August 14, 2020

Planning and Zoning Input to the JP2 Text Amendment

Our homeowners are protected by terms and conditions of the Special Use Permit (SUP) that JP2's owner agreed to when he asked for permission to build his athletic fields next to our homes. In May, the school's owner requested a text amendment that would remove his obligations to uphold key protective SUP terms he agreed to. (The City Planning Division recommended the request and actually was the submitter of the request.) As such, our neighborhoods opposed the text amendment, to preserve our SUP legal protections. At the P&Z hearing the Commissioners told the owner he should work with the homeowners to resolve his differences and come back after he has done that.

Based on input I have received from some of the neighborhood team members, my impression is that when the "team" met with the owner, he took the position which I believe can fairly be summed up as follows:

"You have an SUP that protects you from being abused by me. I want to invalidate it with my text amendment that removes your protections from me. So, my offer is that your SUP is off the table for any discussion, but I am willing to negotiate with you on the terms of my text amendment that I wrote with highly favorable terms to me; or, alternatively, I will not talk with you at all, because I am confident I already have the votes'".

That's my interpretation from the feedback I received, and the results of the "negotiations" do seem to bear this interpretation out. Cases in point:

1. My SUP provided three different light clauses that protect me against the owner's light encroachment and nuisances from the effects of his lights. The owner's text amendment removes all of those protections. The owner refused to work with our negotiators to respect our SUP protections, so the text amendment you will vote on now will remove my protection from the owner's lights.

2. My SUP provides that no commercial parking lots or driveways will be constructed next to my property. The owner's text amendment allows parking lots and driveways to be constructed next to my property. The owner refused to work with our negotiators to respect our SUP protections, and so the text amendment you will vote on now will remove my protection from parking lots and driveways being constructed beside my back yard.

3. My SUP provides that only JP2 and St. Peters use the facility. That has a built in limiting effect on my exposure to the noise and lights, particularly on weekends and summer when school is not in session. The owner's text amendment was written to allow third party use - 7 days a week - with unreasonable hours from early morning to late evening. By writing in unreasonable hours, one can appear to be "making concessions" by cutting out a few hours. I have no doubt this will be claimed as a "concession", but in reality, you will now vote to change the limited use protection I had in the SUP to a situation that extends his usage (and our abuse) to 7 days a week, all year long. We will never get a break from kids screaming and people cheering next to our back yards. Day in and day out, all day long. Vote for this amendment if you would like this done next to your back yard.

The owner took our SUP off the table because the Planning Department inserted itself into the process as an advocate for the owner. That killed the entire negotiation process. I do not

understand why the Planning Department wanted to do this, but it effectively gave the owner all the negotiation leverage. So, we have lost all our key SUP protections as I noted above in this "negotiation". Some of our team members who were frustrated by the lack of progress finally had to send a request to the City Manager to withdraw the text amendment so we can have a fair negotiation with the owner - without him being emboldened by the Planning Department or the sense that "he has the votes" anyway. This request has the backing of 33 signatories, representing 25 households, from mostly abutting or nearby homes to the owner's complex, and one member of the neighborhood advisory board.

I've witnessed a different narrative developing from the owner's side that you will no doubt hear on Tuesday night, extolling the owner's efforts to work with the neighborhood, to resolve their issues with a one night sound and light test, and two neighborhood meetings held by the Planning Department. Thats paints a different picture, so please ask yourself, if he resolved so many of our problems, then why are 33 people signing a document that their concerns have not been met and that they do not believe that the owner has engaged in "authentic and meaningful" discussions? The Planning Department's Neighborhood meetings were essentially Q&A sessions in which our questions weren't answered satisfactorily. We've responded to many of those answers and submitted into public comments a document where the question, answer, and our response to the answer can be seen. If the objective of those sessions was to make us feel more comfortable with the text amendment, my opinion is they failed.

