIST FIRE/AMBULANCE	DTX
14143763	07/13/2014 03:11:58	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14135884	07/04/2014 02:31:11	565		911 HANGUP	GOA
14126040	06/22/2014 13:30:30	565		PREVIOUS CN	PCN
14121939	06/17/2014 19:53:47	565		FAMILY/CHILDREN-MENTAL/VULNERABLE ADULT	GOA
14117976	06/13/2014 04:16:09	565		DISTURBANCE-DISTURBANCE CALLS	Unfou
14116004	06/10/2014 19:24:30	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
14115399	06/10/2014 04:41:43	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14115396	06/10/2014 04:22:00	565		INVESTIGATE-AND ALL OTHER	RR
14115392	06/10/2014 04:07:17	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14113917	06/08/2014 07:56:56	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14111058	06/04/2014 22:26:53	565		FAMILY/CHILDREN-MENTAL/VULNERABLE ADULT	SNR
14110282	06/04/2014 00:33:00	565		INVESTIGATE-AND ALL OTHER	RR
14109948	06/03/2014 17:10:18	565		DRUGS-NARCOTICS	GOA
14109487	06/03/2014 05:08:54	565		POLICE VISIT-PROACTIVE POLICE VISIT	GOA

**Saint Paul Police Department
Address/Intersection Report**

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
14109482	06/03/2014 04:26:28	565		DISTURBANCE-DISTURBANCE CALLS	SNR
14108693	06/02/2014 04:50:35	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14107045	05/31/2014 02:09:53	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	CAN
14106597	05/30/2014 17:17:28	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
14106088	05/30/2014 04:15:45	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14104038	05/27/2014 23:36:53	565		DISTURBANCE-FIGHTS	GOA
14097846	05/20/2014 14:37:25	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
14097072	05/19/2014 12:36:57	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14092033	05/13/2014 00:50:00	565		INVESTIGATE-AND ALL OTHER	RR
14086597	05/05/2014 19:21:43	565		DISTURBANCE-FIGHTS	CAN
14085509	05/04/2014 03:14:44	565		DISTURBANCE-DISTURBANCE CALLS	Unfou
14083601	05/02/2014 03:10:20	565		INVESTIGATE-AND ALL OTHER	ADV
14081698	04/29/2014 13:59:36	565		PREVIOUS CN	PCN
14080306	04/27/2014 04:14:14	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14076886	04/22/2014 17:34:15	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14075862	04/21/2014 09:54:53	565		POLICE VISIT-PROACTIVE POLICE VISIT	ADV
14075135	04/20/2014 03:17:18	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14075085	04/20/2014 01:11:59	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14074807	04/19/2014 18:14:21	565		TRAFFIC ACCIDENT-PROPERTY DAMAGE,HIT & RUN	ADV
14074327	04/18/2014 23:09:08	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
14069587	04/12/2014 18:35:03	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	CAN
14068717	04/11/2014 18:25:26	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14066304	04/08/2014 15:08:34	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14059588	03/30/2014 01:34:48	565		DISTURBANCE-DISTURBANCE CALLS	Unfou
14059345	03/29/2014 20:04:46	565		ASS-ASSIST FIRE/AMBULANCE	ADV
14054603	03/23/2014 01:57:22	565		DWI-COMBINATION OF ALCOHOL AND DRUGS	GOA
14051752	03/19/2014 12:57:04	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
14051212	03/18/2014 15:38:32	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	CAN
14050031	03/17/2014 00:16:22	565		INVESTIGATE-CIVIL PROBLEM	ADV
14046893	03/12/2014 13:29:35	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV

Saint Paul Police Department Address/Intersection Report

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
14044767	03/09/2014 04:37:37	565		DRUNKENNESS	ADV
14044110	03/08/2014 06:40:00	565		ALARMS	RR
14039996	03/02/2014 01:29:06	565		911 HANGUP	ADV
14039390	03/01/2014 01:43:33	565		DWI-COMBINATION OF ALCOHOL AND DRUGS GOA	
14035380	02/23/2014 00:16:40	565		TRAFFIC-STOP/ADVISE	ADV
14030686	02/16/2014 00:47:43	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14025131	02/07/2014 22:17:50	565		DRUNKENNESS	ADV
14021766	02/03/2014 05:49:00	565		ALARMS	RR
14009695	01/16/2014 02:43:57	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	ADV
14009237	01/15/2014 13:57:25	565		OTHER ASSAULTS	GOA
14004509	01/08/2014 15:53:00	565		ALARMS	RR
13266069	12/14/2013 22:30:28	565		DRUNKENNESS	DTX
13261818	12/09/2013 01:13:45	565		DISTURBANCE-DISTURBANCE CALLS	ADV
13244722	11/13/2013 22:38:16	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
13240364	11/07/2013 15:21:05	565		TRAFFIC VIOLATION-OTHER PARKING VIOLATIONS	CAN
13237233	11/03/2013 02:07:09	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
13226909	10/20/2013 04:31:52	565		DISTURBANCE-DISTURBANCE CALLS	Unfou
13220430	10/11/2013 13:43:35	565		PREVIOUS CN	PCN
13220300	10/11/2013 10:40:00	565		ROBBERY-MISC.,STRONG ARM	RR
13214054	10/03/2013 00:55:26	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	ADV
13196612	09/11/2013 15:55:16	565		FRAUD	ADV
13142299	07/09/2013 23:49:37	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
13138991	07/05/2013 22:02:24	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
13136824	06/30/2013 23:30:00	565		THEFT-ALL OTHER,UNDER \$500	RR
13128830	06/24/2013 03:13:00	565		DISTURBANCE-DISTURBANCE CALLS	ADV
13125160	06/19/2013 19:17:15	565		DRUNKENNESS	ADV
13125151	06/19/2013 19:08:29	565		DISTURBANCE-FIGHTS	SNR
13106378	05/28/2013 17:47:02	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
13086887	05/03/2013 20:48:32	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
13083451	04/29/2013 03:12:35	565		DWI-COMBINATION OF ALCOHOL AND DRUGS GOA	

Appendix C
(6 of 6)

Saint Paul Police Department Address/Intersection Report

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
13049874	03/13/2013 19:42:17	565		FAMILY/CHILDREN-MENTAL/VULNERABLE ADULT	ADV
13043884	03/05/2013 02:40:55	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
13035786	02/21/2013 16:24:13	565		DRUNKENNESS	DTX
13029989	02/13/2013 13:20:57	565		CHECK WELFARE	ADV
13003412	01/05/2013 23:47:31	565		DISTURBANCE-DISTURBANCE CALLS	ADV
12303250	12/28/2012 18:50:03	565		DRUNKENNESS	DTX
12285844	12/05/2012 15:27:56	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
12284546	12/03/2012 23:19:21	565		DWI-COMBINATION OF ALCOHOL AND DRUGS	GOA
12256823	10/28/2012 18:13:42	565		THEFT EXCEPT AUTO THEFT	CAN
12256822	10/28/2012 18:11:00	565		ROBBERY-HIGHWAY,STRONG ARM	RR
12248855	10/18/2012 14:07:28	565		DISTURBANCE-DISTURBANCE CALLS	ADV
12231982	09/28/2012 15:12:51	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	ADV
12188406	08/08/2012 17:53:10	565		POLICE VISIT-PROACTIVE POLICE VISIT	ADV
12177224	07/26/2012 20:06:00	565		WARRANT ARREST-WHERE NO CN IS REF ON RR WARRANT	
12164826	07/12/2012 17:09:55	565		DRUGS-NARCOTICS	GOA

Monday, July 13, 2015

Hello, Jake —

Please forward this email message to the members of the St. Paul Zoning Committee as Appendix D of our testimony regarding file number 15-134559 (Border Foods/Taco Bell at 565 N. Snelling Avenue): Videos of related noise and nuisance taken from our property.

Let us know if there are problems with the format that need to be fixed.

Thank you,
Kristine and Mark Vesley

To the Zoning Committee:

We have thus far submitted written testimony that was to be included in the hard copy of the application/staff report packet for file number 15-134559. Because we want to make sure all Zoning Committee members have a chance to see and hear the nature of much of the nuisance activity at Taco Bell at 565 N. Snelling Avenue, we also wish to submit live links to relevant videos that we have posted on-line.

