

Nikki Dykes

From: Jim Olenbush [REDACTED]
Sent: Thursday, September 29, 2022 2:20 PM
To: Development Services
Subject: Western Hills Athletic Club

Re: the special exception to rebuild and extend the courts

Improvements to Western Hills are improvements to Rollingwood. I am in favor of the plan to rebuild and extend the tennis and pickleball courts.

Sincerely,

Jim Olenbush

Nikki Dykes

From: Burns, Roy [REDACTED]
Sent: Thursday, October 6, 2022 9:40 AM
To: Development Services
Cc: Emily Burns
Subject: Western Hills Athletic Club - we support

Hi, Nikki, thank you for your letter notifying us of this project. My wife and I are owners of 300 Inwood Rd, and are writing in support of WHAC's petition to repair and expand the tennis courts at WHAC.

WHAC is a wonderful resource for the neighborhood and we believe that as a community we should support WHAC's ability to offer high-quality recreation for its members.

Please share our support with whomever needs to know in order to make this important and positive decision.

We are available to discuss if helpful

My best,
Roy

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Nikki Dykes

From: Mary Elizabeth Cofer [REDACTED]
Sent: Thursday, October 6, 2022 10:54 AM
To: Development Services
Subject: Tennis court expansion

Thank you for the opportunity to respond regarding the expansion of the Western Hills Athletic Club tennis courts. After much consideration, I am not in favor of this expansion for the following reasons:

1. Drainage continues to be a problem for Rollingwood and we do not need to add to this issue.
2. Given the increasing temperatures we are experiencing in Texas, we need to protect all the trees we can and not cut them down.
3. We do not need to add more impervious cover to Rollingwood for the above reasons.
4. If we were to increase the size of the tennis courts, we would also need to add parking and parking is a problem at our park and this area already. It is not fair to the neighborhood, nor is it safe, to compound this problem.

With all due respect,

--

Mary Elizabeth Cofer
3306 Gent

Nikki Dykes

From: Bobby McQuiston [REDACTED]
Sent: Tuesday, October 25, 2022 9:46 AM
To: Development Services
Cc: Bobby McQuiston
Subject: Opposed to Special Exception (107-491) Western Hills Athletic Club

Greetings members of the Board of Adjustment,

Thank you for your service to the citizens of Rollingwood and our community.

My wife and I are not going to be able to attend the public hearing on October 26th, so we are presenting our position in this email.

We built our home on Rock Way in 1976 and have been members of the Western Hills Athletic Club (WHAC) since 1974 (joined when we purchased the property before building the home). We remain members, 48 years and counting. Our children grew up using the pool, the ball fields and the two tennis courts. I was an avid tennis player for over 30 years, playing three times per week. I did not often find both courts taken when I wanted to play, but when such rare occasions did occur, I found alternate courts readily available, either at the Hill Country Middle School or at the Westlake High School, each in close proximity.

Having reviewed the plans for the Special Exception proposed by WHAC and recently walked the property to give us a visual sighting, my wife and I are adamantly opposed to the requested expansion for tennis and pickleball courts. The loss of so many beautiful, I would say, "Legacy" trees, is totally unacceptable. Expansion of the courts and loss and destruction of those trees would forever alter the beauty of the current setting. As I mentioned, multiple alternative courts exist in the event neither of the two current courts is available, and those alternative courts are only 5-10 minutes away, not a big burden upon those wanting to use the courts.

Please hear our voices against this unnecessary and destructive plan.

Thank you.

Bobby and Margaret McQuiston

Desiree Adair

From: Brook Brown [REDACTED]
Sent: Tuesday, October 25, 2022 1:33 PM
To: Desiree Adair
Subject: WHAC appeal to the Board of Adjustment

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Desiree,

Could you send the comments below to the Members of the Board of Adjustment and copy the applicant, in connection with the WHAC appeal to the Board of Adjustment to be heard tomorrow evening? If its appropriate to post with the BOA agenda packet, I have no objection to such a posting.

Also, I would like to note that I am filing these comments not as a member of the City Council, but as a concerned resident within 250 feet of this project.

Thank you for all you do for our City,
Brook

Dear Members of the Board of Adjustment,

I offer the following concerns in your consideration of the application filed by the Western Hills Athletic Club:

Concern No. 1: The requested special exception is not authorized under Rollingwood ordinances.

The Western Hills Athletic Club seeks a special exception that would permit it to demolish two non-conforming tennis courts and erect four non-conforming tennis courts in the space previously occupied by the existing two non-conforming courts and expand the use of the newly constructed courts to include pickleball as well as tennis. The ordinances of the City of Rollingwood do not permit this action.

Texas Local Government Code Section 211.009(a)(2) authorizes a Board of Adjustment to grant a special exception to the terms of a zoning ordinance "when the ordinance requires the Board to do so."