I can honestly say I've never been through what has felt like a more underhanded and biased process then what I have experienced with the JP2 project. Our homeowners were promised protection through an SUP to which the owner agreed in order to get sign off to build the facility, then the SUP isn't enforced, and then the Planning Department recommending you vote on new laws to kill the SUP so the owner can freely use the facility in a way that wasn't disclosed or authorized when he asked for the SUP. The right thing for the City to do is tell this owner to live up to his agreement. His "right" to these changes in his land use doesn't rise above the rights of our homeowners SUP protections. Frankly, he has no right to these changes at all. The owner was provided a solution by the BOA to co-exist with the surrounding neighborhoods and he agreed to the terms. The SUP should be maintained, in its entirety. Not only is it the ethical thing to do, it is a legal agreement, which specifically names our neighborhoods and residents as beneficiaries of the agreement, as needing the specific protections the agreement provides those residents in connection with the JP2 development. In this sense, I believe it is improper for the City to make a new law that removes those protections and exposes us to this much disruption in our lives. That is why I am asking you to end this and vote this down. The text amendment is inherently unfair to the residents who live next to this development. My opinion is it will destroy our everyday lives and our property values.

Dave Caldwell
Planter's Walk Homeowner

John Paul II Small Private School Text Amendment

There were several comments made by Rich Balot and Tom Barnett at Tuesday's meeting that I believe I need to rebut. These are comments I believe either presented an inaccurate impression of what is actually taking place, or omit important information needed to fully understand what is actually happening; or, I just simply disagree with, for what I believe are compelling reasons.

Comments by Rich Balot

About claiming that his "drone" on "sound and light night" took pictures from above that showed it was "dark" at the boundary. The use of drones, while it sounds very "high tech" and presents a dramatic view, doesn't disprove the nuisance light issues my neighbors and I have in our yards from Mr. Balot's lights. The drone pictures present a view from above to show contrast between the parts of the field receiving the beam and the edges that don't have the beam on them. They don't show a proper perspective of what is going on at our yards like the simple pictures I took with an iPhone, "horizontally", at our boundary and of my neighbor's house. My pictures show how the light really looks to me and my neighbors as we see it, standing in our yards, and viewing it coming in at us horizontally. Since Mr. Balot apparently submitted his drone pictures I need to also submit my pictures in rebuttal. **Attachment 1** shows the glare we are looking into and illumination on the house. We see this glare because the lights were placed by Mr. Balot facing our yards, so of course we see the glare, which is against the special use permit clause prohibiting such placement. The illumination can be seen on my neighbor's house from Mr. Balot's spill light crossing our boundary, violating the special use clause prohibiting any light from crossing the boundary. Both conditions are out of compliance with the special use permit clause prohibiting a nuisance situation.

About Mr. Balot's comments about the homeowner neighbors with light issues. Mr. Balot said, and I paraphrase his comments, that there was one neighbor who "he could not satisfy". That would be me, and he is right, I was not satisfied when he told me that I must "wait for my trees to grow" to block HIS light glare. What he means by "not being able to satisfy me" as I interpret it is that there is no easy or cheap fix to correct the problem he has caused for me in his lighting design, so "sound and light night" was a bust for me. The second neighbor he said he was working with are my next door neighbors, the Rabons, who have issues with the same lights as I do. Mr. Balot did visit their house on "sound and light night". After he left their house that evening, I spoke with Kim Rabon, and she was crying. She told me that Mr. Balot had told them his lights were adjusted within 'his' specification, but he would "give them some light darkening screen" for their back porch. By the way, both Mr. Balot and Mr. Barnett have both claimed this light is not a nuisance. Why would Mr. Balot need to provide light darkening screen for light that is not a nuisance? The truth is that the light on both our properties is a nuisance, and Mr. Balot has refused to properly fix the issue because the Planning Department approved his lights anyway, leaving us with a light problem on our yards.

In fact, if you take a closer look at the situation you find that Mr. Balot's lights were designed out of compliance with the Board of Adjustments standards. We obtained a copy of the school's lighting design plan from the City. It allows spill light at the boundary. But, the SUP's clause states that no part of the light cone shall cross the boundary. Why is this important? Because the text amendment for "small private schools" conveniently "fixes" Mr. Balot's out of compliance problem by allowing light across the boundary, leaving me and my neighbors with a permanent problem on our yards. So, the idea here seems to me to be that when you are a developer in Greenville, you can ignore the BOA standards, and then go to the Planning Department and receive assistance in making your own new laws to suit whatever you need, regardless of whether or not the new laws infringe on the rights of others.

