



4. In 2005, the Applicant applied to the Board for a special exception to expand its existing educational use to the Maguire Campus, then under agreement of sale with the Episcopal Academy. The Applicant proposed to use the Campus in the same manner as Episcopal Academy had, except for the age of the student-participants, which was proposed to change from predominantly K-12-age to college-age.<sup>2</sup>

5. The Board granted the 2005 application. *Appeal of St. Joseph's University*, No. 4011 (March 16, 2006) ("*St. Joseph's I*"). Several neighbors appealed that decision to the Court of Common Pleas of Montgomery County, where the appeal was settled by stipulation of the parties dated July 27, 2006. *Asher, et al. v. St. Joseph's University*, No. 2006-08888.

6. The Board's decision in *St. Joseph's I* approved the Applicant's uses of the existing buildings on the Maguire Campus for education, administration and maintenance, essentially the same uses that Episcopal Academy had made of those buildings. The 14.5 acres of playing fields were allowed to continue to be used for varsity and intramural grass sports such as baseball, softball and soccer. The tennis courts were allowed to remain and to be used for NCAA Division I tennis matches. [*St. Joseph's I* at pp. 3, 7-9]

7. Since the decision in *St. Joseph's I*, the existing baseball field has been used for games and practices, and the existing football field has been used for intramural athletics, including the University's intramural flag football program. Field hockey and softball also takes place on the athletic fields. [N.T. 11/30/2010 at 69-70; N.T. 07/08/2010 at 11; N.T. 07/19/2010 at 29, 103-110 and 132-133]

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<sup>2</sup> The increase in college-age student-participants increased the number of students-participants of driving age. That increase triggered the Zoning Ordinance's requirement for a special exception to expand the educational use. See Code §155-4 B ("Expanded Use").

8. The decision in *St. Joseph's I* also granted the Applicant relief from the parking requirements for the Maguire Campus. After finding that 999 spaces were required and that only 319 existed, the Board waived the requirement for 499 spaces, found that 28 spaces could be added by re-striping an existing lot, and then granted a variance from the remaining 158 required spaces. [*St. Joseph's I* at pp. 10-12]

9. Following the Board's approval in *St. Joseph's I*, the Applicant filed requests with the Township Board of Commissioners ("BOC") for land development plan approval. As part of that request, the Applicant proposed to construct and/or install a number of improvements to the playing fields on the Maguire Campus.

10. While the preliminary plan was pending before the BOC, a group of neighbors known as the Merion Community Coalition ("MCC") wrote to the Township Zoning Officer objecting to the preliminary plan, claiming that the proposed improvements to the playing fields amounted to an "expanded use" beyond that described in the plans and testimony at the hearings on *St. Joseph's I*. MCC further claimed that the Applicant had to return to this Board for a special exception for the expanded use.

11. After receiving additional correspondence from the Applicant and the MCC, the Zoning Officer issued a determination that certain of the proposed improvements were "expanded uses" that required a special exception from the Board.

12. The Applicant and the MCC filed appeals with the Board from the Zoning Officer's decision.

13. After a hearing on the matter, the Board denied the Applicant's appeal and granted MCC's appeal in part, essentially finding that a number of the improvements proposed during the land development process constituted "expanded uses" of the special

exception granted in *St. Joseph's I* and that the Applicant was required to obtain an additional special exception from this Board for those expanded uses. *Appeal of St. Joseph's University*, No. 4166 (March 26, 2009) ("*St. Joseph's II*"); *see also Appeal of Merion Community Coalition*, No. 4167 (March 26, 2009).

14. Both parties appealed the Board's decision to the Court of Common Pleas of Montgomery County, which affirmed the Board in an order dated October 19, 2009 and an opinion dated December 30, 2009. *Appeal of St. Joseph's University from the March 26, 2009 Decisions of the Lower Merion Township Zoning Hearing Board*, Nos. 2009-11927, 2009-11928. The Applicant's appeal to the Commonwealth Court from that decision is pending.

#### The 2009 Special Exception Application

15. On June 10, 2009, the Applicant filed an application with the Board for a special exception to install the site improvements on the Maguire Campus that the Board had identified in *St. Joseph's II* as expanded uses. [Exhibit A-2, Application; N.T. 07/23/2009 at 8] That application is the subject of the present decision.<sup>3</sup>

16. The proposed improvements include: (i) combining the existing baseball field and other playing field along North Latches Lane into a single intercollegiate baseball field; (ii) utilizing the existing football field and track area for a intercollegiate softball field and an intramural field; (iii) utilizing the two playing fields along City Avenue for an intercollegiate field hockey field and an intramural field; (iv) installing artificial turf on the baseball, softball and hockey fields; (v) erecting retaining walls; (vi) installing dugouts, new permanent bleacher seating, press boxes, backstops, fencing, ball

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<sup>3</sup> The Applicant had originally included a request for a special exception for an "expanded use" in its appeal of the Zoning Officer's decision in *St. Joseph's II*. The Applicant withdrew that request immediately before the hearing and proceeded on the appeal alone.

netting, new scoreboards, public address systems for the baseball, softball and hockey fields; and (vii) installing batting cages, bullpens and landscaping. [Exhibits A-2, Application; A-8, Site Plan; and A-27, Landscaping Plan; N.T. 07/23/2009 at 17-32; N.T. 09/03/2009 at 8-10]<sup>4</sup>

17. The Board held public hearings on the application on the following fifteen dates: July 23, 2009, September 3, 2009, October 26, 2009, November 5, 2009, November 30, 2009, January 7, 2010, February 2, 2010, March 18, 2010, April 22, 2010, May 13, 2010, June 10, 2010, July 8, 2010, July 19, 2010, July 20, 2010 and August 3, 2010.

18. The MCC and several other neighbors entered appearances in opposition to the application.

19. The following expert witnesses testified on behalf of the Applicant:

- (a) Dennis Glackin, AICP, land planner
- (b) Adrienne Eiss, PTP, traffic consultant
- (c) Kevin R. Momenee, P.E., professional engineer
- (d) Felicia Doggett, acoustic expert
- (e) Reaves Lukens, SRA, MAI, CRE, real estate expert

20. The following expert witnesses testified on behalf of MCC:

- (a) Andreas Heinrich, P.E., traffic engineer
- (b) Dr. E. Carr Everbach, acoustic expert
- (c) Norman R. Dotti, P.E., acoustic expert

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<sup>4</sup> Near the completion of the hearings on the application, the Applicant amended its plans for the baseball field to reconfigure some of the improvements in response to the concerns of the neighbors residing in that area. [Exhibits A-56, Conditions; A-57, Alternative Plan; and A-66, Conceptual Landscape Plan; N.T. 08/03/2010 at 7-14]

(d) Charles L. Guttenplan, AICP, land planner

(e) Maureen Mastroieni, MAI, CRE, real estate expert

21. A number of residential neighbors of the Maguire Campus, and several members of the MCC testified in opposition to the application.

22. The Applicant introduced 66 exhibits, MCC introduced 32 exhibits, and other objectors introduced 10 exhibits. The Board admitted all the Exhibits into evidence.

### The Proposed Improvements

23. The locations of the proposed improvements are depicted on the various site plans and landscape plans introduced by the Applicant. [Exhibits A-7, A-8, A-9, A-57, A-66] They are described individually below.

#### a. Artificial Turf

24. The Applicant proposes to install artificial turf on the baseball, softball and hockey fields. [Exhibit A-8, Site Plan; N.T. 9/03/2009 at 99]

25. The proposed turf complies with the Consumer Product Safety Improvement Act of 2008 standard for lead content. [N.T. 09/03/2009 at 27]

26. Use of artificial turf is less subject to inclement weather than is the present use of natural grass on the Maguire Campus athletic fields. [N.T. 9/03/2009 at 101-102; N.T. 07/20/2010 at 192-193]

27. Although the installation of turf will not change the Applicant's schedules for varsity baseball, softball and field hockey, it is undisputed that the use of artificial turf maximizes playing time and presents the opportunity for increased use of the athletic

fields beyond the normal schedule of varsity games. [*e.g.*, Exhibit O-3, Open Space Plan Excerpts; O-21, Momenee Letter; N.T. 5/13/2010 at 87]

28. The proposed artificial turf is permeable and its stormwater runoff coefficient is less than or equal to grass; and the proposed drainage system will be maintained to continue this runoff coefficient. [*generally*, N.T. 10/26/2009 at 133-139]

29. The artificial turf will not have a negative impact on the neighborhood aesthetics. [Exhibit A-21, Photo: Natural Grass/Turf Contrast]

b. Bleachers

30. The Applicant proposes a total of 800 permanent bleacher seats for the athletic fields: 400 for the baseball field, 200 for the softball field and 200 for the hockey field. [Exhibits A-8 and A-9, Site Plans; A-15, Bleacher Plan; N.T. 07/23/2009 at 19, 26 and 30]

31. The use of bleacher seats for these sports is typical for athletic facilities connected with educational uses in Lower Merion Township. The number of permanent bleacher seats proposed is less than the permanent seating at Lower Merion Township's two public high school stadiums. Harriton High School has over 1,500 bleacher seats and Lower Merion High School has over 3000 bleacher seats. [N.T. 10/26/2009 at 55-56; N.T. 07/20/2010 at 147-148; Exhibit A-21, Photographs of Lower Merion High School; Exhibit A-59, Photographs of Harriton High School]

32. The permanent seating at Harriton High School and Lower Merion High School are located as close or closer to neighboring residential properties as the Applicant's proposed bleachers are to Applicant's residential neighbors. [Exhibits A-21, Photographs of Lower Merion High School; A-38, Harriton High School Site Plan; A-39,

Lower Merion High School Aerial Photo; A-59, Photographs of Harriton High School; N.T. 10/26/2010 at 55-56 and 58; N.T. 05/13/2010 at 63]

33. Although there was no exact figure for the number of moveable bleacher seats on the athletic fields during Episcopal Academy's ownership of the property, MCC's land planner acknowledged that the Applicant's proposed 800 permanent bleacher seats are fewer than the movable bleacher seats Episcopal maintained on the athletic fields. [Exhibit A-62, Episcopal Bleacher Seating Plan; N.T. 05/13/2010 at 62]

34. Nothing prevents spectators at outdoor athletic events at educational facilities from bringing their own chairs or other portable seating.

c. Dugouts

35. The Applicant proposes dugouts for the baseball and softball fields. [Exhibits A-8 and A-9, Site Plans; A-11, Dugout Plan; N.T. 07/23/2009 at 20 and 26]

36. The use of dugouts for baseball and softball is typical for athletic facilities connected with higher educational uses in Lower Merion Township. [Exhibits A-10, Photograph of Haverford College; N.T. 07/19/2010 at 137]

d. Press Boxes

37. The University proposes a press box for both the baseball and softball fields. [Exhibits A-8, Site Plan; A-13, Press Box Plans]

38. The use of press boxes is typical for outdoor athletic facilities connected with educational uses in Lower Merion Township. [Exhibits A-21, Photograph: Lower Merion High School Turf, Stands, Press Box, Netting; A-58, Acoustical Analysis, Photograph of Harriton High School Bleachers and Press Box; N.T. 07/19/2010 at 137]



e. Ball Netting

39. The Applicant originally proposed ball netting 362-feet long for the baseball field, mounted on seven 35-foot high poles located within the North Latches Lane front yard setback (left field of the baseball field). [Exhibits A-8 Site Plan, A-37, Photographs of Baseball Field; Exhibit A-56, Conditions; N.T. 10/26/2009 at 46-47]

40. Although the Board has never granted zoning relief for ball netting in connection with a baseball field, netting similar to that proposed by the Applicant is located in the required front yard setback at the Haverford School, Harriton High School and the Baldwin School in Lower Merion Township. [Exhibits A-22, Photographs of Ball screens and ball netting; A-38, Harriton High School Site Plan; N.T. 9/03/2009 at 29-30; N.T. 5/13/2010 at 67, 74-76]<sup>5</sup>

41. The Applicant amended its original special exception plans to relocate and re-size the ball netting for the baseball field. The last submitted plan for the netting proposed that it will be: (i) out of the required front yard setback, (ii) reduced in height from 35 feet to 25 feet, (iii) reduced in length from 362 feet to 280 feet, (iv) mounted on five poles, not seven, and (v) in place only from mid-February through no later than mid-June, and from September 1 through November 1. [Exhibit A-56, Conditions]<sup>6</sup>

42. The actual height of the poles above the grade of North Latches Lane will be between 12 feet and 22 feet due to the difference between the grade of that roadway and the grade of the baseball field. [N.T. 8/03/2010 at 20-22]

43. The purpose of the ball netting is to keep batted baseballs within the Maguire Campus and off Latches Lane. [N.T. 09/03/2009 at 93]

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<sup>5</sup> Section 130 of the Zoning Ordinance arguably authorizes the BOC to approve ball netting as "fences" in the front yard exceeding six feet in height, as part of the land development process. Code §155-130 B.

<sup>6</sup> The supporting poles will remain in place throughout the year.

44. The use of ball netting is typical for outdoor athletic facilities connected with higher educational facilities and located near residential uses or roadways in Lower Merion Township. [Exhibits A-22, Photographs of ball screens and ball netting; A-38, Harriton High School Site Plan; N.T. 9/03/2009 at 29-30]

f. Public Address Systems

45. The University proposes to install permanent public address ("PA") systems for the baseball field, softball field and field hockey field in the locations depicted on the plans submitted by Applicant's acoustic expert. [Exhibit A-34, Metropolitan Acoustics Drawings]

46. The PA systems will be "distributive" systems as opposed to "point source" systems. Distributive systems manage the propagation of sound better than point source systems. [Exhibit A-48, Metropolitan Acoustics Report dated 11/03/2009 at 1-2; N.T. 09/03/2009 at 41-42]

47. The use of PA systems for outdoor athletic events in connection with educational facilities is typical in Lower Merion Township. [Exhibits A-25, Photographs of PA Systems; and A-58, Metropolitan Acoustics Report dated 7/15/2010 at 3; N.T. 09/03/2009 at 35-36; N.T. 07/20/2010 at 146-147]

48. PA systems were located on the Maguire Campus during Episcopal Academy's occupancy and were used during baseball games, at pep rallies, at the annual Haverford Game and Episcopal's summer camp. [Exhibit A-25, Photographs of PA Systems; N.T. 02/10/2010 at 100-101; N.T. 07/08/2010 at 10, 13; N.T. 07/19/2010 at 27]

49. The Lower Merion Noise Ordinance defines maximum permissible indoor and outdoor sound pressure levels in frequency bands for daytime usage and nighttime

(11:00 p.m.-7:00 a.m.) usage. Code §105-3. The use of frequency bands is an outdated convention so the Applicant's acoustic expert, Felicia Doggett, converted the tables in the Noise Ordinance to the "new octave band" using generally accepted ANSI standards. [Exhibit A-48, Metropolitan Acoustics Report dated 11/3/09, pp. 2-3]

50. Ms. Doggett originally reported and testified that the PA systems will be designed and calibrated to reach a maximum level of 77 dB in the baseball bleachers (and 84 dB at the two other fields because they are farther from the property line) in order to adhere to the maximum noise levels at the property line stated in the Noise Ordinance (63 dB). [*Id.*, pp. 4-5; N.T. 11/05/2009 at 85-88, 102-103]

51. Ms. Doggett based her opinion that the PA systems would meet the limitations in the Noise Ordinance on 3D modeling she conducted using the EASE program, which records data regarding the open and closed spaces in an area, assigns acoustic properties to the various surfaces within the model and then allows the user to calculate acoustical parameters at various listening positions (in this case at the Applicant's property lines). [N.T. 7/20/2010 at 94]

52. EASE is an accepted and reliable model to predict sound levels at the relatively short distances (several hundred feet) between noise source and listener at issue in this matter. [N.T. 7/20/2010 at 94-97]

53. MCC's acoustic experts raised the issue of the additive effect of the crowd noise at sporting events and the amplified sound from the PA system. Ms. Doggett then returned to testify (with a second report) after taking measurements of crowd noise at other sporting events. She acknowledged that there can be an additive effect from peak crowd noise events (measured by her in the bleachers of sporting events at 85 dB) and

simultaneous usage of the PA system (which she initially proposed to calibrate to reach 77 dB in the bleachers). [N.T. 7/20/2010 at 108-109, 114-115; Exhibit A-58, Metropolitan Acoustics Report dated 7/15/10]

54. Although the unamplified human voices would not exceed the Noise Ordinance and the PA system would be calibrated so as not to exceed the Ordinance, the additive effect would produce a violation of the Noise Ordinance. [N.T. 7/20/2010 at 110-111] Ms. Doggett believed, however, that during those peak crowd noise events, the PA announcer would wait until the crowd noise died down since otherwise, with the PA system limited to 77 dB in the bleachers, the announcer could not be heard over the crowd. [N.T. 7/20/2010 at 109-110]

55. It is likely, unless otherwise prohibited, that during baseball games, the PA system would be used to announce batters coming to the plate at the same time that the crowd is noisily reacting to a previous play, creating an additive effect that would violate the Noise Ordinance. [N.T. 7/20/2010 at 111-112]

56. If the PA system were calibrated so as not to exceed 74 dB in the bleachers, it could still be heard above normal crowd talking, but would not cause a violation of the Noise Ordinance during peak crowd noise events. [N.T. 7/20/2010 at 112-114]

57. The Applicant agreed to the following limitations on the use of the PA systems:

(a) use will be limited to announcements, the National Anthem, player line-ups and substitutions;

(b) the PA systems will be used only for baseball, softball and field hockey varsity games, and tournaments in which St. Joseph's University baseball, softball and field hockey are participants;

(c) the PA systems will not be used for other sporting events or general events on campus;

(d) the speakers will be located where shown on Exhibit A-34; and

(e) the speakers will not be used for play-by-play announcements.

[Exhibit A-56, Conditions; 07/20/2010 at 50-53]

g. Other Proposed Improvements

58. The proposed improvements also include backstops for the baseball and softball fields, bullpens, batting cages, scoreboards for all three varsity fields, and outfield fences, all of which the Board finds to be typical for outdoor athletic facilities connected with educational facilities in Lower Merion Township. [See Photographic exhibits A-16, A-17, A-19, A-23, A-26, A-37; *generally*, N.T. 07/23/2009 at 20-30; N.T. 09/03/2009 at 19-23, 31-34 and 55-56]

h. The Amended Plan for the Baseball Field

59. At the August 3, 2010 hearing, the Applicant presented an amended plan of the baseball field and accessory improvements (including the ball netting discussed above). [Exhibits A-56, Conditions; and A-57, Alternative Plan; N.T. 08/03/2010 at 7-8]<sup>7</sup>

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<sup>7</sup> The Applicant originally presented the amended plan at the July 20, 2010 hearing as an "alternative" that the Applicant suggested the Board could consider if the original layout of the field was unacceptable in some way. The Board deemed the amended plan to be a substantial modification and, therefore, a new plan. The Board requested that the Applicant decide whether it would proceed on the original plan or on the amended plan. It chose to proceed on the amended plan. All parties were provided notice and an opportunity to present evidence and testimony on the amended plan. [See *generally*, N.T. 7/20/2010 at 78-87; N.T. 8/03/2010 at 7-8]

60. Changes on the amended plan from the Applicant's original plan for the baseball field include:

(a) home plate is set back an additional 28 feet to the south, placing home plate 396 feet from the curb line of North Latches Lane;

(b) the outfield fence is removed from the front yard and set back 71 feet from the curb line of North Latches Lane;

(c) the ball netting is removed from the front yard and is set back 65 feet from the curb line of North Latches Lane;

(d) the length of the ball netting is reduced from 362 feet to 280 feet;

(e) the number of poles supporting the ball netting is reduced from seven to five;

(f) the height of the ball netting is reduced from 35 to 25 feet;

(g) the retaining wall in center field is eliminated;

(h) the carriage house to the west of the baseball field is preserved (except for the attached garage); and

(i) the depth of the landscaped buffer along North Latches Lane is increased from approximately 24 feet to 50 feet. [N.T. 08/03/2010 at 8-11]

61. The amended plan generally located the baseball field improvements further away from residential properties than the original plan. [Exhibits A-63, Preliminary Plan Distance Study; A-64, Modified Layout Distance Study; and A-65, Proposed Condition: Modified Layout of Baseball Field; N.T. 08/03/2010 at 11-14]

62. In some instances, the amended plan reduced the distance between the baseball field and nearby residences. In those instances, St. Joseph's University-owned buildings are situated between the field and the affected neighbors. [*Id.*]

63. The amended plan for the baseball field includes an amended landscaping plan that generally enhances the amount and features of landscaping previously presented. [Exhibit A-66, Conceptual Landscaping Plan; *generally described at* N.T. 08/03/2010 at 16-22]

64. The MCC agreed with the Applicant that the amended plan for the baseball field would in no way impact the surrounding properties any differently in terms of noise than the original plans, obviating the need for additional testimony from the acoustics experts. [N.T. 08/03/2010 at 14-15]

#### Specific Special Exception Criteria

65. The proposed improvements are part of an accredited educational institution use permitted by special exception in the RAA Residence District and RA Residence District.

66. The Maguire Campus is non-conforming with respect to the Zoning Ordinance requirements for (i) providing ingress and egress from a primary, secondary or tertiary arterial road, (ii) observing location and spacing limitations with regard to other regulated uses, (iii) maintaining certain required lighting, and (iv) establishing minimum buffer areas. [*St. Joseph's I*, p. 12]

67. No buses will be on the Maguire Campus. The drop-off areas for events on the Maguire Campus will be on the adjacent property. [Exhibit A-42, Plan Detail; N.T. 10/26/2009 at 65-66]

68. The Board in *St. Joseph's I* granted the Applicant some measure of relief from the required number of parking spaces under the Zoning Ordinance. However, the Board will enter certain conditions requiring the use of University parking lots to reduce the potential adverse impact on surrounding residential neighborhoods from traffic and parking during events on the Maguire Campus.

69. There will be no change in level of service at the intersections near the Maguire Campus as a result of the Applicant's use of the proposed improvements. [Exhibits A-35, Traffic Report dated 9/01/09 and A-44, Traffic Report dated 10/16/09; *generally*, N.T. 10/26/2009 at 89-99]

70. The Applicant provided a statement of use of the Maguire Campus and a statement of use of the playing fields that detail the proposed times and locations of the uses of the fields. [See, Exhibits A-3 and A-33]

71. The Applicant satisfied its burden of proving compliance with the applicable specific criteria for a special exception to expand an accredited educational institution.

#### The Adverse Impacts on the Neighboring Community

72. Section 114 C(1) of the Zoning Ordinance provides that, in determining whether the allowance of a special exception will be contrary to the public interest, the Board shall consider whether the allowance would adversely affect the public health, safety and welfare due to changes in traffic conditions, drainage, air quality, noise levels, natural features of the land, neighborhood property values and neighborhood aesthetic characteristics. Code §155-114 C(1)



73. The Board finds that the proposed improvements, and the proposed use of those improvements by the Applicant (as conditioned herein), will not generate adverse impacts on the health, safety and welfare of the community that are not normally generated by this type of expanded use.

a. Traffic

74. MCC presented the testimony and report of expert traffic engineer Andreas Heinrich in opposition to the application.

75. Mr. Heinrich agreed with the Applicant's expert traffic engineer that the proposed use of the Maguire Campus would not adversely affect levels of service at the nearby intersections. [N.T. 10/26/2009 at 167]

76. Mr. Heinrich opined, however, that for certain periods of time before and after baseball games on the weekend, the traffic on Latches Lane would increase as spectators arriving by vehicle searched for parking spaces. [*See generally*, N.T. 10/26/2009 at 159-168; N.T. 11/05/2009 at 12-13]

77. The Applicant's expert traffic engineer, Adrienne Eiss, performed a quantitative analysis to determine the impact of traffic from sporting events on the neighborhood. [Exhibit A-44, Traffic Report dated 10/16/09]

78. Assuming a capacity varsity baseball game, Ms. Eiss estimated that the game would generate approximately 50 cars for a weekday game and 60 cars for a weekend game. [N.T. 10/26/2009 at 94-95] She concluded that there would be no traffic congestion as a result of even the most heavily attended sporting events and that ample off-street parking would be available, including in the Latches Hall parking lot, which

ordinarily requires a University permit. [Exhibit A-44, Traffic Report dated 10/16/09; N.T. 10/26/2009 at 94-97, 110-113]

79. The Board credits the report and testimony of the Applicant's expert traffic engineer and finds that, provided the Latches Hall parking lot is available for all varsity games and games in which the PA system is in use, the use of the Maguire Campus and the proposed improvements will not have an adverse impact on the public health, safety and welfare, in terms of traffic and parking conditions, not normally associated with athletic events at accredited educational institutions.

b. Noise Levels

80. Dr. E. Carr Everbach testified as an acoustic expert on behalf of MCC. [Exhibit O-10, Everbach Report 11/2/09; N.T. 11/05/2009 at 106 *et seq.*]

81. He opined that the even the non-amplified noise from an intramural sporting event at the Maguire Campus could exceed the Noise Ordinance's broader limits for sporadic noise. [N.T. 11/05/2009 at 175]

82. However, Dr. Everbach acknowledged that, as written, the Lower Merion Noise Ordinance classifies non-amplified sporting event noises (e.g., crowd, crack of the bat, etc.) not as sporadic noise, but as continuous noise because such noises can be measured by the operator of a sound level meter with associated equipment. [N.T. 11/05/2009 at 175-179]

83. Dr. Everbach testified that he knew of no other educational institution in as close proximity to a residential neighborhood with a low background noise level as the Maguire Campus is to its neighbors. He did not, however, measure any of the background noise levels in the residential neighborhoods near Lower Merion High

School, Harriton High School or the Haverford School, all located in Lower Merion Township, and all with residences as close to athletic fields as the Maguire Campus athletic fields are to its residential neighbors. [*Id.* at 181-182]

84. The MCC also presented the testimony and report of a second acoustics expert, Norman Dotti. [Exhibit O-15, Russell Acoustics Report dated 1/5/10; N.T. 02/10/2010 at 10, *et seq.*]

85. Mr. Dotti testified that the limits in the Noise Ordinance for continuous noise apply only to mechanical equipment and not to crowd noise. [N.T. 02/10/2010 at 64-65] As a consequence, crowd noise – deemed continuous noise under the Noise Ordinance definitions – is not subject to the limits in the Ordinance.

86. He also stated that average crowds at athletic events at the Maguire Campus would not have an adverse impact on the neighbors in terms of changes in noise levels. [*Id.* at 67]

87. Mr. Dotti acknowledged that athletic facilities are often associated with educational institutions. [*Id.* at 65-66]

88. When asked whether or not the predicted sound pressure levels from athletic events at the Maguire Campus would be comparable to the levels that would normally be generated at athletic events at educational institutions in Lower Merion Township, Mr. Dotti responded that he "really [didn't] care what the sound levels are like at other institutions." [*Id.* at 63-64]

89. As found above by the Board, the Applicant's acoustic expert, Felicia Doggett, testified that the PA system for the baseball field will be calibrated so that the noise level at the Maguire Campus property line from the additive effect of the use of the

PA and the crowd will not exceed the limits in the Noise Ordinance. She opined that the noise levels for athletic events at the Maguire Campus after the installation of the proposed improvements would be no greater than the noise levels at comparable events at educational institutions. [Exhibit A-58, Metropolitan Acoustics Report dated 7/15/10; *generally*, N.T. 07/20/2010 at 97-107]

90. Ms. Doggett also testified that (i) the background sound levels at the residential areas around the Maguire Campus are similar or higher than measured background sound levels at the residential areas around Harriton High School, (ii) the predicted sound levels from athletic events at residential property lines surrounding the Maguire Campus are lower than peak sound levels for athletic events adjacent to Harriton High School; and (iii) the layout of the athletic fields would not increase peak sound levels beyond what would be expected with the existing terrain. [Exhibit A-58, Metropolitan Acoustics Report dated 7/15/10; N.T. 07/20/2009 at 93, *et seq.*]

91. The Board credits the reports and testimony of the Applicant's acoustic expert and finds that the use of the Maguire Campus and the proposed improvements, as conditioned herein, will not have an adverse impact on the public health, safety and welfare, in terms of noise levels, not normally associated with athletic events at educational institutions.

c. Neighborhood Property Values

92. The MCC presented the report and testimony of expert real estate appraiser Maureen Mastroieni. [Exhibit O-8, Mastroieni Report; N.T. 11/30/2009 at 110 *et seq.*]

93. Ms. Mastroieni opined that the Applicant's proposed improvements would have a "devastating" effect on the property values in the neighborhood, which she characterized as being comprised of homes with values of \$1 million to \$3 million. [N.T. 11/30/2009 at 114-115 and 135; N.T. 01/07/2010 at 146-147]

94. Ms. Mastroieni's opinion was based on the belief that homes selling for \$1 million to \$3 million "are simply not built" next to athletic complexes (a use she described as an "undesirable influence.") [Exhibits O-8, Mastroieni Report at 22; N.T. 11/30/2009 at 117 and 142; N.T. 01/07/2010 at 23-24 and 43]

95. In fact, it is not extraordinary to find homes in Lower Merion that sold for (and are valued at) \$1 million to \$3 million next to the athletic fields of educational institutions. Examples include homes near the athletic facilities at Harriton High School, Lower Merion High School, the Haverford School and the Shipley School. [N.T. 07/19/2010 at 166-167; Exhibit A-49, Aerial photograph of Harriton High School and neighborhood]

96. There are three methods to determinate whether a particular amenity or disamenity will have a positive or negative effect on proximate property values: (i) a paired sales analysis, (ii) a group data analysis, and (iii) a multi-variate regression analysis. [N.T. 07/20/2010 at 44-45]

97. Ms. Mastroieni prepared a group data analysis, which the Board finds is entitled to little weight because the sales she used were not "nearly identical" (as required by the governing appraisal literature) and she did not control for numerous variables. [A-52, Article: *The Appraisal of Real Estate*; N.T. 01/07/2009 at 80, 136-138; N.T. 07/19/2010 at 172-173; N.T. 07/20/2010 at 44-45]

98. Ms. Mastroieni relied on certain passages from the writings of John Crompton to support her claim that the proposed improvements would have a negative impact on property values. [N.T. 01/07/2010 at 43-47; Exhibits A-50, Article from *Journal of Park and Recreation Administration*; A-51, Crompton Article; and O-8, Mastroieni Report at 23]

99. Ms. Mastroieni acknowledged that the Crompton passage quoted on page 7 of her report actually supports the conclusion that active recreation areas have a small positive incremental effect on neighboring property values. [N.T. 01/07/2010 at 49-51]

100. The Board gave little weight to Ms. Mastroieni's testimony and report because of the foregoing and in light of the testimony of Reaves C. Lukens, Jr., discussed below.

101. Reaves C. Lukens, Jr. testified for the Applicant as an expert real estate appraiser. [N.T. 07/19/2009 at 159 *et seq.*]

102. The Board credits Mr. Lukens' testimony in support of the following findings:

(a) some of the most expensive homes in Lower Merion Township have been built adjacent to athletic complexes of educational institutions; [N.T. 07/19/2010 at 165-168]

(b) sales around Harriton High School provided ample data to perform a paired sales analysis of homes worth between \$1 million and \$3 million; [*Id.* at 166-167] and

(c) the installation and use of the proposed improvements will not have an adverse impact on the public health, safety and welfare, in terms of property

values, not normally associated with athletic events at accredited educational institutions.  
[N.T. 07/19/2010 at 178-183]

d. Natural Features and Neighborhood Aesthetics

103. The neighborhood surrounding the Maguire Campus is characterized by institutional uses and residential uses. [*generally*, N.T. 11/30/2009 at 34-35, 90-92, 166-168; N.T. 07/20/2010 at 159-163]

104. Institutional uses in the neighborhood include the Barnes Foundation, the University's Merion Campus, Adath Israel, Lower Merion Synagogue, Stern Hebrew Academy, a public library and the French International School and are all within walking distance of the Maguire Campus. [*Id.*; Exhibit O-29, Map; Exhibit A-44, Orth-Rogers Report, Figure 1]

105. University students reside in several residence halls located on the Merion Campus, some of which have direct vehicular access to Latches Lane. [*Id.*]

106. The character and density of the residential uses varies in the neighborhood, ranging from large mansions along North Latches Lane to row homes lining the streets intersecting Old Lancaster Road to multi-family buildings including Yorklynne Manor and the Latches Lane Condominiums. [*Id.*]

107. The neighborhood is characterized by relatively lightly trafficked streets (e.g., North Latches Lane), and private streets (e.g., Berwick Road), as well as more heavily trafficked streets and thoroughfares such as Old Lancaster Road and Montgomery Avenue, as well as City Avenue on its perimeter. [*Id.*]

108. Several witnesses in opposition to the application testified that the proposed improvements would adversely impact the neighborhood because the

neighborhood has a significant Orthodox Jewish community, whose lifestyle would be threatened by the Applicant's use of the proposed improvements. [*e.g.*, N.T. 11/30/2009 at 13-23; N.T. 05/13/2010 at 16-17]

109. The credible evidence proved that there would not be a substantial increase in traffic on account of the use of the proposed improvements (as conditioned herein), that the character of the neighborhood has for years included the use of the Maguire Campus for athletic practices and competitions, that the character of the neighborhood includes heavily trafficked streets, and that the Applicant plans to install stormwater management facilities and landscaping features that will mitigate the impacts of the use of the Campus for athletic practices and competitions. [N.T. 09/03/2009 at 75-76; N.T. 11/30/2009 at 27-29; N.T. 05/13/2010 at 37-43; N.T. 07/20/2010 at 160-165; Exhibit A-61, Aerial photograph of synagogues near Maguire Campus]

110. The Board further credits the testimony of the Applicant's expert land planner, Dennis Glackin, in support of the following findings:

(a) the proposed improvements will not have an adverse impact on the public health, safety and welfare in terms of natural features of the land; the trees being removed will be replaced by substantial new landscaping; no wetlands, floodplains or steep slopes are proposed to be disturbed;

(b) the new landscaping will mitigate any adverse impact of the proposed improvements on the neighborhood aesthetics; the landscape plans provide more protection of the neighborhood aesthetics (consistent with Lower Merion Township's Natural Features Ordinance) than would ordinarily be expected in such facilities in residential neighborhoods; and



(c) installation and use of the proposed improvements will not have an adverse impact on the public health, safety and welfare, in terms of the character of the neighborhood, not normally associated with athletic events at accredited educational institutions. [N.T. 09/03/2009 at 75-76; Exhibits A-27, Phase I Landscaping Plan, A-28, Plan close-ups, A-66, Concept Landscaping Plan for baseball field]

e. Drainage

111. The Applicant's expert civil engineer, Kevin Momenee, P.E., testified that the Maguire Campus currently has no storm water management system to control the rate of runoff. [N.T. 10/26/2009 at 132]

112. In connection with the proposed improvements, the Applicant will install a comprehensive storm water management program, including the installation of porous paving, rain gardens, vegetative swales, a subsurface system of large diameter perforated pipes and crushed stone, and artificial turf. [N.T. 10/26/2009 at 133-140]

113. The installation and use of the proposed improvements will not have an adverse impact on the public health, safety and welfare, in terms of drainage, not normally associated with such improvements at educational institutions; rather, there will be significant improvement in off-site impacts as a result of the installation of the planned storm water management facilities. [N.T. 10/26/2009 at 146-150]

The Use of the Proposed Improvements

114. The Applicant's intended uses of the proposed improvements are set forth on Exhibits A-3 and A-33.

115. Included in those intended uses is the "continue[d]" hosting of "community athletic events." [*e.g.*, Exhibit A-3, Statement of Use, ¶D.3]

116. Though such events may have taken place on occasion, there was no evidence that the Board ever permitted the use of the athletic fields on the Maguire Campus by any groups not a part of the Episcopal Academy.

117. The Applicant did not request a special exception to expand the use of the Maguire Campus to non-St. Joseph's University groups.

### **CONCLUSIONS OF LAW**

1. The proposed improvements to the Maguire Campus are permitted by special exception as an expansion of the Applicant's existing accredited educational institution. Code §§155-11 S(2), 155-11 X.

2. Except for the "community athletic events" described on Exhibits A-3 and A-33, the uses of the proposed improvements are permitted by special exception as part of the accredited educational institution use.

3. Use of the Maguire Campus for "community athletic events" and use of the Maguire Campus by groups and individuals not affiliated with St. Joseph's University or its opponents during athletic competitions are not permitted without the Applicant obtaining an additional special exception for an "expanded use."

4. The Applicant's proposed improvements comply with all the specific criteria applicable to the expansion of an accredited educational institution.

5. As specifically conditioned herein, the expansion will not have adverse impacts on the public health, safety and welfare not normally associated with that kind of use.

## **OPINION**

The Lower Merion Zoning Ordinance defines an "expanded use" to include the enlargement of the use of property evidenced by, among other things, construction of new buildings or additions to buildings, and construction of new athletic fields. Code §155-4 B ("Expanded Use"). Having determined in *St. Joseph's II* that the proposed improvements constituted an expanded use of the property beyond that approved in *St. Joseph's I*, the Board must now decide whether to approve those improvements under the standards for special exceptions.

### **The Special Exception Standard**

A special exception is not an exception to a zoning ordinance, but rather is a use to which an applicant is entitled unless the Board determines, according to standards set forth in the Lower Merion Zoning Ordinance, that the proposed use would adversely affect the community. *East Manchester Township Zoning Hearing Board v. Dallmeyer*, 609 A.2d 604 (1992); 53 P.S. §10912.1. Once an applicant for a special exception satisfies its burden of proving that the proposed use meets the specific and objective criteria in the Zoning Ordinance, a presumption arises that the use is consistent with the public health, safety and welfare. *Id.* The burden then shifts to any objectors to present evidence of a high degree of probability that the use will substantially, adversely affect the health, safety and welfare of the community. *Id.*

The objectors' burden is more than merely showing an adverse impact. When the BOC permits a use by special exception, it is exercising its legislative judgment that such uses, in the ordinary case, will not negatively impact the public welfare. The objectors' evidence, therefore, "must show a high probability that the use will generate adverse

impacts not normally generated by this type of use and that these impacts will pose a substantial threat to the health and safety of the community." *Appeal of Michael Dippolito*, 833 A.2d 336 (Pa. Cmwlth. 2003); *Greaton Properties, Inc. v. Lower Merion Township*, 796 A.2d 1038, 1045 (Pa. Cmwlth. 2002).

**The Proposed Improvements and Their Use are Permitted by Special Exception**

Section 11 S(2) of the Zoning Ordinance permits "accredited educational institutions" by special exception in residential districts. Section 11 X allows those institutions to expand by special exception. Code §§155-11 S(2), 155-11 X.

St. Joseph's University is an accredited educational institution. The proposed improvements are all to be used in connection with St. Joseph's varsity, intramural and student athletic programs and activities, they are typical for educational institutions, and are therefore permitted by special exception as expansions to St. Joseph's accredited educational institution use. [N.T. 09/03/2009 at 64-65]

However, the Applicant's proposal to "continue" to host "community athletic events" on the Maguire Campus is not approved. There was no evidence submitted to prove that such events were ever lawfully conducted by the Episcopal Academy on the property and the Applicant did not specifically request that its approved use be expanded to permit those events. The use of the Maguire Campus is, therefore, prohibited for any "outside" groups and individuals, i.e., groups and individuals not affiliated with the Applicant or its opponents during athletic competitions. This finding does not preclude the Applicant from seeking an additional special exception in the future to open the Maguire Campus to other groups and individuals.

The Applicant demonstrated that its proposed expansion complies with all the specific criteria applicable to its accredited educational institution. As the Board found in *St. Joseph's I*, the Maguire Campus is non-conforming with respect to these criteria: (i) providing ingress and egress from a primary, secondary or tertiary arterial road, Code §155-11 W, (ii) observing location and spacing limitations with regard to other regulated uses, Code §155-11 Y(3), (iii) maintaining certain required lighting, Code §155-11Y(5), and (iv) establishing minimum buffer areas. Code §155-11 Y(6). [*St. Joseph's I*, p. 12] Because no buses would be on the Maguire Campus, and the drop-off areas for events on the Campus would be on the adjacent property, the loading/queuing criteria does not apply. Code §155-11 Y(4)(d). [Exhibit A-42, Plan Detail; N.T. 10/26/2009 at 66]

The Board in *St. Joseph's I* already granted the Applicant relief from the criteria regarding the number of parking spaces for its expansion of the use of the Maguire Campus to include students of driving age. Code §§155-95 AA(1)(a), 155-114 C(3).

The Applicant also satisfied the requirement for a traffic impact study demonstrating that there will not be level of service lower than "C" at the intersections near the Maguire Campus (or if LOS is already "C" or below, it will not change for the worse) as a result of the Applicant's use of the proposed improvements. Code §155-11 Y(1). [Exhibits A-35, Traffic Report dated 9/01/09 and A-44, Traffic Report dated 10/16/09; N.T. 10/26/2009 at 89-99] However, as indicated in its findings of fact, the Board will impose certain conditions on the use of the University parking lots to reduce the potential adverse impact on the surrounding residential neighborhood of added traffic and parking during Maguire Campus athletic events.

Finally, the Applicant's statements regarding the use of the Maguire Campus and the athletic fields satisfied the criteria for "general information" regarding the participants, hours of operation and attendance at those athletic events. Code §155-11 Y(2). [See, Exhibits A-3 and A-33]

**The Proposed Expansion, as Conditioned Herein, Will Not Generate Impacts Not Normally Associated With This Type of Use That Pose a Substantial Threat to the Health, Safety and Welfare of the Community**

The Applicant having satisfied its burden of proving compliance with the specific criteria applicable to its proposed expansion, the Board must consider whether granting the special exception will have an adverse impact on the public health, safety and welfare. In determining whether that is the case, the Section 114 C(1) of the Zoning Ordinance compels the Board to consider whether granting the relief will adversely affect the public welfare due to "changes in traffic conditions, drainage, [etc.]." Code §155-114 C(1). Seizing on this language, much of the testimony and evidence in this protracted matter tended to prove that there would indeed be some measure of "change" resulting from the proposed improvements (some allegedly for the better (stormwater management), some allegedly for the worse (traffic and noise)).

However, the mere proof that there will be a change (even for the worse) in the way the public is impacted by a proposed use is not sufficient to deny a special exception. As noted above, when the BOC legislated that accredited educational institutions are permitted in all residential districts by special exception, they made the determination that such uses will not ordinarily negatively impact the public health, safety and welfare. Consequently, the objectors had the burden in this case to prove "a high probability that the use will generate adverse impacts not normally generated by this type of use and that

these impacts will pose a substantial threat to the health and safety of the community." *Appeal of Michael Dippolito*, 833 A.2d 336 (Pa. Cmwlth. 2003) (emphasis supplied); *Greaton Properties, Inc. v. Lower Merion Township*, 796 A.2d 1038 (Pa. Cmwlth. 2002). We emphasize the quoted language because much of the testimony in this matter did not focus on this determinative aspect of the law of special exceptions.

Lower Merion Township is home to numerous public and private educational institutions, including colleges and universities (Applicant's being one), high schools, academies and religious-affiliated schools. In 1998, the BOC adopted comprehensive amendments to the Zoning Ordinance to impose new requirements and limitations on educational institutions. The BOC continued, however, to permit educational institutions in all residential districts by special exception. It made no distinction among colleges, high schools, middle schools, grade schools and preschools. Consequently, when this Board considers whether a proposed educational institution (or its expansion) poses a substantial threat to the public health, safety and welfare, we presume that the BOC was familiar with the potential impacts from all aspects of educational uses and facilities when it amended the Zoning Ordinance in 1998 and continued to permit them (without distinction as to level of education) in all residential districts.<sup>8</sup>

The Board makes two additional observations pertinent to this application and the assessment of its impacts. First, we do not decide the public welfare aspect of this case based on shifting burdens of proof or on the failure of one party or another to submit competent evidence. The Lower Merion Zoning Ordinance does shift the burden of

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<sup>8</sup> This is not to suggest that the impacts of a college are no different from the impacts of a preschool, but only that the BOC has not seen fit to impose any specific criteria on colleges that are any different from those on other educational institutions (except the increased parking required for students of driving age).

presenting evidence under certain circumstances,<sup>9</sup> but in this matter, all parties had ample opportunity to submit testimony and evidence on all aspects of potential adverse impacts. Instead, the Board's decision is based on its determinations of the credibility of witnesses and the weight to be accorded their testimony. As detailed in the findings of fact, in most circumstances, the Board gave more weight to the testimony and evidence of the Applicant's expert witnesses regarding the impacts of the proposed improvements on the public welfare.

The second observation has more of an impact on future expansions of the use of the property than on the expansion approved today. It is the Board's judgment that where a special exception is sought for an expanded use under the Lower Merion Zoning Ordinance, the impact of the expansion on the public health, safety and welfare must be determined from a "baseline" of the conditions when the original special exception was granted. [See, N.T. 07/20/2010 at 62-64] For example, if the Applicant returns at some point for an approval of lighting for the athletic fields, the Board will be obliged to assess the impact of the accumulation of: (1) the improvements approved in this application, and (2) the new lighting. Otherwise the cumulative impacts of a special exception use might escape review by the filing of one application after another for incremental improvements and expansions. So although the Board has made findings of fact regarding the impacts of the individual components of the proposed improvements (PA system, turf, ball netting, bleachers), we specifically hold that the impacts of expanded special exception uses should be evaluated based on a consideration not only of the individual components (any one of which might warrant denial of relief), but also of the combined impact of those components and previous expansions of the use. The Board's judgment in this

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<sup>9</sup> See Code §155-114 E.



regard is consistent with the Commonwealth Court's observation that the objectors' burden to prove adverse impacts in a special exception case actually becomes less difficult where the use is already operating on the property than it is where the use is new to the property. *See, Pennsy Supply, Inc. v. Zoning Hearing Board of Dorrance Township*, 987 A.2d 1243, 1250 (Pa. Cmwlth. 2009).

Bearing all that in mind, and having carefully reviewed the testimony and exhibits, the Board concludes that the expansion of the Maguire Campus by the installation and use of the proposed improvements, as amended by the Applicant and as conditioned herein, will not have an adverse impact on the public health, safety and welfare not normally generated by this type of use. Findings of Fact 72-115 detail the evidence that the Board considered in reaching this conclusion.

With specific regard to the potential impacts on the character of the neighborhood, a number of objectors would have the Board measure those impacts based on the neighborhood as primarily an Orthodox Jewish community. In assessing the impact of a special exception on the character of a neighborhood, though, the Board must consider the overall character of the neighborhood as a whole. *Union Township v. Ethan Michael, Inc.*, 979 A.2d 431 (Pa. Cmwlth. 2009). While the Board is sympathetic to the potential disturbance that the use of the athletic fields might have to those observing the Sabbath, we are obliged to focus on the entire neighborhood when assessing the impacts of the proposed improvements. And given the nature of this neighborhood as one of mixed residential uses and institutional uses bounded by some of the area's most heavily-trafficked roadways, the Board has concluded that the installation and use of the improvements to these existing athletic fields would not result in adverse impacts to the

character of the neighborhood not normally associated with this type of use, provided that the conditions imposed by the Board are adhered to by the Applicant.

With regard to the impacts that the addition of three permanent PA systems to the Maguire Campus would have on the public welfare, the Board was persuaded by Ms. Doggett's testimony that the PA system for the baseball field (the impacts of the others closer to City Avenue were not challenged) will be calibrated so that the additive effect of the PA and the crowd noise will not exceed the Noise Ordinance limitations at the Maguire Campus property line. To insure that is the case, and to reduce the potential impact on the neighborhood, the Board will impose the following conditions on the use of the PA systems:

1. use is limited to player lineups at the beginning of games, substitutions during games, the national anthem, and emergency announcements;
2. use is limited to St. Joseph's University baseball, softball and field hockey varsity games and varsity tournaments in which St. Joseph's University teams are participants;
3. speakers will not be used for any other sporting events or general events on campus;
4. speakers will be located where shown on the plans and amended plans; and
5. speakers for the baseball field will be calibrated to a maximum of 74 dB in the bleachers or such other lower level as may prove in the future to be necessary to insure that the additive effect of the crowd noise and the use of the PA system does not result in a violation of the Noise Ordinance at the Maguire Campus property line.

Whether or not the limitations on the noise levels of the PA system will render it ineffective in the bleachers during crowd noise is not a concern of the Board.

### **Limitations of the Use of the Athletic Fields**

It is clear that with the addition of synthetic turf to three of the athletic fields, the opportunity for vastly increased amounts of play is presented. [Exhibit O-3, Open Space Plan Excerpts; O-21, Momenee Letter and exhibit pp. 79-80; N.T. 05/13/2010 at 87] The Board believes it is important to clearly set forth what intensity of use is permitted on the athletic fields in this decision, as it also became clear during the hearings that these fields will be used more often than they had been used in the past by the Episcopal Academy. Any increase in the use of the fields beyond the parameters below will require a special exception for an expanded use and a re-evaluation of the potential adverse impacts on the public health, safety and welfare as outlined above. Use of the athletic fields will be limited:

1. to St. Joseph's University intercollegiate games and practices;
2. to St. Joseph's University intramurals and tournaments, subject additionally to the following:
  - (a) intramurals are limited to twenty-four (24) hours total per week; and
  - (b) intramurals and tournaments are limited to six (6) hours total on weekend (Saturday and Sunday) days; and
  - (c) intramurals and tournaments are limited to the hours of 9 a.m. to 6 p.m. (or dusk, whichever is earlier);
3. to St. Joseph's University students, opponents, and event spectators; and

4. in all events, to daylight hours.

Although the BOC will ultimately decide the nature and extent of the landscaping required for the improvements, the Applicant's testimony indicated, and the Board found as a fact, that much of the mitigation of the impacts of the baseball field expansion on the neighborhood is related to the effectiveness of the screening and landscaping of those improvements. Subject then to the ultimate approval of the BOC and Township staff, the Board will condition the special exception on the landscaping being as substantial and as expeditiously-established as possible to provide an effective buffer.

In sum, the Board finds that, as thus conditioned, allowing the special exception will not be contrary to the public interest within the meaning of Section 114 A(2), nor will it adversely affect the public health, safety and welfare within the meaning of Section 114 C.

## O R D E R

AND NOW, this 18<sup>th</sup> day of November, 2010, it is hereby ORDERED that the application of St. Joseph's University for a special exception under Code §§155-11 S(2) and 155-11 X to install certain improvements on the Maguire Campus, known as 356-476 North Latches Lane, 480 North Latches Lane, 35 Berwick Road and 39 Berwick Road is GRANTED for the reasons set forth in the foregoing findings, conclusions and opinion. Use of the Maguire Campus is prohibited for outside groups and individuals not affiliated with the Applicant or its opponents during athletic events without obtaining a special exception for an expanded use.

The relief is granted based on, and conditioned on adherence to (except to the extent otherwise set forth in the foregoing decision) the plans (including specifically Exhibit A-57, Alternative Phase I Baseball Field Alignment) and testimony presented at the hearings in this matter. Relief is further conditioned on:

1. PA Systems

- a. use is limited to player lineups at the beginning of games, substitutions during games, the national anthem, and emergency announcements;
- b. use is limited to St. Joseph's University baseball, softball and field hockey varsity games and varsity tournaments in which St. Joseph's University teams are participants;
- c. will not be used for any other sporting events or general events on campus
- d. speakers will be located where shown on the plans and amended plans; and
- e. speakers for the baseball field will be calibrated to a maximum of 74 dB in the bleachers or such other lower level as may prove in the future to be necessary to insure that the additive effect of the crowd noise and the use of the PA system does not result in a violation of the Noise Ordinance at the Maguire Campus property line.

2. Ball netting

- a. for the Spring season, the netting may be put up no earlier than: (1)

the beginning of the Spring sports season or (2) February 15, whichever is later; and must be taken down no later than (1) the end of the Spring sports season or (2) June 15, whichever is earlier;

b. for the Fall season, the netting may be put up no earlier than: (1) the beginning of the Fall sports season or (2) September 1, whichever is later; and must be taken down no later than (1) the end of the Fall sports season or (2) November 1, whichever is earlier;

c. landscaping for the netting and the supporting poles to be approved by the BOC and the Township staff.

3. Use of the Athletic Fields is limited:

- a. to St. Joseph's University intercollegiate games and practices; and
- b. to St. Joseph's University intramurals and tournaments, subject additionally to the following:
  - 1) intramurals are limited to twenty-four (24) hours per week; and
  - 2) intramurals and tournaments are limited to six (6) hours total on weekend (Saturday and Sunday) days; and
  - 3) intramurals and tournaments are limited to the hours of 9 a.m. to 6 p.m. (or dusk, whichever is earlier); and
- c. to St. Joseph's University students, opponents and event spectators; and
- d. in all events, to daylight hours.

4. Landscaping. All landscaping for the proposed improvements shall, subject to the approval of the BOC and Township staff, be as substantial and as expeditiously-established as possible to provide an effective buffer.

5. Parking. The Latches Hall parking lot will be made available for spectator parking for all varsity games on the Maguire Campus and for all other events on the Maguire Campus for which the PA system is used; the Applicant will provide signs and/or traffic personnel to direct spectators and attendees at these events to the appropriate off-street parking areas.

Chairman Aaron, Member Fox, and Alternate Member Baron-Baer participating, all voting "aye." Member Brier did not participate in the hearings or the decision in this matter.

Attest: \_\_\_\_\_

Michael Wylie  
Secretary