See Tx. Local Govt. Sec. 211.009. AUTHORITY OF BOARD. (a) The board of adjustment may:

(1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;

(2) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;

(3) authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and

(4) hear and decide other matters authorized by an ordinance adopted under this subchapter.

Section 107-419, the opening section of Article IV of the zoning code addressing Nonconforming Structures and Uses, states plainly: "Nonconforming premises and uses are declared by this article to be incompatible with permitted uses in the zoning districts created under this article. It is further the intent of this article that nonconformities shall not be enlarged upon, expanded or extended, nor used as grounds for adding other buildings, structures or uses prohibited elsewhere in the same district." Thus, the intent of the Zoning Code could not be clearer that enlargement of nonconforming buildings is contrary to the purposes of the Code. Rollingwood's ordinances permit a special exception in limited circumstances for an enlargement or extension of a nonconforming building (Ord. 107-491(2) where less than 50% of a structure is demolished but not where fifty percent or more of the square footage of the building or structure is

demolished unless “otherwise required by ordinance or law”. No other ordinance requires that a special exception be granted in this circumstance. Instead, see Ord. 107-422(2), stating that “Except as otherwise required by ordinance or law, a nonconforming building or structure must be brought into conformity if (a) fifty percent of the square footage of the building or structure is demolished...” Similarly Ord. 107-422(2) and Ord. 107-422(4)-(5) provide authority for a special exception but only where the repair or reconstruction “will not increase the extent of the nonconformity of the building or structure”. These required conditions are not met by the proposed application, in that more than 50% of the existing structure will be demolished, and the two added tennis courts will necessarily increase (double) the extent of the nonconformity.

Because no city ordinance authorizes the BOA to grant any special exception under these conditions, and instead our ordinances prohibit such an expansion of a nonconforming building when more than 50% of the existing structure is demolished, the BOA holds no authority to grant the application. Moreover, when such an exception is not authorized by ordinance, the courts have concluded to do so is a void act. See *West Texas Water Refiners, Inc. v. S & B Beverage Co.*, 915 S.W.2d 623 (Tex. App. 1996), and subsequent case law, that if the Board were to create a special exception on grounds not permitted by ordinance, such action would constitute a legislative act and would be void as usurping the City Council’s legislative authority.

Conclusion: While the Western Hills Athletic Club may repair or replace the existing tennis courts, in their current location, to alleviate the unsafe conditions of these courts, no authority is provided to the BOA to permit it to grant a special exception authorizing the erection of four new nonconforming courts that double the extent of the existing nonconformity.

Concern No. 2: The noise created by allowing pickleball in the WHAC properties would constitute a nuisance, would violate Rollingwood’s noise ordinance, and precludes a finding that the application will not adversely impact the public health, convenience safety and general welfare of the community.

Article III of the Rollingwood Ordinances, Sections 18-52-55 regulate permissible noise within the city boundaries. Under this ordinance, any noise disturbance as defined in the ordinance to include “any sound which...annoys or disturbs a reasonable person or normal sensitivities; or (3) endangers or injures personal or real property” is prohibited. See Sec. 18-54(a): “It is unlawful for any person to make, continue, or cause to be made or continued any noise disturbance.”

Assessments of the noise created by pickleball demonstrate that pickleball courts create nuisance levels of noise. The links below provide assessments of the level of noise at various distances from a pickleball court and its impact on homes and residents. For Rollingwood, there are many homes along Wallis, Rollingwood Drive, Hatley, Pleasant Cove, Nixon, within distances where the noise from multiple pickleball courts (accommodating up to eight games simultaneously if all four courts were striped for pickleball) would be distressful, not to mention the impact that such noise levels would have on users of the Rollingwood Park and city staff and visitors at Rollingwood City Hall.

(1) From the “Crazy Pickleball Lady”, a pickleball enthusiast website, the decibel level of pickleball is reported as follows:

“Pickleball sound levels within 100 feet of courts will usually be around 70 dBA with no sound reduction efforts applied. This is as loud as freeway traffic sound. At 200 feet, (using the 6 dB drop for doubling the distance) the level will be about 64 dBA. That’s louder than normal conversation. At 400 feet it will be about 58 dBA. It is recommended that we avoid extended periods of exposure to levels above 80 dBA. Above 90 dBA is considered dangerous according to the Occupational Safety and Health Association (OSHA) standards. Loud music fans beware! Frequent pickleball sounds are typically about 70 dBA at about 100 feet away from the strike of the ball. Residents in homes located in a quiet residential area, that are within 100 feet from pickleball courts are used to noise levels of 40 dBA, therefore the level of pickleball noise is 30 decibels louder. And, remember, each time you increase a sound level by 10 decibels, it will sound twice as loud. So, an increase of 30 decibels is (10dB+10dB+10dB) or 2x as loud x 2x as loud x 2x as loud, or 8 times as loud. That’s a significant increase in loudness.” See link at: <https://crazypickleballlady.com/2021/07/13/the-sound-of-pickleball-a-detailed-explanation-and-what-you-need-to-consider-before-building-courts/>

(2) One law firm, specializing in home owners' association law, reports:

"Considering that pickleball is played with a solid paddle and a wiffleball, it is an extraordinarily loud sport. Moreover, as it grows in popularity, it generally brings large gatherings of people together whose yells and cheers can be heard over great distances. This noise may result in a substantial nuisance to those within earshot and may subject the association to various lawsuits unless the pickleball courts are constructed far out of the earshot of the residences. Unfortunately, our office has seen many associations attempting to convert croquet lawns, bocce ball courts, etc. into pickleball courts that are centrally located to other amenities provided by the association. These are typically areas which many members regularly visit as a place of quiet enjoyment and relaxation. Unfortunately, this quiet enjoyment could be severely disrupted once the pickleball courts are installed. Even more concerning is when associations attempt to install the pickleball courts in areas immediately adjacent to residences. The owners of the surrounding homes will be routinely battered with the noise emanating from the pickleball courts. This will no doubt result in substantial frustration to those residents, may have a negative impact on their property value, and will, almost certainly, result in a nuisance lawsuit for the association. The nuisance created by this loud sport has resulted in various lawsuits and settlement agreements costing associations tens of thousands of dollars and has severely harmed many associations' financial wellbeing. This, in turn, is then passed back to the membership by way of increased assessments. As such, if the association decides to move forward with the installation of the pickleball courts, it is not a matter of if, but a question of when a lawsuit may be filed. Thus, unless the association has an area far removed from the residences and other common area amenities, it is likely not worth exposing the association to the increased risk of liability." See link: <https://hoalaw.tinnellylaw.com/pickleball-installation/>

(3) Summary of the pickleball ordinance adopted by Park City, Utah, to alleviate issues caused by noise and parking at pickleball courts:

Outdoor Pickleball Courts in residential areas:

- Require a Conditional Use Permit

- Public notice will be sent to property owners within 300 feet of the proposed site

- The Planning Commission will conduct a public hearing

- The Planning Commission may condition the approval to address site-specific impacts

- Require a minimum 600-foot setback from lot lines of adjacent residential properties for pickleball courts with no noise mitigation

- May have reduced setbacks that are no less than 150 feet from adjacent residential property lines when a property owner demonstrates the outdoor pickleball court will comply with the noise ordinance

- Property owners will be required to submit a site-specific noise study completed by a certified acoustical professional

- Property owners must demonstrate that mitigating features, including noise-mitigating barriers, will be effective

- Require Homeowner Association notification for properties that are part of a Homeowner Association registered with the City

- Are limited to hours of play from 8 AM - 8 PM

- The Planning Commission may establish more restrictive hours of operations upon findings that corroborate the appropriateness of alternative times of use

- Prohibit outdoor lighting of residential courts

- Require guest parking to be provided on-site

- Require additional landscaping for noise and visual mitigation measures

See link: <https://www.parkcity.org/departments/planning/code-amendments/pickleball>

(4) Related links:

<https://www.latimes.com/california/story/2022-03-03/pickleball-noise-fueling-neighborhood-drama>

<https://clubandresortbusiness.com/longboat-key-fla-clubs-pickleball-court-plan-raises-concerns/>

<https://clubandresortbusiness.com/pickleball-commotion-lands-kansas-club-in-court/>

<https://www.naplesnews.com/story/news/local/communities/the-banner/2022/04/15/bonita-council-new-district-map-chosen-pickleball-noise-discussed/7316629001/>
<https://bkl.ca/features/pickleball-noise/>

Concern 3: Western Hills' application does not address the added traffic and parking that multiple pickleball courts would require, and precludes a finding that the application will not adversely impact the public health, convenience safety and general welfare of the community.

With pickleball, four times the numbers of tennis players can play on each "tennis" court, and matches may be ½ the time of a tennis match, thus multiplying by a factor of four or more the number of vehicles that may be parked at the Western Hills club if pickleball is permitted on all courts. The application submitted by Western Hills does not address the added traffic and parking that may result if its application is approved.

Conclusion:

It seems that pickleball is a great sport with lots of enthusiasts, but may not be right for the small-sized, central park location of the Western Hills Club. The impact from noise and parking would likely disrupt the neighborhood, interfere with the enjoyment of the Rollingwood park, and be an unhappy fit for this community. For this reason, the finding that "the public convenience and welfare will not be substantially or permanently injured in the granting of the special exception" cannot be made, nor the finding that the "grant of the special exception will not adversely affect the public health, convenience, safety or general welfare" of the community. For these reasons also, I would urge that the application be denied. I have no objection to permitting the existing tennis courts to be repaired or replaced in their existing location.

Thank you for your service to Rollingwood and attention to this matter.

Sincerely,

Brook Brown

307 Nixon Drive