Mr. Balot's comment to the effect that his lights aren't any worse on our homes than street lights, or less. There are two problems with that perspective. One is that most street lights are on the street, not in our back yards, so, normally people get to enjoy their dark back yards at night. No more for us. Second, street lights are somewhat shielded from the glare. There is nothing shielding the glare we are receiving from Mr. Balot's light. When is the last time you have seen glare from your street light as intense as the glare in Attachment 1?

Mr Balot's comment about the 300+ petitions from the surrounding neighborhoods not being significant or relevant in some way unless "people sign new petitions". What?? Why would the same people need to sign new petitions? Nothing has changed about the "latest version" of the text amendment from the first version that would cause anyone to feel differently about having the SUP cancelled out by this text amendment. There are actually no changes that have been made that are "significant concessions" on the part of Mr. Balot. The minimal hour changes that were made are not going to make anyone change their mind about signing the petition. We still have 300+ people in the surrounding neighborhoods who say they oppose this text amendment. They didn't "go away" between May and now as Mr. Balot seems to be trying to say.

Thomas Barnett

His comment about there being restrictions on use in the text amendment but no restrictions on use in the SUP. But that doesn't mean it will be less usage, or anything close, so it is really a meaningless statement. Only JP2 and St. Peters get to use the facilities in the SUP. That is automatically a highly significant use limiting factor that the text amendment doesn't have, since school is normally closed on weekends and all during summer. The text amendment's 3rd party use goes on all week and weekends and all year long. The "restrictions" still allow use during nearly all normal waking hours. JP2 and St. Peters aren't going to use the facility any less by having the text amendment, it's just going to allow way more use by adding third parties, and weekends, and summers. The hard truth before the P&Z is that the text amendment will be a usage nightmare for abutting residents, 9:30 AM to 9:30 PM Monday through Thursday, 9:30 AM to 11:00 PM Friday and Saturday, and 9:30 AM to 5 PM on Sunday. Every week of the year, screaming kids and loud cheering next to our back yards all day long, every day. Imagine this suddenly beside your house. **Predictably, it will ruin our homes.** That is an easy prediction to make with what is being proposed. Anybody listening to this spin on the text amendment being 'more restrictive' than the SUP isn't paying attention to detail. Keep the SUP and let JP2 and St. Peters use it all they can, as much as they can, and it won't come close to the usage with the text amendment. This "restriction argument" in my opinion is deceptive. This amendment should be voted down for this reason alone, it is ridiculous to expect people to put up with this abomination beside their homes all day long every day of the year, which is what this amounts to. And, it was misrepresented to us so they could obtain the special use permit to erect the facility, so it is also improper in that sense as well.

His comments about the text amendment being the "most harmonious option" and "this option doesn't leave the developer entirely happy". This is just disingenuous in my opinion. There is nothing "harmonious" about this option for the abutting homeowners. Mr. Balot gets everything he isn't entitled to, and he gets out of his SUP. We get nothing we are already entitled to by the SUP. Mr. Balot will do backflips if he gets this.

His comments about "the three options he had".

Rezoning - not acceptable to the Planning Department (staff couldn't recommend it since it did not meet published criteria).

Amended SUP - not acceptable to Mr. Balot, therefore "not an option" for staff. (??)

Text amendment – Acceptable to Mr. Balot, therefore okay with staff. (??)

How about option 4? ***Tell Mr. Balot he isn't entitled to a text amendment due to his obligations to his SUP, which was established first, and protects the homeowners!*** No? Why not? Why was this never considered an option by Mr. Barnett? Why isn't protecting already established rights of others THE VERY FIRST OPTION considered by our City's Planning Department? Mr. Barnett didn't have to recommend the text amendment. He could have explained to Mr. Balot that as the Director, he has a role and obligation to the public to act as a fiduciary to the homeowners to protect and enforce their already established rights, and allow Mr. Balot to exercise the only right he actually has, by law, to submit his own text amendment - without Mr. Barnett blessing it with a recommendation. It seems to me that "option 4" should have provided Mr. Barnett with a perfectly reasonable "option 1". The option he chose seems to me to make no sense.

In conclusion, thank you for allowing me the chance to rebut these claims that I feel are just more or less false. Once again, I respectfully request that you either vote this inappropriate law down, or at minimum, withdraw the text amendment (and the influence of the Planning Department from the process), so we can offer Mr. Balot to re-engage with us, this time in genuine discussions that include recognition of our interests as well as his own.

Sincerely,

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