August 19, 2020

Re: Small Private School Amendment

To the Planning & Zoning Commission Members –

Thank you again for listening to our concerns on Tuesday evening, as the issue of the small private school text amendment is a significant one for our community at large and our neighborhoods in particular. Your careful consideration of the matter and attention to detail is much appreciated. I mentioned during my presentation that, due to time constraints, I was not able to fully elaborate on my main points; in this letter I will respond to some of what was said by others as well as offer clarification on my comments.

To begin, I do want to return to what Mr. Maxwell said about the P&Z commission not making a motion for a text amendment to be pursued. This is something which was repeatedly told to us (the neighbors) by Mr. Balot. However, I went back and listened to all the previous meetings, and none of us were *ever* told to meet about *a text amendment*. We were told to meet and work through our differences in an effort to find a resolution, and a text amendment was just one option someone (I believe it was Mr. Overton) recommended we explore, with the caveat that he wasn't even sure if that was the right way to move forward. Even then, the text amendment was not the *only* option*,* nor is it the best one.

I believe it is also important to make it clear that it is Mr. Balot, and not the neighbors, who have stopped meeting. In fact, without the initiative of our HOA president, I'm not sure we ever would have met in the first place. On Tuesday evening Mr. Balot stated that he has "hosted" the group twice. I assume that when he says "hosted" he means that we physically met at JPII, because it was our HOA president who reached out to him to meet, our HOA president who ran the first meeting, and I was the one who more or less facilitated the second meeting. And let's be clear: it is Mr. Balot who has indicated he is done working toward a resolution. Many neighborhood residents indicated last night that we are willing to continue working through our disagreements until a full resolution is reached, and this was also made clear to Ann Maxwell when we sent her the letter asking for the amendment to be pulled. But Mr. Balot has said he is no longer willing to talk. Here is an excerpt from an email exchange involving several of us, with relevant statements highlighted:

> **Excerpt from email from Mr. Balot 8/9/2020**
> As I've stated multiple times, I'm happy to meet with you or the neighbors anytime to attempt to resolve any issues. I'm also happy to meet jointly with city staff.
>
> **Excerpt of Response from Thomas Feller (8/10/2020)**
> Regarding your offer to sit down with us and the city, as I mentioned at the most recent Zoom meeting with the City, I think that is an excellent idea (I think I'm even the one who brought it up). So, based on your email, I can only assume it is the city staff who is refusing to meet (since they more or less said they would not do it). Perhaps if you made the request in addition to us making it they'd be more amenable to it.
>
> **Excerpt from Response of Mr. Balot (8/10/2020)**
> We have met twice (as a group) with the city and you participated in both. Zoom and live. I do not think the city staff has refused to meet and I know I haven't. Staff has given both parties the

time requested and We have met.   All parties understand the differences and more meetings are not going to solve the issues since Unfortunately based on your email I can only assume the neighbors are not willing to give on anything and this exercise is nothing more than a delay tactic….I believe it's time to let the elected/appointed officials determine if the proposal is fair since I don't see us ever resolving the remaining issues to your satisfaction.

As you can see, Mr. Balot extended an offer to meet, I responded and agreed it was a good idea, and then he decided we did not need to meet any further. As a clarification, he mentioned I was the one refusing to meet; to be fair, I turned down a prior invitation from him to alone **because I did not believe it wise or fair to do so, and I told him that I would meet with him when our entire team was present.** If any of the commission members would prefer to read the entire email thread so that you can see the full context, I am happy to provide it to you. As further evidence, I also share excerpts from additional two emails from Rich, one to me and one to another person on our team. Again, if you would prefer to read the email threads I can provide share them, as I am sure Chantae Gooby, Brad Sceviour, or Thomas Barnett could since all of them were copied.

Excerpt from email from Rich Balot to K. Hinant 8/13/2020 at 8:32am

I've listened to you and your neighbors. I've made significant changes to help protect the neighbors.   This process is over. The next item is to have the p&z vote and I encourage you to share your opinions with them.

Excerpt from email to Rich Balot 8/13/2020 from me at 9:09am (note, there were 9 different emails between others prior to my response)

I'd like to interject for a moment in this conversation, as I feel it is quickly heading down-hill. I believe this conversation is a good example of where there is quite a bit of truth to both "sides", and it is also a prime example of many of the driving concerns around this whole process of which the neighbors have been complaining.

