

IN RE: APPLICATION OF : BEFORE THE ZONING HEARING BOARD

WEST CHESTER AREA : OF WESTTOWN TOWNSHIP

SCHOOL DISTRICT : CHESTER COUNTY, PENNSYLVANIA

OPINION

I. Background and History

West Chester Area School District has filed with this Board an application to modify a prior order entered to WT-ZHB-5-02 and dated January 31, 2003, wherein this Board granted a special exception to construct, use and operate on the Premises designated as 1100 Shiloh Road, this Township (UPI No. 67-05-6E and 67-05-9E) a public secondary school, known as the Bayard Rustin High School. At the time of the hearing on that application, the issue of outdoor sports lighting was raised by the Township and the Protestants, but the Applicant, the West Chester Area School District, stated that it did not intend initially to construct outdoor lighting for its sports facility but reserved the right to return to the Board if it decided to pursue such outdoor lighting in the future. In its opinion and order in Part E under the section entitled "Discussion" the Board stated as follows:

E. Stadium Lighting: The Project Proposed does not envision a lighted stadium for evening use. Therefore, the issue of stadium lighting has neither been addressed through testimony nor evaluated as to impact. The lighting of that facility can have a major impact upon the surrounding neighborhood and the adjacent roadways and railway. Therefore, any lighting of the stadium or other areas for nighttime events shall constitute a substantial modification of the plan approved and the special exception granted. Any installation of outdoor lighting for evening events shall, prior to installation, require an application to the Zoning Hearing Board for a modification of the special exception herein granted and a finding that all external impacts have been sufficiently mitigated. This requirement shall be in addition to compliance with any then applicable ordinance regulating such lighting and shall be deemed a condition in addition to compliance with the lighting standards set forth in the Agreement, Exhibit A-41.

Also, the Order contained the following condition to the grant of the special exception:

c. That any lighting of the Stadium or other athletic fields or other areas for use of nighttime events or assemblies shall constitute a substantial modification of the plan approved and the special exception herein granted. Any installation of outdoor lighting for evening events shall, prior to installation, require an application to the Zoning Hearing Board for a modification of the special exception herein granted. At the hearing on that Application the burden shall be the Applicant's to demonstrate that all external impacts have been sufficiently mitigated. This requirement shall be in addition to compliance with any then applicable ordinance regulating such

lighting and shall be deemed a condition in addition to the compliance with the lighting standards set forth in the Agreement, Exhibit A-41.

There was also appended to the Order and incorporated therein by reference an Intergovernmental Cooperation Agreement (hereafter, "IGCA") setting forth, inter alia, lighting standards and specifications. Accordingly, the Order envisioned three standards for determining compliance for the installation of outdoor lighting rather than a single free-standing set of regulations: First, the Applicant had to demonstrate compliance with the standards set forth in the Intergovernmental Cooperation Agreement (Exhibit B of the Opinion and Order). Second, the Applicant was required to show compliance with the terms of any applicable subsequently enacted ordinance or amendment setting forth standards for such facilities. Finally that Applicant was required to demonstrate satisfactory mitigation of external effects. These requirements were in the conjunctive and not in the alternative. All had to be met.

Recently, the Township did enact an amendment to the Zoning Ordinance setting forth detailed standards for outdoor sports facility lighting. This Ordinance made such outdoor lighting a use permitted as a conditional use by the Board of Supervisors.

The School District has now decided to install lighting for evening events at its outdoor stadium. The processing of this application, therefore, would require by the literal terms of the Zoning Hearing Board's Order of January 31, 2003 a hearing before the Zoning Hearing Board to determine if the Applicant has complied with the terms of the Intergovernmental Cooperation Agreement (Exhibit B of the January 31, 2003 Order), a determination by the Zoning Hearing Board to determine if the Applicant has complied with the current lighting ordinance and a determination as to whether the Applicant has adequately mitigated all external effects and if all such requirements have been met, to modify the Special Exception previously granted to permit the installation of the stadium lighting. The terms of the current lighting standards amendment would be subject to the conditional use approval by the Board of Supervisors.

The IGCA appended to the Board's original order contained a draft lighting ordinance and mandated compliance therewith as well as any subsequently adopted lighting ordinance. The Order also required compliance with any subsequently adopted ordinance standards in place at the time the School District applied for approval of outdoor stadium lighting. On March 3, 2003, the Township enacted Ordinance 2003-2 which regulated comprehensively the performance standards for

outdoor stadium lighting. The ordinance so adopted was substantially similar to the draft ordinance referenced in the original order and thus the draft ordinance was subsumed thereby. Section 170-1514 was again substantially amended by Ordinance 2009-4 on July 6, 2009 and as so amended represents the governing standards applicable at the time of the filing of this application. The provisions of the IGCA dealt with a wide range of other matters most of which were addressed in the application for land development and other actions during the construction and operation of the facility. To the extent the 2009 amendments dealt with lighting standards, the standards set forth in the IGCA were, where inconsistent, subsumed in the 2009 amendments.

The School District has now determined that it desires to install stadium lighting for outdoor night athletic events and for other school-related activities, such as graduation ceremonies. Accordingly, the School District has filed the instant application before this Board. Testimony having been presented and exhibits entered, the matter is now before us for disposition.

