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Time-out called again on SJU playing-field plan

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Add one more week to the saga of Saint Joseph's University and its new playing fields in Lower Merion.

After a four-hour session Wednesday night – equal in length to one held just two days earlier by the township's planning commission – the board of commissioners' Building and Planning Committee put off a decision on a preliminary plan of land development for SJU's new Maguire Campus until March 16.

At issue were several conditions of approval, including some new ones sought by Merion neighbors.

The continuing debate came after the university put in a significant new proffer intended to ease some neighborhood concerns about upgraded college-level play on the former Episcopal Academy's day-school campus.

That offer is to wrap bleachers and other structures near home plate on the new varsity baseball field with sound-attenuation materials.

Noise from new permanent public-address systems on the baseball and two other fields has been a major concern of homeowners nearby.

The proposal was well-received, but neighbors still were looking for stronger assurances on the operation of stormwater-management systems under new artificial-turf fields and on parking issues on game days.

The primary sticking point for the university, a community group and some commissioners, however, was the very first condition of approval on a list of nearly 100.

The condition had received substantial discussion also at the planning commission, which ultimately recommended approval of the land-development plan.

The disagreement had to do with whether or in what manner a recent Lower Merion Zoning Hearing Board decision and the conditions it imposed should enter into what will finally be a recorded plan for the 36-acre campus.

The planning commission had recommended including the condition, which states that Saint Joseph's "shall comply with the zoning hearing board discussion and conditions" in several appeals, and notes that the zoning-board order would be listed on the final plan.

The university would have preferred to delete the condition. The result of having the zoning decision and conditions recorded in the land-development plan, SJU attorney Fred Fromhold said, would be that, if the university in the future seeks a modification of those orders, it would not only have to return to the zoning board for approval but to the planning commission and board of commissioners as well.

Wednesday night, having made what township planning staff called a “major concession” on the sound buffering, Fromhold suggested new language. It would agree to a condition, he said, that stated it would comply with all “legally applicable orders of the zoning hearing board.”

Comment by Jim Greenfield, an attorney representing the Merion Community Coalition, shed some new light on the implications of that language.

In 2008 the coalition challenged the university’s land-development plan, saying that it exceeded zoning approvals granted in 2006. The zoning board ultimately agreed, deciding that SJU would need to enter into new hearings to get a special exception for expanded use of the property.

It was those hearings, conducted over about 18 months, that resulted in the zoning board’s decision last November to approve the special exception with conditions.

As Greenfield reminded commissioners, however, the university had appealed the zoning board’s 2009 decision requiring the new special exception. After a Montgomery County Common Pleas Court judge upheld the zoning board’s order, SJU appealed to Commonwealth Court.

That appeal has been dormant for almost a year. By this week, Greenfield had told the planning commission Monday night, the university had only a few days left in the appeal period to ask the Commonwealth Court to move it forward.

Wednesday night, he told commissioners, the university has asked the Commonwealth Court to move the appeal forward, with an initial date for submission of briefs set for April 8.

Should the court overturn the lower court’s decision, that would mean the 18 months of hearings – and the restrictions that came out of them – should never have happened, Greenfield said. “What you would be left with is nothing.”

Two years ago the university could have let that first appeal run its course. Instead it initiated the special-exception hearings.

“They weren’t compelled to do what they did,” Greenfield said. “They did it for tactical reasons. This is a situation they’ve created entirely on their own.”

Commissioner Brian Gordon, whose ward includes the campus, had sought to have the condition addressing the zoning-board decisions included. “The zoning hearing board [imposed] some very concrete conditions,” which the university had accepted, he said, adding that he wanted the land-development record to incorporate those conditions in some way.

Commissioner Phil Rosenzweig acknowledged it was a touchy area. The zoning hearing board generally deals with the uses of a property and not land-development issues. “How can this board capture jurisdiction over the zoning hearing board’s determination?” he wondered.

On the other hand, Rosenzweig said he was not comfortable with dropping the condition entirely or accepting the university’s language, which he agreed “doesn’t adequately protect the community.”

Fromhold maintained that incorporating the zoning decisions into the final plan “puts this owner and any owner in double jeopardy,” possibly setting a precedent that would require owners to go through more levels of approval for amendments to zoning orders.

Having heard Greenfield’s information about the Commonwealth Court appeal, however, Rosenzweig asked, “How can we act when the rules of the game may change?”

By deferring deliberation on conditions and a vote on the plan until next week, the board indicated it wants the university to meet with planning staff and work out final conditions that it can accept – and those to which it cannot agree.

The board is to take the matter up again in a special Building and Planning Committee meeting March 16 to begin at 7:30 p.m., before its scheduled regular meeting at 8 p.m.

The prospect of another long meeting is almost certain, however, since the board also deferred some controversial matters having to do with the township's library-renovation project to the same night.

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