

Zoning Examiner Hearing

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IN RE:

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6500 Beechmont Avenue, Cincinnati, Ohio : CASE NO: ZH2017-0061

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Zoning Examiner Hearing was taken at the City of Cincinnati, II Centennial Plaza, 805 Central Avenue, Fifth Floor conference room, at 1:30 p.m., on Wednesday, July 26, 2017.

## APPEARANCES:

Kevin Tidd – Zoning Hearing Examiner  
C. Francis Barrett – Attorney for McNicholas High School  
Tim Burke – Attorney for opposing neighbors  
David R. Jackson – Executive Director McNicholas High School  
Scott Fratianne – Spindlewick Neighbor  
John Kaufman – Musco Lighting  
Riley N. Kinman – RWK Environmental, Inc.  
Tim Hershner – Planning Consultant  
David Hadley – McNicholas Parent  
Timothy Murray – McNicholas Parent  
Candie Huston – Alumni/Parent McNicholas High School

## ALSO PRESENT:

Pat Smith  
Michael Orlando  
Shawn Gillette  
Jeff Hutchinson  
Mary Ellen Fitzpatric  
Shannon Kapp  
Shawn Young  
David Krusling  
Michael Carvay  
Niel Rammel  
Paul Rammel  
Alexis Gauger  
Hailey Bell  
Pat Stricker  
Christina Mullis  
Chris Watford  
Chris Ayers  
Pat Byrne  
Andrew R. Poole  
Kevin Murray  
Melissa Luckey  
Carol Black  
Jennifer Wagner  
Patty Beckert  
Rev. Jan K. Schmidt  
Dan Rosenbaum  
Rob Feld  
Terry Sage

Mike Clark  
Joseph H. Wilson III  
Tim Lynch  
Robert Hayes

1           MR. TIDD: We are on the record now. This is the July 26, 2017 of the  
2           Zoning Hearing Examiner docket. My name is Kevin Tidd. I am the Zoning Hearing  
3           Examiner for the City of Cincinnati and I will preside over this hearing. The case  
4           before us today is Case No. ZH20170061. The property in question is 6500  
5           Beechmont Avenue. The purpose of this hearing is to allow applicants and opposing  
6           parties to testify and to offer evidence and testimony. This hearing will follow the  
7           rules found in the Zoning Code and supplemental rules of the Zoning Hearing  
8           Examiner.

9           All testimony and evidence that an applicant or any opposing party wishes to  
10          offer must be presented at this hearing. The hearing will proceed as follows. The  
11          applicant, the applicant attorney or the applicant (Inaudible) will first present the  
12          applicant's case. The public will have an opportunity to speak after the applicant has  
13          presented its case.

14          If there is more than one person opposing an application, those persons should  
15          decide among themselves the length of time each will have to speak. If an opposition  
16          group is in attendance I may request that a spokesperson may be chosen to speak on  
17          behalf of the group. If the applicant is represented by an attorney, the applicant's  
18          attorney may cross examine any person who has testified at the hearing. If a party of  
19          record is represented by an attorney the attorney for the part of record may present  
20          witnesses after the applicant has presented its case and may cross examine any person  
21          who has testified at the hearing.

22          In the event that any party testifies or offers argument in opposition to an  
23          applicant, the applicant shall have an opportunity to rebut the testimony, enter an  
24          argument offered in opposition. After the applicant has been given an opportunity to

1           rebut any testimony and/or argument offered in opposition any attorney for a party of  
2           record will have an opportunity to make a closing statement. Finally, that applicant  
3           will have an opportunity to make a closing statement. After all presentations have  
4           been made I will close the hearing. A decision will be expected within two weeks.

5                     I may limit or exclude any testimony that I deem irrelevant or outside the  
6           scope of the application being considered. I may interrupt any speaker that asks  
7           questions and make any comments. I may also refuse to consider hearsay testimony  
8           or documents. If this means evidence you want to introduce that consists of a  
9           statement made by a person who is not present at this hearing, or a document that  
10          includes a statement of the person who is not at the hearing.

11                    A sign-in sheet is being passed around. Please be sure to sign in. All persons  
12          providing testimony will be sworn in now. I think the easiest way to do it is swear  
13          everybody in except for the attorneys, whether you plan to speak or not.

14                    Do you solemnly swear that the testimony you shall give will be the truth, the  
15          whole truth and nothing but the truth?