…

This email chain is ultimately NOT about a light and sound test, but rather the toxicity of the environment in which conversations and actions are happening. Until that toxicity is addressed and solved **by the entire group**, I fear additional forward movement is going to be difficult at best. Rich, based on your emails here, it seems that you believe the ends justify the means and that process is more or less irrelevant. We, respectfully, disagree with that; our own experience and every piece of literature or research I have ever lead on effective leadership and change would suggest otherwise. This is why we have asked at the meetings for the amendment to be pulled; the current process is infecting the outcome. You can't get a good cake if you put in bad ingredients, and right now the ingredients are bad. The only way to improve the cake it is to change the ingredients. That might mean different people need to be involved in the process (and I include myself in that statement), or it could mean the same people re-start the process with a plan and timeline for reaching consensus (ie, monthly meetings, specific commitments regarding how we will interact, what we are going to decide, how we will come to a decision, who makes decisions, etc), or it could even be some combination of those two options or another one I haven't thought of.

Finally… Rich, before you feel like I'm laying the blame squarely on your shoulders, I'm not; I would say every person involved in this process is partially culpable - me included. Resolution

won't happen until all of this is addressed. The question becomes, "Are those invested in this process committed enough to step back and fix it in order to get a better outcome?" Based on my conversations with the neighbors, plenty of us are....If a high-quality cake (ie, resolution between the neighbors and JPII) is truly the goal, then it will take someone else who has the power and position to make that decision and act on it.

Excerpt from email from Rich Balot to T. Feller 8/13/2020 at 10:25am
Enough time, meetings, emails, texts, zooms, etc have happened. It's time for votes....This will be my last email to you or the committee.

Having shared all of this, let me now fill in the holes from my comments last night. The following are points I either made last night and for which I did not provide adequate support, or they were points I had hoped to say but did not because of time constraints. So that you do not have to read everything I have already said, statements from last night are printed in black while the clarifications I have promised (or additions based on what I omitted) are in blue.

So, let's examine some of the finer details of this amendment so that you know EXACTLY what it is you are voting on.

We have been told the following:

1. A TA was needed to allow 3rd party use because the current SUP restricts 3rd party usage and they couldn't even allow voting or neighborhood associations to meet. To be clear, **this statement is NOT TRUE. The prohibition on third party use *ONLY applies to the athletic complex, and NOT the school*. If the school wanted to allow third parties to use any part of their school building for such events (which, if memory serves, they claimed to have done prior to the building of the Athletic Complex when the new SUP going into place), *they COULD do so.***
2. You were repeatedly told that under the SUP there were no restrictions on amplified sound use, and I'm glad to see that Mr. Sceviour clarified this tonight. We have repeatedly been told by Mr. Ballot that JPII could literally play amplified sound at 2 in the morning if they wanted. **This is NOT TRUE**. Under the current SUP, amplified sound is limited **to athletic games ONLY**. Unless JPII were to be hosting a school athletic game against another schools' team at 2am (or any other strange time), they CANNOT play amplified sound "whenever they want."
3. You were told that this text amendment provides greater protection for the surrounding neighbors regarding amplified sound, because it limits amplified sound to certain hours. **What you HAVE NOT been told is that this text amendment opens up the opportunity for amplified sound to be ANY school-sponsored activity and NOT JUST athletic games (this does not even include the 3rd party usage)**. **So unless we are to believe that "any school event" is LESS restrictive than only athletic games, this TA does *NOT* provide MORE protection.**
4. To echo on of my neighbors comments regarding the sound limit of 75db, it is correct that it is not in the SUP. But the question remains, how was this limit reached and is it acceptable? Mr. Balot says the number came from his engineer's measurements. I can tell you that I participated in the sound test. When my meter (which I know wasn't perfect, but was pretty close) was reading mid-70s, I texted, "It would have been hard to hold a conversation sitting out in the yard." After the limiter was put in place, my meter was reading in the "high 50s" and I texted, "It's much better." Yet somehow the maximum amount codified in the amendment is not what was measured at the *end* of the meeting but rather what was measured at the

beginning. Now this may seem insignificant since we're also been told that normal conversation is about 60db, and the implication behind this seems to be that "75 is only a little bit more than 60 so it must be ok". However, please remember that decibels are *NOT* linear but logarithmic. This means that 75db is at least **3 times** louder than 60db, and generates nearly **32 times the sound intensity**. According to the CDC, someone who listens to 70db noise "may feel annoyed" (their words, not mine). That would seem to echo the texts I sent during the test.