II. Application and Procedural Matters

The Applicant, West Chester Area School District (hereinafter called the "Applicant" or the "School District") is the legal and equitable owner of a tract of

land situate at the northwest corner of Street Road (Pa Rt. 926) and Shiloh Road, known as 1100 Shiloh Road, this Township whereon the Applicant has constructed and operates a secondary school known as the Bayard Rustin High School. This facility was approved by the Zoning Hearing Board pursuant to an order granting a special exception so to do, entered on January 31, 2003.

On June 30, 2010, the Applicant, the School District filed with the Zoning Officer an application for a modification of the Special Exception granted, a Conditional Use and any other relief necessary to permit the installation and operation of outdoor lighting of the Stadium for, primarily, outdoor athletic events.

Pursuant to the application filed, a hearing was scheduled and held before the Zoning Hearing Board on July 29, 2010 commencing at 7:30 p.m. at the Westtown Township Municipal Building, 1039 Wilmington Pike, this Township.

The hearing was duly advertised according to law by publication in the Daily Local News, a newspaper of general circulation in the Township, on July 15 and July 19, 2010. The property was posted on July 14, 2010. Notice was sent to the Applicant by certified mail, properly addressed and postage prepaid on July 14, 2010. Notice was sent by 1st class mail to the neighboring properties, the Board of Supervisors, the Township Planning Commission, the Township Manager and those

other persons entitled to receive such notice under the terms of the Westtown Township Zoning Ordinance or by applicable law on July 15, 2010. Proof of publication and compliance with the notice requirements was entered of record as Board Exhibits.

At the hearing there appeared David J. Scaggs, Esquire, Chairman of the Zoning Hearing Board, Laura M. Scanlon, Esquire, Vice Chairman and Jeffrey R. House, Member of the Board, constituting the entire Zoning Hearing Board. Also present were Kevin Flynn, Alternate Member of the Board, Ronald M. Agulnick, Esquire, Solicitor to the Zoning Hearing Board and Ross A. Unruh, Esquire, Attorney for the Applicant. Also present were Elaine Adler, Assistant Zoning Officer and Secretary to the Board. At that time, those persons requesting to intervene as parties to the proceedings were heard as to standing and the persons whose names and addresses are set forth in Annex B were admitted as parties to the proceedings. The Board then addressed the issue of jurisdiction, heard argument thereon and continued to a public meeting scheduled of record for the entry of an interlocutory order for the retaining and/or transferring jurisdiction to the Board of Supervisors.

This public meeting was scheduled and held on August 10, 2010. Present

at that time were the persons present at the previous meeting with the exception of Ross Unruh, Esquire and Kevin Flynn, the Alternate Board Member. In addition, Robert F Adams, Esquire, Township Solicitor was also present. The Board adopted the interlocutory order retaining jurisdiction on all issues and copies of the order were delivered to the Township and the Applicant. At the meeting the Applicant was invited to amend or modify its application if it so chose and to have any further discussions with the Township it might desire. Further, the Board, with the consent of the Township and the Applicant, agreed that the matter be continued generally on the record pending (i) an opportunity for the School District to make any amendments to the Application it deemed necessary to bring all issues before the Board, (ii) meeting with the Planning Commission to work out any issues it can and give the Planning Commission an opportunity for review and comment as required by the terms of the Ordinance and (iii) agree upon a new date for hearing and giving the Board an opportunity to re-advertise notice of the hearing and reposting the property. In the interim, neither the Board, nor either party would be prejudiced by the delay in recommencing or concluding the hearing. The matter was thereupon continued generally.

Subsequently, on receipt of notice from the parties that they were ready to

proceed with the hearing, the Board scheduled and held the continued hearing at the Westtown Township Municipal Building on Tuesday, June 7, 2011 commencing at 7:30 p.m.

The hearing was duly advertised according to law by publication in the Daily Local News on May 23 and May 30, 2011. The property was again posted May 24, 2011 and notices were sent to the Applicant, the intervenors, and all others entitled to notice on May 23, 2011.

At that hearing, there appeared David J. Scaggs, Esq., Chairman, Jeffery R. House, Vice Chairman and Laura M. Scanlon, Esq., member of the Board, constituting the entire Zoning Hearing Board. Also present were Elaine L. Adler, Assistant Zoning Officer and Secretary to the Board, Ronald M. Agulnick, Esq., Solicitor to the Zoning Hearing Board, Robert F. Adams, Esq., Solicitor to Westtown Township and Ross A. Unruh, Esq., Attorney for the Applicant.

The matter not yet concluded, the hearing was again continued on the record, successively to 7:30 p.m. June 14th and 7:30 p.m. July 7th, 2011, at which time oral testimony was concluded.

At the July 7th hearing, it was agreed by the parties that while the lighting equipment to be installed in the manner described could well comply with the terms

and standards of performance described in the Ordinance, true compliance could only be determined after the equipment was installed and operating. Therefore, this determination would be made after installation but prior to the issuance of the certificate of occupancy. The Township's lighting expert was charged with the task of drafting a protocol for testing and monitoring and that protocol was to be reviewed by the Township's solicitor and Applicant's attorney and when approved by them, would be submitted to the Board. Upon submission thereof to the Board, the 45 day time limit for the Board to render its decision would begin to run. The Applicant and the Township have agreed that the date of delivery of the protocol, and thus commencement of the time within which the Board must render its decision began on July 27, 2011.