16                             (AT WHICH TIME ALL PARTIES WERE SWORN TO TESTIFY)

17                    ALL PARTIES: I do.

18                    MR. TIDD: Thank you. And I do know there are many members of the  
19          public here today. When I open up discussion to the public I will give everyone an  
20          opportunity to speak. But I do want to stress, there are a lot of neighbors here. There  
21          are a lot of members of different organizations. I want to make sure that everybody  
22          has an opportunity so try to be brief and stay relevant. But again, I don't plan to cut  
23          you off. I will give you an opportunity to speak. Mr. Barrett, would you like to  
24          identify yourself for the record?

1 MR. BARRETT: Yes. My name is C. Francis Barrett. I am an attorney at  
2 the law firm of Merritt and Webber. My address is 1201 Mercantile Center, 120 E.  
3 4<sup>th</sup> Street, Cincinnati, Ohio 45220. And I represent Arch Bishop McNicholas High  
4 School.

5 MR. TIDD: Thank you Mr. Barrett. Mr. Burke, you are also here  
6 representing a party, correct?

7 MR. BURKE: My name is Tim Burke of the law firm Mann and Burke and I  
8 am here representing neighbors located along Spindlewick, adjacent to Jason Street.

9 MR. TIDD: Thank you Mr. Burke. Mr. Barrett, why don't you tell me a little  
10 bit about your project and why you are here today?

11 MR. BARRETT: Thank you. Archbishop McNicholas High School is  
12 operating in the 6500 block of Beechmont Avenue in Mt. Washington neighborhood.  
13 The title to the property is Archbishop of Cincinnati Trustee. McNicholas High  
14 School has had this location for many many decades and we agree, was a tremendous  
15 asset to the neighborhood and to Mt. Washington community, as well as the City of  
16 Cincinnati at a whole.

17 The zoning of the subject property is SF6 which is a single-family zoning  
18 district allowing lots on parcels of 6000 square feet. School, both private and public,  
19 are conditional uses in the single-family districts in the City of Cincinnati and this  
20 conditional use rule is required. So anything the school does requires the district's  
21 approval.

22 The school is requesting the permission to install a state of the art lighting for  
23 the stadium. The stadium is existing. It has a football field, soccer field, lacrosse  
24 field combination, a field of running track around it, bleachers on each side. And the

1 school has finally been able to raise the money after the capital campaign, donations  
2 of generous alumni to have lighting. The school is proposing to have state of the art  
3 lighting. And Rosco Lighting Company, which is the expert in sports lighting, is  
4 proposing state of the art LED lighting which will be the finest available.

5 The benefits of this lighting are that it's very controlled. It eliminates off site  
6 spillage and glare to the greatest extent possible. There are only four lighting poles  
7 involved. One is at 90 feet and the other three are at 80 feet. In the SF6 district, you  
8 can have light poles up to 20 feet. If you did that you would have multiple lights and  
9 we would be creating a lighting condition that would be undesirable to everybody,  
10 especially in the neighborhood. With the number of lights, inability to control it by  
11 having these tall poles, only four of them, now directional lighting, we have been able  
12 to accomplish the best of all possible worlds.

13 Through the course of the process, issues came up about sound. So, we  
14 retained the services of sound consultant, Dr. Riley Kinman and he has made  
15 recommendations to relocate the speaker systems which have been on the scoreboard,  
16 or excuse me, on the press box, temporary speakers on the press box, to orient them  
17 on the scoreboard at the (Inaudible) stadium approximately 10 feet off the ground,  
18 and less than 10 feet off the ground, (Inaudible) due south, away from the residential  
19 neighborhood to the north.

20 MR. TIDD: Mr. Barrett, you are looking for conditional use approval for the  
21 sound, correct?

22 MR. BARRETT: That is correct. We were asked to do that as part of this, by  
23 the community. So, we incorporated that in our, in our submission. The school, as I  
24 mentioned, retained Rosco Lighting, state of the art lighting. Mr. John Kaufman is

1 here. He will testify and explain this. I believe you will be very favorably impressed  
2 by his presentation. As I mentioned, we have Environmental Engineer, Dr. Riley  
3 Kinman who will explain briefly his recommendations with respect to the sound.

4 When I first became involved with the project approximately one year ago,  
5 actually it was in, I believe September last year, I did some background research and  
6 investigation. And of course, talked to the City Planning Department and the City  
7 Zoning Department. And the recommendation came to me by the Department of  
8 Zoning Department, was working to engage the community. To become involved  
9 with the community, to meet with the community, and to attempt to address the  
10 concerns of the Mt. Washington Community Council, and in general, the  
11 neighborhood in particular.

