

HUSCH BLACKWELL

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October 14, 2015

**RE: NOTICE OF LAWSUIT: WESTMINSTER CHRISTIAN ACADEMY
ASSOCIATION d/b/a WESTMINSTER CHRISTIAN ACADEMY v. THE CITY
OF TOWN AND COUNTRY, MO**

You hereby are given notice that Westminster Christian Academy Association d/b/a Westminster Christian Academy filed a lawsuit seeking judicial review of the City of Town and Country's denial of its application for a Conditional Use Permit for stadium lighting and a permanent public address system on its existing outdoor athletic facility located on its campus at 800 Maryville Centre Drive. The enclosed Petition was filed on October 14, 2015 in the Circuit Court for St. Louis County, Missouri

Very truly yours,

HUSCH BLACKWELL LLP

By: Caroline L. Hermeling

Caroline L. Hermeling, Partner

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

WESTMINSTER CHRISTIAN ACADEMY)
ASSOCIATION d/b/a WESTMINSTER)
CHRISTIAN ACADEMY,)
a non-profit corporation,)
)
Relator/Plaintiff,)
) Cause No.
v.)
) Division
CITY OF TOWN AND COUNTRY, MISSOURI,)
)
SERVE: Ashley McNamara)
City Clerk)
1011 Municipal Center Drive)
Town and Country, MO 63131)
)
Respondent/Defendant.)

VERIFIED PETITION FOR
WRIT OF CERTIORARI AND ADMINISTRATIVE REVIEW

COMES NOW Relator/Plaintiff Westminster Christian Academy Association d/b/a Westminster Christian Academy ("WCA") and for its Verified Petition against the City of Town and County, Missouri ("City") for judicial review of the denial by the City Board of Aldermen ("BOA") to issue WCA a Conditional Use Permit ("CUP") for use of a permanent public address system and field lighting for WCA's existing stadium, states as follows:

INTRODUCTION

1. WCA's mission is to provide students with a complete educational experience consistent with the deeply held religious beliefs and values that informed its school's families' choice to select WCA for their children's education.
2. This action arises out of the BOA's unlawful decision to deny WCA's application for a CUP to install a permanent public address system and field lighting for WCA's existing

stadium on its campus located at 800 Maryville Centre Drive located in the City ("Property") when WCA has agreed to limit the evening use of the stadium to no more than twenty-five (25) nights per calendar year and WCA further has agreed to the following limitations:

- Evening Activities (as defined below) which may require stadium lights and public address ("P.A.") system during the year except during December, January and February (as set forth below), and only for the time period from 5 p.m. to 10 p.m. (and only past 10 p.m. to complete an athletic game in progress).
- "Evening Activities" will include only school related programs and which fulfill the school's Mission, such as athletic games and practices (football, soccer, field hockey, and lacrosse), and possibly school assembly or recreational events.
- Evening Activities will not occur during the months of December, January and February.
- Evening Activities will not include concerts or non-WCA events.

(collectively, "Limited Evening Use")

3. The BOA's denial of WCA's Limited Evening Use of its stadium is illegal and is unsupported by competent and substantial evidence presented on the record before the BOA on August 10, 2015 at the CUP Hearing (collectively, the "Record").

4. Furthermore, for reasons stated herein, the BOA's denial of WCA's Limited Evening Use is unconstitutional under Missouri law, is unauthorized by law, is arbitrary, capricious or unreasonable, and/or involves an abuse of discretion.

5. This Court must remedy the BOA's blatant disregard of the City Planning Report (as defined herein) and the unrefuted expert testimony in the Record mandating approval of the CUP, the discriminatory treatment of WCA as compared to similarly situated applicants who received CUPs to allow field lighting and the City's unlawful attempt to prevent the reasonable use of property the City does not own.

PARTIES

6. WCA is a Missouri non-profit corporation organized under the laws of the State of Missouri that operates as an independent, co-educational college preparatory school serving grades 7-12 on a 68.8-acre campus located in the City.

