

ST. PAUL CITY HALL CONTINUES TO HIDE BEHIND “QUASI JUDICIAL AUTHORITY”

By Andy Rorvig, Jack Hoeschler and Don Gemberling

The St. Paul City Council has two main roles. The first is legislative, and involves creating laws and ordinances that seek to benefit the health, safety and viability of citizens. The second is “quasi-judicial,” and requires the council to apply laws to make decisions whether to allow a project to be built in the city. The City Council should exercise its quasi-judicial authority in a manner that benefits citizens by engaging the public and working to find mutually beneficial solutions, but that’s not happening as of late.

Take for example what happened recently to council member Jane Prince. Before the City Council on June 5 was a decision on whether to accept the St. Paul Historic Preservation Commission’s recommendation that St. Andrew’s Church receive local historic designation status and not be demolished to make way for the expansion of Twin Cities German Immersion School. Prior to this vote, Prince took it upon herself to visit the church and try to better understand the situation. While at the site, she had a brief conversation with a former parish priest about what this church meant to the community. Because of that, she was told by the City Attorney to recuse herself from the vote on June 5, which she did. The final vote was 5-0 to deny historic designation. The church has subsequently been demolished.

Why was council member Prince silenced? Is there a legal principle at play here we should be aware of?

The short answer is no, there is no ordinance or statute that forbids ex parte contacts (i.e., communication with developers and neighbors outside the presence of both parties). Instead, as the city of St. Paul’s own Conflicts of Interest & Government Ethics document confirms, the principle of due process should govern. Due process is a fairness principle. It isn’t a blindfold or a muzzle. It stands to afford each side a fair shake from the City Council based on the same set of agreed-upon facts. It means no council member should make up his or her mind before considering the arguments of both sides.

Listening and observing is not the same as taking sides. There was no evidence that council member Prince did anything but try to learn—something for which she should be commended. And there’s no reason she couldn’t share with the entire council and both sides of the argument what she saw and learned during her brief visit.

Nothing should prohibit a council member from trying to mediate. In fact, that’s what we should all want and expect. Anyone familiar with the legal system knows that judges, who have actual judicial authority, routinely get involved with the warring parties to try and reach amicable solutions. Mediation is the type of leadership we expect from our leaders. We want more out of our elected officials than picking winners and losers.

Another example of the failure of process was the fight over the expansion of Linwood-Monroe Arts Plus (now Global Arts Plus) School in Summit Hill in 2016-17. That, too, created an

unnecessary divide between a school and the surrounding neighborhood. It was a fight that was eventually decided by the City Council on a 7-0 vote to allow the expansion to move forward and destroy what was viewed by many as a neighborhood park. That fight, too, unnecessarily pitted good people against each other. No City Council member took the initiative to mediate and to at least seek middle ground due to what appears to be an unrealistic fear of violating the misapplied doctrine of quasi-judicial authority.

Good process means that next time there is a development project or a teardown that is not universally accepted by a community, every City Council member, regardless of ward, should be expected to educate themselves, listen and keep an open mind, striving to understand each side of the discussion. Show leadership where leadership is needed and seek amicable solutions. Bring people together instead of dividing and leaving lasting scars.

The process that led to the June 5 vote that denied St. Andrew's historic preservation was flawed. It failed to include the voice of council member Prince, who based on past votes likely would have argued for the preservation of St. Andrew's. St. Paul's success requires a process that includes all voices, even those not in the majority. How else can city government truly represent all voices? We can do better than this.

The writers are attorneys and members of St. Paul STRONG, a nonpartisan organization dedicated to open and representative government in St. Paul.