The parties have concluded the evidence and testimony to be submitted to the Board and the matter is now before us for decision.

From the testimony adduced and exhibits presented, the Board makes the following

III. Findings of Fact

1. The Applicant is the owner in fee of the subject premises and has constructed and operates thereon a secondary school known as the Bayard Rustin High School. The facility was constructed and is operated pursuant to a special exception granted by this Board on January 31, 2003. Excluded from that Order was authority to install outdoor sports lighting unless authorized by the Board upon further application. Such authority would be conditioned upon demonstration by the Applicant of (1) compliance with the standards set forth in the IGCA, (2) compliance with the standards of the now current ordinance provisions governing the project proposed and (3) satisfactory mitigation of all external impacts occurring by reason of the evening stadium activities. The School District has agreed that the use of the stadium for evening events, major or minor, will be limited to School District events and that the stadium and its lighting and other facilities will not be made available to other entities or organizations such as Little League teams or other groups not operated directly by the School District. Facts relating to these three requirements will be addressed serially.

A. Facts Relating to the Intergovernmental Cooperation Agreement

1. In its Order of January 31, 2003 This Board adopted by reference the

terms of the IGCA and appended the IGCA to its Order.

2. Most of the matters contained in the IGCA dealt with issues of payment of fees to the Township, sewage facilities, road improvements, land development issues and architectural matters. Paragraphs A1-5, 7 and 9-13 and all of Part B and Exhibits A, B and D thereof were fully addressed during the pre-construction and construction phases and are therefore immaterial to this decision. The only unaddressed issues dealt with evening events, particularly as they relate to lighting and interior circulation for evening special events. The evening special events lighting was addressed in a proposed and subsequently adopted lighting ordinance (Exhibit C of IGCA) amending section 170-1514 of the Westtown Township Zoning Ordinance. (Hereinafter, the "Draft Ordinance"). However, this section was subsequently amended by a new section 1514 which was adopted prior to the filing of the School District's Application and thus the repealed section 1514 as attached to the IGCA was subsumed in the amended ordinance and became irrelevant to the matter before us. Demonstrated compliance with the current section 1514 standards satisfies compliance with the relevant IGCA draft ordinance standards.

B. Facts Relating to Compliance with Section 1514 Lighting Standards

1. Section 170-1514, as it now exists, contains both construction

specification standards and performance standards. Construction specification standards, as set forth in section 1514 are objective and not dependent on topography, adjacent development, or other external conditions. They are capable of precise measurement. By way of example, the Ordinance limits the maximum mounting height measured from finished grade of the playing field to the top of the highest fixture of a Football Field to 70 feet. In contrast, a performance standard can only be ascertained with certainty after the facility is in operation. A conforming light fixture may or may not conform to a stated performance standard when actually installed, but the fixture is often capable of being adjusted after installation to attain the performance standard established. In this respect, the Board accepts the testimony of the School District's lighting expert, John Schulze, to the extent that it is possible for the lighting proposal to conform to the Township Ordinance standards, if the fixtures are properly installed and modified or adjusted as required. This is true both with respect to the Ordinance standards and adequate mitigation, but we also concur with Township's expert, Mr. Stanley Stubbe, that actual compliance and satisfactory mitigation cannot be ascertained until the facilities are installed and capable of operation.

2. Particularly, without limiting the generality of these findings, the

placement, orientation and shielding of the lights was determined with the primary goal being the adequate lighting of the playing field. The plan presented assumed a flat surface and topography and relative elevations were not studied. The lumination of the lights could, dependent upon the shielding and orientation, project glare into windows of homes within the proscribed distance from the property. However, should that prove to be the case, the condition is capable of remediation by modification of the shielding and orientation of the lighting fixtures as mounted on the poles.

3. The School District intends to have evening sports events utilizing the stadium lighting for a maximum of 20 regularly scheduled events per academic year. The School District also proposes to use the stadium for evening outdoor graduation ceremonies once each year. An additional three championship playoff games may occur in addition to the regular season games. Of the 20 regularly scheduled night games, only four of these events will be football games. The remainder will be boys and girls lacrosse and girls field hockey and boys and girls soccer. The stadium has a seating capacity of 1794. The witnesses used a population of 85% capacity in their planning and analysis, or approximately 1525 attendees at major sports events, including spectators, staff and participants. In

contrast to these estimates, the School District anticipates that less than 500 attendees will be present at any of the minor sports events. While these two attendance estimates are important for other considerations such as traffic and parking, they are not relevant for lighting analysis purposes, since regardless of attendance, the entire stadium will be lighted during an outdoor night event. Perhaps the largest attendance will occur during an evening outdoor graduation ceremony where approximately 2000 persons may attend. Nevertheless, regardless of the attendance or nature of the event, evening outdoor stadium events will be relatively homogeneous from a lighting standpoint.

4. The facilities proposed consist of four lighting poles, each 70 feet in height and placed in locations conforming to the mandated setbacks of the zoning ordinance. There will be mounted on each pole eleven (11) luminaires, or light fixtures. These fixtures will be directed downward toward the playing field and equipped with shields and visors to prevent the light bulb from being visible outside of the School District property. The absence of glare was not analyzed in relation to the existing topography or vegetative or other screening, nor was the emission of glare studied with relation to windows of dwellings located within 1800 feet of the lighted field's boundary. Therefore, while compliance may be able to be achieved

by the design proposed, actual compliance can only be ascertained by testing after installation of the lighting equipment. The Ordinance requires and the School District agrees that all stadium lighting will be extinguished not later than 10:00 p.m.