7. The City is a fourth class city of the State of Missouri located in St. Louis County.

JURISDICTION AND VENUE

8. This Court has jurisdiction of this action pursuant to §§ 89.100 and 536.100, RSMo. and Article 5, § 18 of the Missouri Constitution.

9. Venue is proper in this Court pursuant to §§ 89.110 and 536.110, RSMo. because the City and the Property are located in St. Louis County.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

A. Historical Use of Property Involved Outdoor Evening Events with Lights/Sound

10. For over three decades, the Property at issue has been used for outdoor evening athletic and entertainment events involving lighting, sound systems and even fireworks.

11. For over twenty (20) years from 1981 through 2003, the Special School District operated West County Vocational Technical School which allowed use, without City objection, of its athletic fields during the evening, specifically by the Bonhomme Football League, also known as the Chesterfield Football League.

12. After WCA purchased the property from the Special School District, WCA rented the Property for outdoor events including the City's annual "Fire and Ice" event featuring bands, lights and fireworks.

B. City Approvals of CUPs to Permit Field Lighting for Other Private High Schools

13. Missouri State High School Athletic Association (“MSHSAA”) estimates nearly ninety percent (90%) of football-playing high schools have field lights and schedule games on Friday evenings.

14. In 2003, the City’s BOA approved a CUP for field lighting for Christian Brothers College High School (“CBC”), another private high school located in the City, whose field lighting included installation of eighty (80) foot light poles, the exact same height proposed for WCA’s CUP for its field lighting.

15. The BOA approved the use of the CBC field lighting for a maximum of twenty-eight (28) times per calendar year, three times more than WCA’s request for field lighting under the subject CUP.

16. In 2013, the City BOA again approved a CUP for Principia Corporation, the owner of the property used by The Principia High School (“Principia”), another private high school located in the City, to permit the installation of fifty (50) foot light fixtures for Principia’s existing outdoor athletic facility (soccer field).

17. The BOA’s CUP issued to Principia placed no limitation on the number of times Principia could use the field lighting for its soccer field.

18. Both CBC and Principia are located within the City’s Major Educational Campus “MEC” Zoning District, the same zoning district as WCA’s Property and one in which residential uses are permitted and allowed.

19. In approving the field lighting for CBC and Principia, the City BOA specifically found the proposed field lighting will not: (a) adversely affect the visual coherence, predominant

usage or development character of adjacent neighborhood, (b) adversely affect the general welfare of the community, (c) be developed and operated in a manner that is physically and/or visually incompatible with the permitted uses in the surrounding areas, or (d) create a nuisance – the same standards at issue here.

20. The City BOA also was made aware during its consideration of the subject CUP at the CUP hearing on August 10, 2015 the neighboring City of Creve Coeur also had approved in 2008 a CUP to allow stadium field lighting for Desmet Jesuit High School, another private high school located in a single family residential zoning district, which field lighting again involved the installation of eighty (80) foot light poles to be used over twenty-five (25) times a year and, in that CUP ordinance, the city affirmatively found the proposed conditional use which included field lighting (a) will contribute to and promote the community welfare and convenience at the specific location, (b) will not cause substantial injury to the value of neighboring property, and (c) will be compatible with the surrounding area and thus will not impose an excessive burden or have a substantial negative impact on surrounding or adjacent users or on community facilities or services.

21. WCA's proposed field lighting pursuant to the subject CUP, as pointed out at the CUP Hearing, is technologically superior to the field lighting previously approved by the City BOA for CBC and Principia and by the City of Creve Coeur for Desmet.

22. The City BOA's disparate treatment of similarly situated applicants is discriminatory and unconstitutional and prevents WCA from enjoying the benefits of its major educational campus in a manner similar to the other private schools in the City and throughout St. Louis County.

C. Major Educational Campus Zoning District/ CUP Controlling Factors

23. WCA's request for a CUP to permit field lighting and a permanent P.A. system for Limited Evening Use complies with the City Zoning Code.