Below are 38 videos of the Taco Bell parking lot and grounds taken mostly from the two upper-story windows on the east side of our house, directly facing Taco Bell. Most were taken in 2013 and 2014 (at the suggestion of a friend; it had not occurred to us to document in this way before), and there are many more where these came from. As you can see, the alley that separates our property is just the standard 12-plus feet wide. We seldom are able to enjoy the use of our yard because of the constant noise from Taco Bell's intensive use of its site. We also are often unable to enjoy quiet inside our

house that we believe should be expected in a residentially zoned neighborhood. [As our property is on a hill, or rise, above both the alley and Taco Bell, we look directly down into Taco Bell's parking lot even from the first floor of our house. Therefore, the 6-foot fence and shrubbery proposed are inadequate as a buffer, as you will be able to see. Even the jungle of so-called junk trees that we have allowed to grow on our property between our fence and the alley screens only partially, and we have plans to clear that area and re-plant it as a productive mini alley orchard for urban fruit foraging.]

The videos show various sources of nuisance by category: the ordering kiosk speaker box; loud car engines; loud car radios; loud customer voices; car horns; urinating customers (usually when the building is closed and only the drive-through lane is open); leaf blowers (which come for maintenance in all seasons); garbage take-out and pick-up; and delivery truck unloading and generator noise.

While viewing and listening to some of these videos, please bear in mind that Border Foods has known about the sources of noise and nuisance (criminal conduct sometimes overlaps) for many years and chosen not to eliminate or reduce them voluntarily, and of course it is difficult to "control" the source of bad customer behavior in a parking lot and drive-through lane when employees are inside.

Attempts to seek enforcement by the Department of Safety and Inspections and the Police Department have been difficult and frustrating. We believe that promises of improvement in a rebuilt Taco Bell site cannot be trusted and that relying on City departments for the enforcement of regularly occurring, built-into-the-business-operation violations of City code is impractical.

We believe the noise we currently experience goes far beyond, in volume and number of hours per day, what residential property owners in a mixed-use area of a city should have to accept. We use the term "mixed use" loosely, knowing there is officially no such designation here. Overall, the City's zoning code recognizes a need to balance the rights and interests of businesses with those of adjacent residential properties. The Taco Bell at 565 N. Snelling does not currently meet the standards set by zoning code to achieve that balance. The site plans in the application for a rebuilt Taco Bell

also do not meet those standards. Not only is the drive-through lane as proposed longer to accommodate more loud and idling cars than does the current one; it is closer to our property and thus further from complying with 65.513(a). The garbage area remains in the same location at the back of Taco Bell's lot where it will offend no one on Snelling or Edmund Avenues; instead it sits right behind our driveway and the southeastern corner of our yard, where we have a shade garden planted and bench installed.

As we will state whenever we get the chance, we believe that significantly reduced hours of operation, and no hours of drive-through operation with the building closed, would mitigate the modification for 65.513(a)—that is, closing both restaurant and drive-through no later than midnight Sunday through Thursday and 1:00am Friday and Saturday. We also will request a condition on garbage-related activity, including both garbage take-out by employees and hauling by vendor (see videos #34 through #36; we have not called attention to this category of noise elsewhere).

Thank you for attending to portions of our multimedia testimony.

Please note that we only own a point-and-shoot digital camera and that no audio is amplified; what you hear is what the camera's one setting has picked up. In a few cases it is obvious I am zooming in and out, but most of the time the distance is "natural." Most but not all of these videos are short, around one minute long. Some of these videos may offend. Sorry, but they offend us, too. Humor is also present in some. I regret some of my voiceover narration, but hearing my voice directly behind the camera does serve to provide a basis for comparing the noise from Taco Bell at points 25, 40, and 60 feet away.