5. While mitigation of lamination or glare elimination can be achieved within the constraints of the proposed design, illumination or glow will exist in that the stadium will be illuminated as a result of the stadium lighting. However, the illumination is in no way detrimental to surrounding properties nor does it present a hazard to motor vehicles being operated on the adjacent highways. No one is entitled to total darkness as a matter of right.

6. At the request of the Zoning Hearing Board, the Township's lighting consultant has developed a protocol which has been reviewed by the Township Solicitor and other officials as well as by the School District Solicitor and District personnel and has been approved by them. The protocol establishes a mode of testing for lighting compliance under the provisions of Ordinance No. 2009-4 and lighting mitigation. The protocol will be utilized to test compliance after construction but before issuance of a certificate of occupancy. The protocol will also be used to address complaints or allegations of noncompliance after a certificate of occupancy

has been issued.

7. The Applicant's Exhibits A-12 through A-17 constitute the submission upon which these findings and order are predicated. The Applicant may deviate therefrom only if, in the opinion of the Township and its consultants, such changes will result in equal or better performance and will not generate non-compliance with the Ordinance mandates or detract from the mitigation that would be achieved by use of the materials and design herein proposed and approved.

C. Facts Relating to Traffic

1 While the lighting issue is resolved as a unity, in that the lights are either on or off without regard to attendance, this is not true of the traffic, interior circulation and parking issues which are driven by attendance and concomitant volumes of vehicles and persons. The School District officials testified, and we accept this as fact, that the usage can be divided into two distinct classes of major and minor events. The Ordinance requires (and we predicate our fact finding, approval and conditions thereon) that the number of evening stadium events shall be limited to 20 per year plus a maximum of 3 playoff or championship games should the year's performance so result. The School District has agreed that it will comply with this limitation.

2. Major Evening Events: The application requested, and our approval is limited to a maximum of 5 scheduled Major Night-time Events plus up to three additional championship playoff games if warranted for any academic year. These events include and are limited to an evening outdoor graduation and four regular season home night football games. If the team is successful in its regular season it may host up to three post season night championship playoff games. The dates and times of night home football games and graduation ceremonies are known to the School District well in advance and the Township should be advised of the events at the beginning of each academic year.

3. Any of the following shall be deemed a Major Evening Event:

- a. All night football games
- b. Evening Graduation Ceremonies
- c. Evening events whereat it is anticipated that attendance will exceed 1000 persons including, but not limited to staff, spectators and participants
- d. Where admission is controlled, the issuance of more than 650 admission tickets or passes to persons as spectators to an evening event, whether admission is controlled by ticket sales or gratuitous.
- e. All other Evening Events shall be deemed Miner Evening Events.

4. Minor Evening Events: The remaining night sports events would be night games of lacrosse, field hockey and soccer or any other event using the stadium lighting. These events do not depend on advanced ticket sales, draw fewer than two or three hundred spectators and require no special police presence, parking controls or interior circulation controls. The stadium and parking area lighting and distributed public address system will be used, but no other special planning or actions will be required. All controls are administered solely by School District personnel.

5. Relevant Public Roads: The school property is bounded on two sides by public roads. The southerly boundary is Street Road (Pa. Rt. 926). The easterly boundary is Shiloh Road, a Township Road. Shiloh Road, south of Rt. 926 is known as Westtown-Thornton Road. The intersection of Shiloh Road (Westtown-Thornton Road) and Street Road (Pa. Rt. 926) is a signalized intersection. The traffic light has a left turn phase for both north-south bound vehicles and east-west bound vehicles. Street Road is a two lane road and is fairly heavily traveled by pass-through traffic. Shiloh Road is less heavily traveled and most of the trips at relevant times will be generated by the Rustin School. Proceeding from its intersection with Street Road, north on Shiloh Road approximately 875 feet (scaled

distance measured from Exhibit A-7) is an intersection with Dunning Drive on the east side and the first access onto the school property, known as High School Drive. This drive leads into the stadium area and then proceeds to the school building and its parking areas. Continuing north along Shiloh Road approximately an additional 1,525 feet is a second four way intersection. To the east, the road is called Farm Lane. To the west, the road is the second access onto the school property and is known as the Access Drive. This driveway leads primarily to the school building but there is a turn-off to the left from the Access Drive to circle to the stadium area. The School District proposes that during periods of ingress at the beginning of the major event, i.e. one hour prior to the game and two hours during the game, entry to the campus will be at the northerly Access Drive at Farm Lane and egress at High School Drive with a one-way circulation pattern as shown on Exhibit A-7.

6. Police services during Major Evening Events: The School District proposes to limit the time when police will be at the event to those same hours during which the circulation pattern shown on A-7 is in effect. We do not concur with this proposal. We find that exiting vehicles at the end of the event onto Shiloh Road and then onto Street Road (Rt. 926) will also require police presence.