24. The City's Major Educational Campus "MEC" Zoning District in which the subject Property is located allows the City "to accommodate the expansion or development of campuses for major educational uses with flexibility, while insulating or buffering such major educational uses from adjoining uses, particularly residential uses". City Zoning Code § 405.690.

25. Installation of field lighting is permitted under the City Zoning Code by way of the City's issuance of a CUP. City Zoning Code § 405.710.A.4 (outdoor lighting).

26. Absent competent and substantial evidence in the Record which triggers the existence of one of the below Controlling Factors under Section 405.190 of the City Zoning Code, the City BOA must issue the subject CUP, namely:

- a. Substantially increase traffic hazards or congestion;
- b. Substantially increase fire, health or any other public safety hazards;
- c. Adversely affect the visual coherence, predominant usage or development character of the adjacent neighborhoods;
- d. Adversely affect the general welfare of the community;
- e. Overtax public utilities, service or other municipal facilities;
- f. Be developed and operated in a manner that is physically or visually incompatible with the permitted uses in the surrounding areas;
- g. Substantially increase storm water drainage on other lots;
- h. Create a nuisance

(collectively the "Controlling Factors"). § 405.190.

27. The Record does not contain competent and substantial evidence to trigger the existence of one of the above Controlling Factors and, therefore, the BOA must issue WCA the CUP.

D. The CUP Application and City Planning Report

28. By 2015, WCA had the benefit of improved technology relating to field lighting and a permanent P.A. system and the financial means to install this significant capital improvement project for its school campus.

29. WCA engaged Bruce Coleman, a professional engineer experienced with field lighting to design a state-of-the-art field lighting system to meet MSHSAA lighting requirements for athletic activities while also meeting the requirements of the City's Building Code, Section 500.015.B.36b(1).

30. WCA also engaged consultant Jim Holtrop an acoustical expert to design a permanent P.A. system that would cut the noise level by half of what the school is currently experiencing with the current portable system being used at athletic events and would comply with the St. Louis County noise ordinance, the only controlling noise ordinance as there is no City noise ordinance or state noise statute.

31. Throughout the CUP process, WCA worked with the City's Planning and Public Works Department ("City Planning") to ensure compliance with all applicable code requirements.

32. City Planning studied the CUP application and prepared an Internal Memorandum dated August 10, 2015 directed to the Mayor and BOA ("Planning Staff Report") setting forth the characteristics of the proposed design in relation to the applicable ordinances and identifying

additional conditions for the BOA to consider in the event the BOA approved the CUP (“City Conditions”).

33. WCA consistently represented to the City that WCA would comply with all the identified City Conditions.

E. The Record

34. On August 10, 2015, the BOA, the City body tasked with the responsibility of deciding all planning and zoning matters, conducted a hearing on the record before a court reporter to gather the evidence relating to the subject CUP, namely documents and testimony of expert and lay witnesses (“CUP Hearing”).

35. At the CUP Hearing, the BOA accepted City and third party documents into the record, listened to expert and lay witness testimony, directed questions to some of the witnesses, made statements into the record and then closed the CUP Hearing (collectively, the “Record”).

36. At the CUP Hearing, Jim Holtrop and Bruce Coleman, the acoustic and lighting system experts, provided through testimony and reports expert analysis and opinions that the proposed field lighting and the permanent P.A. sound system for the Limited Evening Use would comply with the applicable and acceptable lighting and noise standards for the City and County of St. Louis, as applicable.

37. Ann McReynolds, a licensed real estate appraiser, offered her expert analysis of sale prices of houses in proximity to four high school athletic stadiums, namely Clayton High School, Desmet High School, Lafayette High School and Marquette High School.

38. Ann McReynold’s expert appraisal opinion in the Record is that the value of residential homes within the City would not be negatively impacted by the BOA’s issuance of the CUP to permit the Limited Evening Use of WCA stadium.