Sincerely,
Kristine (and Mark) Vesley
1598 Edmund Avenue
St. Paul, MN 55104
651.645.2606

SPEAKER BOX NOISE

1. Video documenting unacceptable volume of speaker box

<https://www.youtube.com/watch?v=fvpquqwBit4>

2. Video of loud male worker violating the standard of a “not plainly audible” speaker box

<https://www.youtube.com/watch?v=LvLlzfFvQ34>

3. Video of even louder use of speaker box

<https://www.youtube.com/watch?v=bNGCMOluurM>

4. Video of loud female worker

<https://www.youtube.com/watch?v=7XhhBui44Aw>

5. Video 2 of loud female worker

<https://www.youtube.com/watch?v=3T3rZmJzmAo>

6. Video of loudest female worker

<https://www.youtube.com/watch?v=LM8C98mmJhg>

7. Video of daytime loudness

<https://www.youtube.com/watch?v=LeiEal27GA0>

8. Video of worker telling me via phone that frontline employees may not control volume of speaker box

<https://www.youtube.com/watch?v=THygPyydoLc>

BOOM CAR AND VEHICLE NOISE

9. Video of obnoxious boom car

<https://www.youtube.com/watch?v=TX9Q42Qa9r0>

10. Video of really offensive boom car

<https://www.youtube.com/watch?v=g9vFA-zktsY>

11. Video of typical boom car

<https://www.youtube.com/watch?v=XGpB5H24W8g>

12. Video of loud car stereo

<https://www.youtube.com/watch?v=zHGj7vTb2Qo>

13. Video of honking and revving

<https://www.youtube.com/watch?v=zgNe2w2c460>

14. Video of customer honking late at night when service slows and staff are fewer

<https://www.youtube.com/watch?v=qsnbPK4aQ1Q>

15. Video of a throb car

<https://www.youtube.com/watch?v=UPRBqENits4>

16. Video of a daytime boom car

<https://www.youtube.com/watch?v=WM6QxaDZ3NQ>

17. Video showing typical number of cars in late-night drive-through lane

<https://www.youtube.com/watch?v=X4RlZ-ns8Aw>

18. Video of Taco Bell customer's truck parked in front of house/leaving

<https://www.youtube.com/watch?v=VvHSQfsAddw>

PUBLIC URINATION IN ABSENCE OF TOILETS

19. Video of swearing urinator

<https://www.youtube.com/watch?v=MDD2MI1bxfl>

20. Video of mouthing-off urinator

<https://www.youtube.com/watch?v=7QjkuIDsjBM>

21. Video of woman yelling "I gotta pee" when restaurant/restrooms are closed

<https://www.youtube.com/watch?v=z06fiUTDiHs>

22. Video of nice man peeing right under our bedroom window in the middle of the night and admitting his girlfriend had also done it

<https://www.youtube.com/watch?v=UqoLOtmFzI0>

CUSTOMER VOICES/YELLING

23. Video of loud drive-through customers

<https://www.youtube.com/watch?v=GfLICNYcGa4>

24. Video of couple yelling/fighting in parking lot

<https://www.youtube.com/watch?v=khBjm5gwX4I>

25. Video of couple fight escalating

https://www.youtube.com/watch?v=dlb4NQLg_Zo

26. Video of customer yelling her order at kiosk

https://www.youtube.com/channel/UCsFhSlq6kVATlwC_aT3OsVg

27. Video of street party by Taco Bell

<https://www.youtube.com/watch?v=ovAGNGLoPpc>

28. Video of yelling teens

<https://www.youtube.com/watch?v=4QNL1S037I4>

29. Video of the general loud scene, very typical

https://www.youtube.com/watch?v=f_jdTwSEf6U

30. Video of partying St. Thomas boys

<https://www.youtube.com/watch?v=K2IAGcKMZ-U>

BUSINESS OPERATION NOISE

31. Video of early morning supplies delivery truck dolly clang

<https://www.youtube.com/watch?v=CygD2Wd5njE>

32. Video of amazingly loud delivery truck departure

<https://www.youtube.com/watch?v=7hTFT44GR-M>

33. Video of Easter morning early delivery

https://www.youtube.com/watch?v=0P_mqPHV0Q

34. Video of (illegal) 4:00am garbage pickup

<https://www.youtube.com/watch?v=L4VtSwzpz8L4>

35. Video of worker dragging garbage can over gravelly lot

<https://www.youtube.com/watch?v=llh3uAl4N2s>

36. Video of even louder trash take-out

<https://www.youtube.com/watch?v=NhTeZwyM5qA>

37. Video of Taco Bell leaf blowers (usually 3 or 4 at a time)

<https://www.youtube.com/watch?v=hvQ4BYdbng4>

MISC.

38. Video of possible drug deal in Taco Bell parking lot

<https://www.youtube.com/watch?v=bVh7iiHCNjM>