5. You've been told that the text amendment provides a more accurate reading for light measurement. Again, **this is not true**. The SUP **does** specify a measurement. Specifically, it says "NO LIGHT." No light means zero. The text amendment, however, allows for .5 foot candles. Again, this may seem like an insignificant difference (0 vs. .5). If you want to know that that looks like, then I encourage you to review the pictures which have been shared in previous meetings; I believe you will see that it is not "NONE".
6. You were told in May that if there were light concerns that they would be addressed and light would be blocked, yet when some of our neighbors reported concerns they were told to wait for trees to grow (I was one of them), and that it would take 3-5 **years** for that to happen, and one person I'm aware of may have been offered light-blocking shades. I'm not sure if you find waiting 3-5 years for light concerns to be addressed as reasonable or not, but I have a feeling that if Mr. Balot were told he needed to wait 3-5 years to use his lights he might find that unreasonable.
7. Finally, you were told that JPII needed out of the SUP because they couldn't make any changes or additions to their school without returning to the BOA; **while this is correct, it is also incomplete. Were JPII to return to the BOA they would have to submit a site plan for approval; a long-range plan with all planned changes could easily be submitted and approved, just like they had to do for the athletic complex (for the record, everything on the current athletic plan hasn't been completed)**

In closing, I would also point out that there is **no demonstrated need for third party use of the field**. Even back in January a member of this commission (I believe it was Mr. Parker) made the comment that there is no need for a place for games, though there might be for practices. **Yet when the neighborhood proposed to agree to practices but not games that proposal was turned down**. For the record, I am attaching a copy of what we initially proposed to Mr. Balot, so you can see what we were thinking, yet he was not willing to talk about this since it was focused on amending the SUP. As you will hopefully see, many of the items in that proposal came directly either from what was said by a commission member or from Mr. Balot himself.

There is no reason this situation needs to be resolved through a text amendment, except for the fact that Mr. Balot refuses to consider another alternative. This was made clear last night by both Chantae Gooby and Thomas Barnett; in fact, Mr. Barnett stated that the "SUP door was closed" by Mr. Balot. One has to wonder why that was the case. One reason Mr. Balot told the neighborhood team he was afraid of going back to the BOA was because he could lose the ability to use his lights, and yet we even offered to stand **with and beside him** to say that we didn't want the lights shut off, we just wanted our concerns addressed. We also confirmed with Ms. Gooby that the BOA does not make decisions to make use more restrictive without evidence that the owner is currently out of compliance. It would seem to us that if there was is no evidence Mr. Balot is out of compliance (as he claims) then there should be no fear to appear before them to request an amendment. In short, *everything* which Mr. Balot, JPII, and the neighborhoods have asked for can be accommodated for through a new SUP (see the initial proposal we gave to him). *Almost nothing* that the neighborhoods have requested can be accommodated for in a text amendment, and **significantly more than JPII has asked for is automatically**

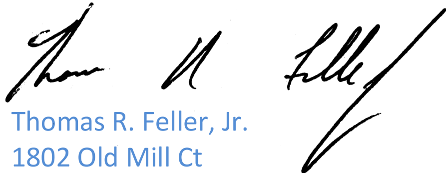
granted. So, please examine why you are considering recommending a text amendment to the city council?

This amendment needs to be withdrawn. The only motivation Mr. Balot will have for us to engage in legitimate conversations is to have those conversations without threats hanging over us. In response to our letter asking her to withdraw the text amendment, Ann Wall, the City Manager, responded, "I am unable to make a request to pull this item from the Planning & Zoning Commission agenda. The staff is of the opinion that this item is ready for consideration by the Commission. Either the property owner or members of the public could request that the item be pulled. At this point, I believe it is up to the Commission to make a recommendation to the City Council after holding the public hearing" (highlighting is mine)

The surrounding neighborhoods need your help in preserving our quality of light. Consider this a formal request to withdraw the amendment from consideration in its entirety; that request was made by several people last night, which should be more than enough to meet any procedural requirement for the commission to talk about and vote on the request. By pulling the request, you will affirm that JPII needs to either live within the limitations **it agreed to** or to return to the BOA with the neighbors to have them changed.