Further, we find that internal security is also enhanced by police presence during the game. Further, the dispersal of vehicles at the intersection of High School Drive and Shiloh Road and at the intersection of Street Road and Shiloh Road can be far more efficiently handled by police direction than can be accommodated with timed traffic signals. Police can make changes in traffic control far more readily as the then existing conditions warrant. Therefore, we find that it will be necessary to impose as a condition to approval that police presence be provided during all Major Evening Events in numbers determined by the Chief of Police of the Westtown-East Goshen Police Department (hereinafter, "WEGO") from one hour prior to the scheduled commencement of the event until at least one half hour (or longer if the situation then requires) after the conclusion thereof. During this period uniformed police shall be stationed at each of the three above enumerated intersections from one hour prior to the scheduled commencement of the event until one half hour after the start thereof and one half hour prior to the end of the event until one half hour after the end thereof or such longer period as the circumstances may require. The full cost for police services shall be reimbursed by the School District to WEGO or such other police entity as may be rendering the service.

7. Dynamic Maximum Component: The School District has suggested that it

may apply for and install a component known as a “Dynamic Maximum Component” to the controller for the traffic signal at Street Road and Shiloh Road. This component adjusts maximum green time to demonstrated backup demand for various movements at the intersection during successive phases of the light. This may or may not make the staffing of uniformed police officers at that intersection necessary. If the School District decides to install the component and PennDOT and the Township approve it, the functioning of the intersection shall be tested at a one or more Major Evening Outdoor Events. Thereafter, Chief of Police of WEGO shall determine whether the staffing requirements may be modified at that intersection. If the component is purchased and installed, the cost of permitting, procuring, installing and testing shall be paid by the School District.

7. The School District’s Traffic Study: The School District submitted as Exhibit A-10 a detailed traffic study purporting to demonstrate the effects of the major evening events upon the flow to traffic at the various relevant intersections. The trip generation projections were made by using past well-attended games vehicle counts and increasing that number by a proportion that 85% of the total seating capacity of the stadium (1794 persons) bears to the number of attendees at the past well attended game (1010), i.e. 51%. It is true that the trip generation

estimates are different than the patterns of existing traffic. For example, some spectators may arrive by individual private vehicles that drop them off at the game and pick them up at the conclusion of the game, but the vehicle does not park on site. Others may arrive by school busses. Some of the vehicles that arrive may have only one and some may have more than one attendees. This mix is apparently accounted for in the study in that the vehicle count at the well attended game would probably have similar characteristics. The application of the 51% increase simply expands on the same mix. However, these mathematical ratios do not seem to work as well with respect to trip distribution, since the trip distribution would seem to be dependent in part on the location of the residential pattern of the opposing school population. This observation does not invalidate the traffic study, but does point out another reason for the need for using police officers to be able to adjust traffic control dependent upon variable patterns of trip distribution. It is a generally accepted principle that normal every-day demands of traffic are best met by construction of facilities required to serve those needs, but that extraordinary demands are best met by using existing facilities and regulating to accommodate the resulting change. The few evening events clearly can be best met by the presence of police officers with the flexibility to direct traffic to clear the intersection

and further enhanced by the Dynamic Maximum controls available for the traffic light at Shiloh Road and Street Road rather than relying on signalization alone.

D. Facts Relating to the Parking and Interior Circulation Plan

1. For Major Evening Events, the School District has proposed an interior circulation and parking sequence plan as shown on Exhibit A-7. The plan sequences nine parking areas to be used. A one-way circulation pattern is proposed with traffic entering the school property at the northern access point designated as the intersection of Shiloh Road with the School Access Lane at Farm Lane. Parking will be directed to the 9 parking areas in that numerical sequence, each to be utilized after the prior area is filled. Parking will be directed by school personnel and each area will be blocked by traffic cones as it is filled. In several respects the plan is unsatisfactory for the following reasons:

a. The school campus is a large area and the parking areas designated as areas 5,6 and 7 scale to a distance of between 1/3 and 1/2 mile from the stadium. Area 9, while proximate to the stadium is not proposed for use unless areas 1 through 8 are filled. We understand the concern about protecting the surface of area 9 since it is used as a practice field. However, we believe the field is at risk only if the field is in a saturated condition. If the field is dry, we do

not see the surface as being at risk by its use approximately four or five times in a year. We believe, therefore that the sequence of parking areas should designate the practice field as Area 2 unless the surface is saturated on a given night.

b. There is no route set aside for drop-off and pick-up of attendees. The driveway leading from the more remote parking areas to the stadium will have vehicles parked on either side early in the parking sequence. After the parking in area 1 is filled, the plan indicates that the access would be closed for drop-off and pick-up traffic. Many of the students attending the game will be below driving age. The obvious constriction and one-way traffic pattern along area 2 will be severely obstructed if vehicles attempt to stop and discharge attendees in that area causing backups of traffic entering and leaving the access areas. Therefore, an area near the school, possibly at the looped area in front of the school building should be the designated area for drop-off and pick-up so that the vehicles traveling along the driveway adjacent to areas 8 and formerly 2 will not be delayed. The loop area could also be considered for the loading and discharge for busses.

c. There is no designated parking area for busses. School busses should not be parking near the stadium but rather at the more remote locations.

We suggest that space near the looped area near the proposed discharge area or Area 6 could also be appropriate for school bus parking after discharging attendees at designated discharge location.