39. Richard Ward, a professional consultant in urban planning and development for over 45 years, gave his expert opinion in the Record that the Limited Evening Use requested under the CUP is no more intense than the Property's previous uses and the Limited Evening Use would not trigger any condition which would allow the BOA to deny the CUP.

40. WCA also confirmed for the Record that WCA would comply with all the City Conditions suggested by City Planning in the Planning Staff Report and remained open to discuss alternative proposals to permit the Limited Evening Use, a use previously granted by the City for other private high schools.

41. No one from City Planning testified in the Record opposition to the CUP.

42. The City did not engage any expert or lay witnesses to testify in opposition to the CUP as a part of the Record.

43. No adjoining commercial property owner testified in opposition to the CUP at the CUP Hearing as a part of the Record.

44. Opposition comments at the CUP Hearing came from residents, primarily from the Arlington Oaks and Old Woods Mill Manor subdivisions accessed off Clayton Road and, in some cases, the comments did not discuss the Controlling Factors relevant to the issuance of the CUP (collectively, "Homeowner Comments").

45. At the CUP Hearing, members of the BOA also made statements which, in some instances, had no connection to the Controlling Factors to be considered in connection with a CUP application.

46. The City BOA closed the Record on August 10, 2015 without making any findings of fact concerning the CUP application or the evidence presented on the Record.

F. BOA Denial, Findings of Fact and Decision

47. On September 14, 2015, the BOA at a regularly scheduled BOA meeting denied the subject CUP without making findings of fact.

48. One of the aldermen denying the CUP on September 14, 2015 was not present at the CUP Hearing on August 10, 2015.

49. On October 12, 2015, the BOA approved a document called "Findings of Fact and Decision of the Board of Aldermen".

50. One of the aldermen who did not attend the CUP Hearing again voted on the approval of the October 12, 2015 document.

G. BOA Decision is Illegal, Discriminatory and Unconstitutional

51. The BOA denial of the CUP for field lighting and a permanent P.A. system for WCA's stadium is unauthorized by law, illegal, discriminatory, unconstitutional under Missouri constitution, unsupported by competent and substantial evidence in the Record, is arbitrary, capricious or unreasonable, and/or involves an abuse of discretion for the foregoing reasons and the reasons set forth below:

- (a) Historical use of the Property for years allowed lighting and sound systems with educational campus operations,
- (b) The City BOA previously issued CUPs for field lighting to two other similarly situated private high schools and had knowledge of a nearby third private high school with similar field lighting in a residential zoning district,
- (c) The City Planning analyzed the CUP and suggested only consideration of the City Conditions, all of which were agreeable to WCA,
- (d) CUP meets City Zoning Code lighting standards,

(e) CUP meets St. Louis County noise ordinance standards,

(f) WCA expert witnesses (“WCA Experts”) testifying in the Record provided credible and competent opinions which established that there was no legal basis for BOA to reject the CUP based on any of the Controlling Factors set forth in section 405.190 of the City Zoning Code,

(g) Neither the City nor City Planning refuted any of the testimony of the WCA Experts with other expert testimony,

(h) Homeowner comments are not competent and substantial evidence in the Record to support the BOA’s denial of the CUP under these circumstances as a matter of law,

(i) City BOA made no findings of fact at the CUP Hearing on August 10, 2015,

(j) City BOA made no findings of fact before they denied the CUP on September 14, 2015, and

(k) A member of the City BOA who did not participate in the CUP Hearing denied the CUP and approved the document on October 12, 2015 entitled “Findings of Fact and Decision of the Board of Aldermen”.

52. BOA’s denial has effectively prevented WCA from conducting the Limited Evening Use at its stadium while other similarly situated high schools in the area enjoy use of their athletic fields during the evening.

53. There is no valid reason to deny the CUP given the uncontested testimony that the new permanent P.A. system will cut the existing noise level from the current system in half and

that the proposed field lighting system is technologically superior to the previous field lighting approved by the BOA on two separate occasions for other private high schools in the City.