Thank you, again, for taking the time to read this information and thoughtfully consider the vote you will make later this week.

Sincerely,



Thomas R. Feller, Jr.
1802 Old Mill Ct

Attachment: Initial proposed provided to Mr. Balot by the neighborhood team on June 22

Concerns voiced by Rich Ballot/JPII and how they are addressed

Concern	Response
1. Returning to the BOA could result in the loss of light and sound use	1. As per Chantae Gooby, changes would require evidence that the SUP has been violated. Without evidence and as an evidentiary board, the BOA does not have any reason to act arbitrarily.
2. Making changes to the site requires constant and repeated returns to the BOA	2. Since an SUP involves the approval of a site-plan, a long-range site plan could be developed to minimize (or eliminate) repeated returns. It would seem prudent to us (though obviously is the prerogative of JPII) to invest the time and energy to develop a long-range, multi-year plan with buildings and additions based on projected enrollment goals (10 years, perhaps, as per Max Joyner's comments at the December 17, 2019 P&Z Meeting).
3. There is a desire to share the facility with community groups, especially for students to be able to volunteer and serve the community by working with younger children or for non-profit fundraisers.	3. As we read the SUP, there does not appear to be a restriction on third party use of the school itself, only the athletic complex. We are willing to allow third-party use of the athletic complex when JPII or St. Peter's students are volunteering and for non-profit fundraisers, given certain conditions are met and followed.
4. There is a desire to offer the athletic facilities for use by community teams.	4. At the December 17, 2019 P&Z hearing it was stated by Billy Parker that community teams have plenty of places to play games but are in need of practice fields. As such, we are willing to allow third-party use for practices, given certain conditions are met first.

Concerns of Neighborhoods and how they are addressed

Concern	Response
5. The SUP offers legal protections for the home owners which would not be in place under a text amendment	5. The SUP seems to be specifically designed for situations such as this, therefore we see no reason to abandon it. This also removes the need for a second (and non-binding) "agreement" between JPII and the neighborhoods.
6. The text amendment opens up the potential for facility usage beyond the times and hours the neighborhood is currently willing to accept.	6. Limiting the use of facility to practices and charity events will reduce the number of people on site as well as the noise. Limiting sound and light usage to JPII only reduces concerns for additional usage of lights and sound which negatively impact the quality of life of neighbors.
7. This process for a text amendment feels rushed, and it seems as if Rich feels the final SUP was agreed to before a full understanding of what it meant (or at least agreed to with unanticipated consequences). As Max Joyner mentioned at the December 17, 2019 P&Z	7. Operating under the current (or even amended SUP) provides time to accomplish a more comprehensive agreement. Rich Ballot has offered to hold some events in the fall for testing light and sound limits as well as to

Meeting, we need to take time to reach an acceptable agreement for something which will be in place for "10-15" years down the road.	make light and sound adjustments. Given that these events will not happen until the fall (at the earliest), there is no urgency is making significant changes now via a text amendment. As a gesture of our good faith and good will, we are willing to agree to third-party *indoor* usage immediately in an amended SUP (which grants something JPII desires), while in exchange for agreed-upon *exterior* usage certain conditions must first be met.
8. The neighborhoods need protections that our quality of life and property values will not be negatively impacted at a significant level.	8. A text amendment does NOT protect our quality of life or property values as there are few (if any) consequences for non-compliance. An SUP offers legal protections for the neighbors in that there are significant consequences for violations and also a legal process for disputes.

Note: Changes notated in red while parenthetical comments (for justification/explanation) are in blue.

The Board further **ORDERS** that the herein described and issued Special Use Permit as is hereby **ISSUED SUBJECT TO AND WITH THE FOLLOWING CONDITIONS:**

A. Site plan approval must be obtained, a traffic analysis must be completed and reviewed and all necessary code required site and road improvements for a school use must be made prior to occupancy.