2. We find the parking and circulation plan to be inadequate for the reasons above stated but feel that the plan can be addressed by imposition of a condition requiring that a modified parking and circulation plan be submitted to the Township addressing the issues above noted. The revised plan shall be reviewed by the Township's traffic consultant for compliance with this condition. If the revised plan is not approved, the Zoning Officer shall refrain from issuing a certificate of occupancy. Such approval or refusal shall be deemed a Determination of the Zoning Officer under Section 909.1(3) of the Municipalities Planning Code.

E. Facts Relating to Noise

1. Presently extant at the stadium facility is a loud speaker system that directs the sound horizontally across the field and bleacher areas. The only diminution of the sound intensity arises from attenuation over distance. There have been no complaints to the Township or the School District of excessive noise from the loud speaker system. The School District intends to continue to use this system for Miner Daytime and Miner Evening Events where the entire stadium

seating is not used.

2. A second system will be installed, and shall be used during all Evening Events. This system will consist of multiple speakers spread over the bleacher areas and directed downward. Thus sound will not be projected toward the lot lines and neighboring properties. Since the sound projected beyond the boundaries will be less than presently exists during the utilization of the old system and the old system has not been a source of complaint, we deem the mitigation satisfactory.

3. Cheering of spectators is a part of the game. We do not believe it within the scope of our charge to attempt to mitigate this aspect of sports spectator activity.

IV. Discussion

The general rule in considering an application for special exception or conditional use relief is that the burden of proof is upon the applicant to (i) bring itself within the definitional ambit for which such relief under the terms of the ordinance may be granted and (ii) to demonstrate compliance with the objective standards governing such relief. The burden then shifts to the objectors to prove that (i) that the application was violative of subjective standards for the grant of relief or (ii) that the relief, if granted would be contrary to the public health, safety,

morals or general welfare.

That the Applicant has brought itself within the definitional ambit for relief needs little discussion. The relief sought is for modification of the special exception previously granted and for approval of a proposed installation of outdoor lighting for night sports events. The application is under the specific terms of the ordinance and prior approval and thus the first element has been met and requires no further discussion.

With respect to the objectors' burden of proof, there is no substantial evidence in the record that the application, if granted would be contrary to the public interest. The use proposed is precisely that envisioned by the Board of Supervisors when the relevant ordinance provisions were adopted and envisioned by the Zoning Hearing Board as a condition reserving jurisdiction in the prior order.

This leaves for discussion the elements of compliance with the objective and subjective mandates of the ordinance and prior order. The expert witnesses of both the Township and the Applicant agree that the design of the lights as presented could comply with the ordinance standards and conditions of the prior order if properly installed and calibrated and maintained. However, actual compliance cannot be affirmatively shown or rebutted until the system is installed and tested as

so installed. There is nothing in the evidence to indicate that the system if properly installed and calibrated will not comply, but there is no way to determine if it does in fact comply until it is constructed and tested.

The answer is found in the structure of the approval process. Authorization is granted by the Zoning Officer in two stages. First, a building permit is issued to authorize the construction of the facilities. After construction, the facilities are inspected to determine compliance and a certificate of use and occupancy is issued. Therefore, the Applicant and the Township have agreed to utilize this dichotomy to permit the facilities to be constructed according to the plans, data and testimony as presented. A protocol has been developed with the aid of the Township's Lighting Consultant and the Township and School District have agreed to most of the methodology proposed. We have therefore taken the protocol as proposed and expanded it to serve as a tool to ascertain initial compliance and also to evaluate future complaints of non-compliance. The protocol is attached hereto as Annex A, incorporated herein by reference and made a part hereof as fully as if set forth herein at length. Costs of initial testing shall be paid by the School District. Subsequent non-compliance testing costs are addressed in the protocol attached as Annex A.

We believe that the internal circulation plan and parking system proposed have serious deficiencies which must be addressed. But these revisions do not require a denial of the relief sought and may best be addressed by the imposition of conditions that appropriately address the issues raised. Since there will be a delay between the issuance of the building permit and the installation and inspection of the facilities and subsequent issuance of the certificate of use and occupancy, there is ample opportunity to address these concerns. The cost of a denial and reapplication with a new round of public hearings does little to promote the public interest when it is capable to being protected by the revision of the parking and circulation plan between the time of issuance of the building permit and the issuance of the certificate of use and occupancy.

We are satisfied that a police presence is not required for minor events, but is essential for major events. However, we are not the proper forum to determine the staffing needs for these events. We believe that the number of police officers needed for major events can best be determined by consultation between officials of the School District, the Township and the Westtown-East Goshen Police Department. This will also allow, when warranted, for changes in staffing where required either by reason of unanticipated events or conditions or where unusually

large attendance is anticipated. The costs associated with providing police personnel at major events shall be paid entirely by the School District.

From the foregoing, we issue the following

V. Order

AND NOW, this 12 day of September, 2011, upon consideration of the testimony adduced and exhibits presented, it is Ordered that:

1. Upon compliance with the conditions herein set forth, the Applicant, West Chester Area School District, has demonstrated proper mitigation of all external impacts and the modification to the prior special exception granted by the Board on January 31, 2003 is hereby granted. The Applicant is hereby authorized to install, use and operate outdoor lighting to permit night sports and other school related evening activities at the Bayard Rustin School in and only in conformity to the terms and subject to the limitations stated herein and not otherwise.

2. Upon compliance with the conditions herein set forth, the Applicant, West Chester Area School District, has brought itself within the definitional ambit for which the conditional use sought may be granted and will have demonstrated compliance with all of the objective conditions entitling it to the Conditional Use Approval sought, said conditional use shall be and hereby is granted to permit the

installation, use and operation of outdoor stadium lighting in and only in conformity to the terms and subject to the limitation stated herein and not otherwise.

3. The conditions to which the approvals sought are subject are:

a. The number of evening events for which the outdoor lighting may be used are limited to twenty regularly scheduled events per academic year plus, if the football team so qualifies, up to three championship games. Of the regularly scheduled evening events, graduation ceremonies and four night football games are deemed Major Evening Events as are any other night outdoor school events described in Findings of Fact C.3. above. The other authorized events shall be deemed Minor Evening Events.

b. All Nighttime Outdoor Activities, whether Major or Minor, shall cease and the outdoor lights shall be extinguished not later than 10:00 p.m. prevailing time.

c. The sound amplification system proposed by the School District, consisting of a fully distributed directional sound system of the type specified in the testimony and exhibits presented by the Applicant's Acoustical Consultant and approved by the Township Consultant is approved. The system shall be of the type so specified and shall be installed in the manner described in the testimony and

exhibits presented. No deviation from the proffered equipment and its method of installation shall be made unless certified by the Township Acoustical Consultant as being equal to or better than the system component originally proposed. Only the fully distributed system shall be used for nighttime events.

d. The lighting equipment and method of installation as presented by the Applicant's Lighting Consultant and approved by the Township's Lighting Consultant shall be and hereby is approved. No deviation therefrom shall be permitted unless the same is certified by the Township's Lighting Consultant as being equal to or better than the system component originally proposed.

e. Upon installation of the lighting facilities, but prior to the issuance of a certificate of use and occupancy therefor, the same shall be tested as to conformity with the relevant terms of section 170-1514 in accordance with the protocol attached hereto as Annex A and no certificate of use and occupancy shall be issued until such system and each element of conformity is certified by the Township's Consultant as installed and operating in conformity to the terms of section 170-1514.

f. During Major Evening Events, uniformed police officers shall be on the premises and the 3 designated relevant intersections to direct traffic entering

and exiting from the school property. The relevant intersections are (i) Street Road and Shiloh Road, (ii) High School Drive (Dunning Drive) and Shiloh Road and (iii) Access Drive (Farm Road) and Shiloh Road. The uniformed police shall be on duty at the said intersections from one hour prior to the scheduled start of the event until one half hour after the commencement thereof and for one half hour prior to the end thereof until one half hour after the end thereof (or such additional time as special circumstances may require). During the period between the times the intersections are manned, the uniformed police shall remain on the premises to assist in crowd control. The Chief of Police of WEGO shall confer with the School District and Township Officials prior to the commencement of the first Major Event and thereafter prior to the commencement of each academic year and shall determine what, if any, additional staffing requirements as to the number of officers are required and their specific duties at the intersections and on the premises. The cost of police services shall be paid by the School District.

g. If the School District elects to apply for, procure and install a Dynamic Maximum Component for the traffic signal at Street Road and Shiloh Road, it may do so. If the District so elects, all costs of application, approval, procurement, installation and testing shall be the obligation of the School District.

Upon installation, the component shall be tested during one or more Major Evening Events. Thereafter, the Chief of Police of the Westtown East Goshen Police Department shall determine if the component justifies a modification of uniformed police staffing at that intersection.

h. The parking and circulation plan shall be revised to address the objections noted in Part D1 in the Findings of Fact above. No certificate of use and occupancy shall be issued until the revised plan is so approved.

i. The lighting facilities shall be used for and only for direct school events and shall not be used for little league or other sports or other events not directly operated and controlled by the School District.

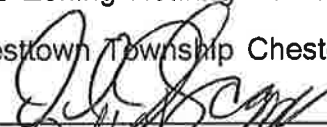
j. The reviews and concurrences of the Township Consultants shall be deemed Reports as defined in the Municipalities Planning Code (the MPC). The Zoning Officer shall not issue a certificate of occupancy except in conformity to the approvals and in accordance with the terms of the Township Consultants' recommendations as required in sub-paragraphs d through g above. The grant or refusal of the certificate by the Zoning Officer shall be deemed a Determination as defined in the MPC and appealable in accordance with the provisions of section 909.1(a)(3). The costs of such review shall be paid by the School District.


k. The permit for operation of the outdoor events shall be renewed annually prior to the commencement of each academic year. Upon application for renewal, School District shall present to the Township Zoning Officer a schedule of the Major Evening Events showing the anticipated attendance and any special issues relevant to the event, and any deviation from previously determined police staffing requirements which the School District may wish the Zoning Officer to approve. The issuance of the annual permit or refusal so to do or any disputes as to modification of terms thereof shall be deemed a Determination by the Zoning Officer.


l. The Relief herein granted shall be valid and must be implemented within 12 months of the date hereof unless extended by the Zoning Officer for up to 6 additional months for cause shown.

Upon compliance with all of the foregoing, the payment of proper fees and the filing of proper applications, the Zoning Officer is authorized and directed to issue the necessary Certificate of Use and Occupancy and subsequent permit renewals in and only in conformity with the terms of this Opinion and Order and not otherwise.

The Zoning Hearing Board of
Westtown Township Chester County







Annex A

LIGHTING COMPLIANCE AND MEASURING PROTOCOL

The purpose of this protocol is to establish fair and efficient procedures to assure compliance with the terms of section 170-1514 of the Zoning Ordinance prior to the initial operation of the lighting facilities to be installed at the Bayard Rustin High School Stadium and to investigate complaints and determine continued compliance after initial activation thereof.

Upon request by the School District for a Certificate of Use and Occupancy and for the purpose of investigation of complaints from a Qualified Complainant alleging a violation of the terms of the approval granted by the Zoning Hearing Board in its Order dated the 12 day of September, 2011 relating to the sports lighting at the Bayard Rustin football field, the following protocol shall prevail:

1. Qualified Complaint - A Qualified Complaint shall be deemed to mean a written Complaint to the Zoning Officer by (a) a Township Official or employee charged with the administration or enforcement of the Zoning Ordinance or Building Code or (b) a member of the Westtown East Goshen Police Department or (c) an adjacent property owner alleging a direct impact of a lighting violation on his property or (d) a property owner alleging that luminaries or reflecting surfaces are directing glare visible from any window on his residence located within 1,800 feet of the boundary of the lighted field.

2. Initiation of General Compliance Survey - A general compliance survey shall be deemed initiated by the request from the School District that the proposed equipment and facilities have been installed and requesting a Certificate of Use and Occupancy for outdoor sports events at the Bayard Rustin Stadium.

a. Upon receipt of a request for a general compliance survey, the Zoning Officer shall notify a qualified lighting consultant of the Township of the request and shall select a tentative date, time and location for the conduct of such

survey. The survey shall be scheduled at least one hour after sunset. The Zoning Officer shall notify the School District, the Township Manager and those persons who have filed a written request with the Zoning Officer to receive such notice. The notice of the date and time of the survey shall be sent to those persons entitled to notice at least 7 days prior to the scheduled date. The School District shall be notified of the scheduled survey and requested to have the sports lighting energized no less than ½ hour prior to the time when luminance readings and other measurements are to be taken.

b. If the weather conditions are violative of the weather conditions described below, the survey shall be postponed to a date certain determined by the Consultant and announced to those authorized to receive notice. Such notice may be in writing mailed at least 3 days prior to rescheduled date or orally announced at the site of the initially scheduled survey. Omission of notice to one or more persons requesting notice shall not invalidate the survey or its import.

c. The equipment used shall include, but not be limited to an Illuminance Meter with an accuracy of +/- 2% +/- 1 digit of displayed value, an Angle of acceptance of 1/3° and which has been NIST calibrated and certified within 1 year of the current date of usage and such other equipment as the consultant may deem useful or required to perform the survey. He shall thereupon examine the equipment and conditions necessary to certify that the lighting equipment installed performs and conforms to each of the mandates of section 170-1514.

d. Procedures: Luminance readings shall be taken in clear weather. Luminance readings shall be taken at least one hour after sunset. Luminance readings shall be taken at the common boundary between the Rustin property boundaries at such locations as will be representative of compliance or non-compliance with the ordinance standards. Where this issue of glare visible at a

window of a residential property within 1800 feet of the boundary of the lighted field, the readings shall be taken at or as near as possible to the lowest window of the residential property. For general survey purposes, not all dwellings need be tested, but the consultant shall select representative properties for such readings. The properties selected shall include any property where specifically requested by the owner thereof who would be deemed a qualified complainant. Three successive luminance readings shall be taken of each luminaire believed by the consultant to be potentially offending.

e. Recording. The readings shall be recorded on the Township's official form a copy of which is attached hereto.

f. Form Disposition. Completed forms shall be presented to the Township Zoning Officer.

g. The costs of the initial compliance survey shall be paid by the School District.

3. Violation Survey. a. All Qualified Complaints shall be filed with the Zoning Officer and shall be verified. Upon receipt of the complaint, the Zoning Officer or his designee shall make an initial review thereof and such investigation as will enable him to determine if the complaint may have merit. If the Zoning Officer determines that the Complaint is qualified and may have merit, he shall notify the School District, the Complainant and the Township Manager of his initial conclusion and shall request the Consultant to make a survey of the complaint. The survey shall be limited to and only to the alleged violation found to have potential merit. The Consultant shall follow the notice procedure set forth in paragraphs 2a and b above but notice need not be given to members of the general public or persons other than the Complainant filing the complaint.

b. If the survey determines that the School District is in fact in violation of the ordinance or the Order of the Zoning Hearing Board, in addition to other remedies available to the Township, the cost of the survey shall be assessed against

and paid by the School District. If the survey finds no violation the costs of the survey shall be paid by the Township. If the Zoning Officer determines that there is not sufficient cause to proceed with the survey, he shall notify the Complainant in writing of his determination and such determination may be appealed under the provisions of section 909.1(a) 3 of the MPC. In such event, the costs of survey and testing shall be paid by the party ordering such survey and the expert testifying in the matter shall be deemed a consultant of the party and not an official or consultant of the Township.