54. WCA has exhausted all available administrative remedies.

COUNT I – WRIT OF CERTIORARI:
ILLEGAL DENIAL OF THE CUP APPLICATION

55. Relator re-alleges and incorporates by reference Paragraphs 1 through 54 above.

56. The Record establishes WCA was entitled to a CUP to install field lighting system and a permanent P.A. system at its stadium for Limited Evening Use.

57. The City BOA's Decision to deny the CUP was made without competent and substantial evidence on the whole record in violation of Missouri law.

58. WCA has been aggrieved by the BOA's denial of the CUP.

59. Pursuant to § 89.110 RSMo, the Court is authorized to conduct a judicial review of the BOA's denial.

60. WCA is entitled to recover its attorneys' fees under Section 89.110 RSMo, because the BOA's denial constituted gross negligence and/or bad faith.

WHEREFORE, Relator/Plaintiff Westminster Christian Academy Association d/b/a Westminster Christian Academy respectfully requests this Court issue a Writ of Certiorari directed to Respondent City of Town and County requiring the City to certify to this Court a true, full, and complete copy of the record of the acts and proceedings in this matter, along with all exhibits and documents admitted into evidence, and have said copy and exhibits returned to the Court ten (10) days after the service of notice of the Writ's issuance on the City, so that this Court may adjudicate, on an expedited basis, the legality of said proceedings and make such further orders therein as it deems necessary, including (1) entering an order finding the denial of the CUP was illegal, unconstitutional and discriminatory for the reasons stated herein including a

finding that the denial was not supported by competent and substantial evidence, (2) ordering the City to reverse its denial of the CUP and to issue WCA the CUP, (3) awarding WCA its reasonable attorneys' fees and costs incurred in this matter, and (4) for such other relief as this Court deems just and proper.

COUNT II – ADMINISTRATIVE REVIEW:
ILLEGAL DENIAL OF THE CUP APPLICATION

61. Relator re-alleges and incorporates by reference Paragraphs 1 through 54 above.

62. The Record (as defined herein) establishes that the BOA had no lawful basis to deny the CUP for the Limited Evening Use.

63. The City BOA's Decision to deny the CUP was made without competent and substantial evidence on the whole record in violation of Missouri law.

64. WCA has been aggrieved by the City's denial of the CUP.

65. Pursuant to § 536.110 RSMo, the Court is authorized to conduct a judicial review of the BOA's Decision.

WHEREFORE, Relator/Plaintiff Westminster Christian Academy Association d/b/a Westminster Christian Academy respectfully requests this Court (1) find the denial of the CUP to be illegal, unconstitutional and discriminatory for the reasons stated herein including a finding that the denial was not supported by competent and substantial evidence, (2) ordering the City to reverse its denial of the CUP and to issue WCA the CUP, and (3) grant such other relief as this Court deems just and proper.

Respectfully submitted,

HUSCH BLACKWELL LLP

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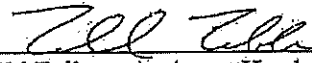
DECLARATION OF VERIFICATION

I, Todd Fuller, swear upon penalty of perjury, that:

1. I am over the age of eighteen and have personal knowledge about, or information available to me regarding, the allegations made in the foregoing Verified Petition ("Petition") in my capacity as an authorized agent for Westminster Christian Academy Association d/b/a Westminster Christian Academy ("WCA").

2. In that capacity, I have read the foregoing Petition and am authorized to execute this Verification on behalf of WCA.

3. The facts in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.



Todd Fuller – Assistant Head of School - Finance
Westminster Christian Academy

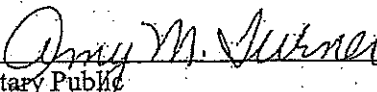
STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 14th day of October, 2015, before me personally appeared Todd Fuller, to me known to be the person described in and who executed the foregoing instrument; and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year above written.



AMY M. TURNER
My Commission Expires
December 11, 2017
St. Charles County
Commission #13808021



Notary Public

My Commission Expires: