

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

| | | |
|---------------------------|---|------------------|
| WESTMINSTER CHRISTIAN |) | |
| ACADEMY ASSOCIATION, |) | |
| |) | |
| Petitioner, |) | No. 15SL-CC03523 |
| |) | |
| vs. |) | Division 36 |
| |) | |
| CITY OF TOWN AND COUNTRY, |) | |
| |) | |
| Respondent. |) | |

RESPONDENT’S ANSWER

COMES NOW Respondent, the City of Town and Country (the “City”), by and through undersigned counsel, and hereby files its Answer to Petitioner’s Verified Petition for Writ of Certiorari and Administrative Review as follows:

1. Respondent is without sufficient information to admit or deny the allegations in paragraph 1, and, consequently, denies them.
2. Denied.
3. The allegations in paragraph 3 are incorrect legal conclusions that do not require a response; to the extent a response is required, however, Respondent denies each and every allegation in Paragraph 3.
4. The allegations in paragraph 4 are incorrect legal conclusions that do not require a response; to the extent a response is required, however, Respondent denies each and every allegation in Paragraph 4.
5. The allegations in paragraph 5 are incorrect legal conclusions and incorrect legal standards that do not require a response; to the extent a response is required, however, Respondent denies each and every allegation in Paragraph 5.

6. Admitted.

7. Admitted.

8. Respondent admits that Petitioner alleges the Court has jurisdiction of this action to review the administrative record in this case through the Writ of Certiorari issued by the Court pursuant to Chapter 89.110 RSMo., and, further admits Petitioner alleges that the Court has jurisdiction under Chapter 536.100, but states that these are legal conclusions that do not require a response by Respondent. To the extent that either statute confers jurisdiction, Respondent states further that review under Chapter 89.110 and Chapter 536.100 are seen as statutory equivalents under which the Court reviews the administrative record under a deferential standard of review that is limited to determining whether there is any competent and substantial evidence in the Record to support the decision of the Board of Aldermen, while disregarding all evidence to the contrary.

9. Respondent admits that the proper venue for actions against the City is the St. Louis County Circuit Court.

10. Respondent is without sufficient information to admit or deny the allegations in paragraph 10, and, consequently, denies them.

11. Respondent is without sufficient information to admit or deny the allegations in paragraph 11, and, consequently, denies them.

12. Respondent admits that the City rented Petitioner's property for a single-day event once a year, but is without sufficient information to admit or deny the remaining allegations in paragraph 12, and, consequently, denies them.

13. Respondent is without sufficient information to admit or deny the allegations in paragraph 13, and, consequently, denies them.

14. Respondent admits that the City granted a CUP to the Christian Brothers College High School on grounds and conditions substantially different from those that supported the denial of the distinctly different application before the Board in this case, as demonstrated by the Record. Respondent denies the remaining allegations in Paragraph 14.

15. Respondent admits that Petitioner requested lighting on 25 calendar days without a specific time limit and that the City granted a CUP to the Christian Brothers College High School for limited lighting on 28 calendar days and on other grounds and conditions substantially different from those that supported the denial of the distinctly different application before the Board in this case, as demonstrated by the Record. Respondent denies the remaining allegations in Paragraph 15.

16. Respondent admits that the City granted a CUP to the Principia High School on grounds and conditions substantially different from those that supported the denial of the distinctly different application before the Board in this case, as demonstrated by the Record. Respondent denies the remaining allegations in Paragraph 16.

17. Admitted.

18. Respondent admits that the CBC, Principia and Westminster schools are all located within the "MEC" Major Educational Campus zoning district, but denies that the properties are situated in a substantially similar neighborhood or that either the CBC or Principia schools have lighted athletic fields anywhere near residential neighborhoods as is the case with the Westminster application. Respondent denies the remaining allegations in Paragraph 18.

19. Respondent admits that its CUP standards have not changed since it granted CUPs to CBC and Principia under significantly different factual circumstances, but denies the remaining allegations of Paragraph 19.

20. Respondent admits that Petitioner presented irrelevant information about a CUP granted in another city under a different standard for issuing CUPs and that involve different factual circumstances and neighborhood conditions, and denies the remaining allegations in Paragraph 20.

21. Respondent admits that Petitioner presented irrelevant information regarding the technological superiority of it proposed lighting system, but denies the remaining allegations of Paragraph 21.

22. Respondent denies the allegations in Paragraph 22; and further states the allegations in Paragraph 22 state improper legal standards that cannot be considered by this Court in a Writ of Certiorari proceeding under either Chapter 89.110 or Chapter 536.100. Respondent further states that the factual circumstances existing on each of the campuses and presented on the record of each different CUP application are not part of the Record on review, but to the extent such extraneous evidence were to be considered by the Court, the records of those applications will demonstrate facts so substantially different as to nullify Petitioner's allegations in Paragraph 22.

23. Denied.

24. Respondent admits that paragraph 24 provides a partial statement of the City's Zoning Code applicable to the subject property, but states further that the section quoted out of context is misleading and states further that the Code of Town and Country is the best evidence of its terms. Respondent denies the remaining allegations in Paragraph 24.

25. Respondent admits that field lighting *may* be allowed through the issuance of a conditional use permit, in the proper exercise of administrative discretion by the Board of Aldermen, but states further that the Code of Town and Country requires that the Board of Aldermen shall not approve a CUP unless the applicant demonstrates through competent and substantial evidence that no negative impact will result from a single one of the eight factors set forth in Section 405.190A, and Respondent denies the remaining allegations of Paragraph 25.

26. Respondent denies the allegations in Paragraph 26 as an improper legal conclusion and incorrect statement of the standard applicable to applications for CUPs in Town and Country, and that the correct standard is set forth in Respondent's response to Paragraph 25 above; and Respondent states further that the Zoning Code of Town and Country is the best evidence of its terms.

27. Denied.

28. Respondent is without sufficient information to admit or deny the allegations in paragraph 28, and, consequently, denies them.

29. Respondent is without sufficient information to admit or deny the allegations in paragraph 29, and, consequently, denies them.

30. Respondent is without sufficient information to admit or deny the allegations in paragraph 30, and, consequently, denies them.

31. Respondent admits that is Planning and Public Works employees are required to work with members of the general public regarding proposed developments, but denies the remaining allegations in Paragraph 31.

32. Respondent admits that it is standard practice for the City's Planning staff to prepare reports regarding CUP applications and to suggest conditions hypothetically that might be appropriate to impose on any CUP in the event that the Board of Aldermen were to find competent and substantial evidence presented by the applicant to demonstrate compliance with each factor required before a CUP may be issued, and denies the remaining allegations in Paragraph 32.

33. Respondent is without sufficient information to admit or deny the allegations in paragraph 33, and, consequently, denies them.

34. Respondent admits that the Board of Aldermen conducted a public hearing on August 10, 2015 at which it heard and received documentary and testimonial evidence and that the Board of Aldermen is responsible for many planning and zoning decisions, but denies the remaining allegations in Paragraph 34.

35. Respondent admits that it conducted a hearing at which testimony was taken and documents were entered into evidence and where witnesses were questioned and statements made, but denies that Paragraph 35 is a complete or accurate summary of the entire proceeding. Respondent further states that the Record before the Court, including the Transcript, is the best evidence of the Public Hearing held by the City.

36. Respondent admits that Jim Holtrop and Bruce Coleman testified at the public hearing, but denies the remaining allegations in Paragraph 36.

37. Respondent admits that Ann McReynolds testified at the public hearing, but denies the remaining allegations in Paragraph 37.

38. Respondent admits that Ann McReynolds offered an opinion at the Public Hearing, but denies the remaining allegations in Paragraph 38.

39. Respondent admits that Richard Ward testified at the Public Hearing and has served as a paid consultant for 45 years, but denies the remaining allegations in Paragraph 39.

40. Respondent denies that Petitioner's willingness to comply with conditions proposed hypothetically by planning staff is in any way relevant to the standard required by the Zoning Code in order for the Board to grant a CUP, and, therefore, denies the allegations in Paragraph 40.

41. Respondent denies that the City Planning staff has any obligation to testify for or against a CUP application, and, therefore, denies that the allegations in Paragraph 41 are relevant to the standard governing this Court's review of the Record.

42. Respondent denies that the City has any obligation to call witnesses to testify for or against a CUP application, and, therefore, denies that the allegations in Paragraph 42 are relevant to the standard governing this Court's review of the Record.

43. Admitted.

44. Respondent admits that residents from various subdivisions testified against the CUP application at issue, but denies the remaining allegations of Paragraph 44.

45. Respondent admits that members of the Board of Aldermen made comments on the Record, but denies the remaining allegations of Paragraph 45.

46. Respondent admits that the Board of Aldermen closed the Public Hearing on August 10, 2015 for purposes of taking further evidence, but denies the remaining allegations of Paragraph 45 because they imply an improper legal standard that is not applicable to the administrative review of a CUP application.

47. Respondent denies the allegations in Paragraph 47 as an incorrect statement of the action taken at the September 14, 2015 meeting or action required by law.

48. Respondent admits that an alder person who voted to deny the CUP was not present at the public hearing on August 10, 2015, but states further that the same alder person stated at the September 14, 2015 that she had reviewed the transcript of the public hearing before her vote.

49. Respondent admits the Board issued its final written decision entitled “Findings of Fact and Decision of the Board of Aldermen.” Respondent denies the remaining allegations of Paragraph 49.

50. Respondent admits that the same alder person who was not present at the public hearing on August 10, 2015, did vote to approve the “Findings of Fact and Decision of the Board of Aldermen” on October 12, 2015, but states further that the same alder person had reviewed the transcript of the public hearing before her vote.

51. Denied as to the allegations in Paragraph 51 and all of its subparts.

52. Denied.

53. Denied.

54. Paragraph 54 states legal conclusions to which no reply is required.

COUNT I

55. Respondent hereby incorporates its responses to paragraphs 1 through 54 as though fully set forth herein.

56. Denied.

57. Denied.

58. Denied.

59. Respondent admits that the Court is empowered by Chapter 89.110 to review the administrative record in this case, under a standard of review that is deferential to the decision of the Board of Aldermen, and is limited to determining whether there is any competent and substantial evidence in the Record to support the decision, while disregarding all evidence contrary to the decision of the Board.

60. Denied.

WHEREFORE, the Court should affirm the decision of the Board of Aldermen because it is supported by competent and substantial evidence in the Record and dismiss Petitioner's Verified Petition for Writ of Certiorari at Petitioner's cost, and for such other and further relief as the Court deems appropriate under its special jurisdiction conferred by Chapter 89 RSMo.

COUNT II

61. Respondent restates its responses to Paragraphs 1 through 54 above as though fully set forth herein.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

WHEREFORE, the Court should affirm the decision of the Board of Aldermen because it is supported by competent and substantial evidence in the Record and dismiss Petitioner's Verified Petition for Administrative Review at Petitioner's cost, and for such other and further relief as the Court deems appropriate under the circumstances.

ADDITIONAL DEFENSES

66. In addition to the defenses stated above, and without waiving those defenses, Respondent states the following additional defenses in response to each of Counts I and II:

- A. Petitioner fails to state a claim for which relief may be granted.
- B. Petitioner has failed to comply with all of the jurisdictional requirements set forth in Missouri law for review of an administrative zoning decision of the type at issue in this case.
- C. Petitioner's request for an award of attorney's fees and costs is not supported by law and should be stricken.

Respectfully submitted,

CURTIS, HEINZ, GARRETT & O'KEEFE, P.C.

By: /s/ Steven W. Garrett

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Respondent's Answer was served by the Court's e-filing system this 14th day of December 2015 upon Counsel of record.

/s/ Steven W. Garrett