B. The entirety of the athletic complex at issue, including but not limited to facilities and structures, shall be incorporated into the campus of the school (currently John Paul II High School).

C. The athletic complex shall maintain connectivity with the school for perpetuity. The special use permit would automatically terminate at any such time that the use ceases being a school or the proposed athletic complex is used for any other purpose other than being operated under a part of the campus.

D. ~~The athletic complex shall only be used for school related activities. No third party agencies apart from the school shall be permitted to use the complex.~~ Limited third party use of the athletic complex shall be allowed under the following conditions:

1) Alcohol consumption is prohibited at the athletic complex except for religious ceremonies involving communion;
2) Weapons and firearms are prohibited on the athletic facility premises by any person who is not an on-duty law-enforcement officer;
3) The use of interior facilities shall be at the discretion of the property owner and school. Indoor use of facilities does not include permission to tailgate on site;
4) Upon certification that Section F(1), F(2), H(1), and H(2) are completed and that JPII is in compliance, the use of exterior athletic facilities will be allowed Monday – Saturday under the following conditions:
    a. Lights and amplified sound will not be allowed for any third-party use, except in the case of emergencies;

b. Athletic field use by third parties shall be limited to practices and only when JPII & St. Peter's students are volunteering to assist and mentor other participants in said third-party teams;

c. Use of exterior athletic facilities by non-profits for fund-raising events shall be allowed, contingent upon D(1), D(2), and D(4)(a). These activities must be communicated to the respective neighborhood representatives at least 30 days in advance.

   a. Use of lights and sound for non-profit, fundraiser events will be allowed three (3) days per calendar year (January 1 – December 31). In the event of a "24 hour" activity, lights will be reduced by 50% and the use of the sound system will be prohibited from the hours of 10:00 pm – 8:00 am.

   b. Events involving light and sound usage shall be communicated to the respective neighborhood representatives at least 60 days in advance.

E. No lighting shall be directed toward or placed in such a manner as to shine directly into a public right-of-way or residential premises.

F. No lighting shall illuminate any public right-of-way, street or any adjoining or area property in such a manner as to constitute a nuisance or hazard to the general public.

1) As per Max Joyner's recommendation at the December 17, 2019 (see 2:15:55 of the video) and Rich Balot's proposal at the May 28, 2020 meeting, JPII will install additional buffers to further limit and negate the negative impact of lights and sound on neighboring properties. These barriers may include additional (and taller) trees and/or additional fencing. If trees or other vegetation are installed to block nuisance light, this condition will not be considered met until the vegetation grows to reach such a height as to reasonably demonstrate they can block the nuisance light for impacted home owners.

2) As per Rich Balot's proposal at the May 28, 2020 meeting, JPII will host a light test in the fall of 2020 in cooperation with the home owners in the adjoining neighborhoods to identify potential changes to the lights which may be needed, and, where adjustments cannot be made, identify locations for additional light barriers to be installed.

G. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling.

H. ~~No~~ Limited (this seems to be a clarification rather than a change) outdoor amplified sound shall be allowed. The definition of "outdoor amplified sound" is any sound using amplifying equipment, whose source is outside or whose source is inside and the sound propagates to the outside through open doors or windows or other openings in the building.

1) As per Rich Balot's proposal at the May 28, 2020 meeting, JPII will install and use a sound limiter on the AV system.

2) As per Rich Balot's proposal at the May 28, 2020 meeting, JPII will host a sound test in the fall of 2020 in cooperation with the home owners in the adjoining neighborhoods to test different levels of the limiter to determine the best initial setting which balances the needs of the athletic complex for engaging and entertaining sound during athletic events and the needs of home owners to not have the sound be a nuisance in or a hazard to daily lives (i.e., windows and walls should

not shake when sound is played, amplified sound should not be heard inside when doors and windows are closed, etc.). Sound levels should not surpass ___ dB at the edge of the property (this number would be determined after the sound tests are completed in the fall).

I. No parking or driveways shall be permitted along the perimeter of the site abutting residential homes.

J. Required parking spaces shall be in compliance for both a senior high school and stadium

K. No musical concerts may be held at any outdoor recreation field located on the private school campus. (Note: this is copied from Rich's original text amendment proposal sent to the city)