12 We had a series of meetings and there is a document in submission which  
13 confirms this. I attended every one of these meetings as did the Executive Director of  
14 the school. The Executive Director of the school is seated right behind me, David  
15 Jackson. Where is David? Oh, here he is, right next to me, excuse me. I was on the  
16 phone with you, Mr. Burke, yesterday. We didn't think Mr. Jackson would be here  
17 and he actually made it back from Connecticut to be here today. He was supposed to  
18 be on vacation because this is the only time the Executive Director of the school can  
19 take a vacation. Right before school starts. Right before the sports programs and the  
20 play summer start.

21 So, anyway, we had a meeting on Wednesday, December 7<sup>th</sup>, in the evening at  
22 McNicholas High School. Neighbors were invited to that meeting. We also had a  
23 meeting on Wednesday, January 4 with Mt. Washing, at Mt. Washington Recreation  
24 Center with the Board of Mt. Washington Community Council who informed them.

1           Then, on Friday afternoon, January 13<sup>th</sup>, we met in the Administration building of the  
2 school with one of the neighboring property owners, Mr. Scott Fratianne, who is the  
3 spokesperson in the neighborhood. He is here today, one of Mr. Burke's clients. And  
4 also, Mt. Washington Community Council Board Member, Jody Pole. I believe she  
5 might even be president of the council now, in an effort to see what we can do to  
6 reach out to the neighborhood and address some of the issues the neighborhood had.

7           So then we proceeded a month later on Wednesday, November, excuse me,  
8 Wednesday, February 15<sup>th</sup>, at a meeting at the, in the high school cafeteria with the  
9 neighborhood. And a week later we met at the Mt. Washington Recreation Center for  
10 another neighborhood meeting. So the neighbors who could not make the 15<sup>th</sup> of  
11 February could hopefully make the meeting on February 27<sup>th</sup>. We then went in front  
12 of the Board of the Mt. Washington Community Council for another presentation on  
13 Wednesday, March 1<sup>st</sup>.

14           And then, we had a meeting with the general membership of Mt. Washington  
15 Community Council on Wednesday, April 19<sup>th</sup>. And at that meeting there was a vote  
16 called by the Board of the Membership of the Mt. Washington Community Council,  
17 total membership. And the vote was in favor of the request of McNicholas High  
18 School.

19           Then, we met again on Wednesday, May 10<sup>th</sup> at 7:00 in the High School Café,  
20 and we invited almost 400 persons. Four hundred individual invitations were hand  
21 delivered by the neighborhood. We retained the services of the zoning consultant,  
22 Timothy B. Hershner, to advise us as to the appropriate land use planning. This  
23 would involve, he has been in attendance at most of these meetings and he was  
24 instrumental in orchestrating the May 10 meeting with David Paxon. I believe Mr.

1 Hershner delivered the 400 individual invitations to each of the households  
2 throughout the neighborhood.

3 I should also mention that the City Planning Department, the City Zoning  
4 Department, advised me to contact the Chair of the Zoning Committee, the Mt.  
5 Washington Community Council, which would be Michael Survey. In fact, he used  
6 to be the director of (Inaudible) for the City of Cincinnati. And he was very  
7 instructive and instrumental telling us what we needed to do in terms of neighborhood  
8 meetings and issues he addressed. So, he was very informative in that regard.

9 If I could just go over here to the (Inaudible) log and based upon my  
10 discussions with you and Mr. Burke, we will make these part of the record. The one  
11 on the right is called the Hamilton County CAGIS Map. CAGIS stands for  
12 Cincinnati Area Geographic Information System. And this shows the property  
13 owner's parcel lines. We have Beechmont Avenue (Inaudible) location. All of this  
14 property here is owned by the Archbishop (Inaudible) McNicholas High School.

15 This is the border line, the west borderline and Mt. Washington Presbyterian  
16 Church is the primary name on the west. Across the street we have Guardian Angels  
17 Parish and Parish Church and Parish School. If you go to the east, we actually move  
18 into (Inaudible) that's in the Anderson Township. This is in Anderson Township,  
19 these properties here. This is Berkshire, Berkshire coming off, coming off  
20 Beechmont. Beechmont proceeds this way.

21 The neighborhood that we are most concerned about is the (Inaudible). This  
22 is the street directly to the north. And it comes off of Berkshire Club Drive and the  
23 property is the south side of (Inaudible) represent the people who were most  
24 concerned and we tried most to mitigate the impacts on their property. If you move

1 over here to the aerial photograph, this also shows the property lines. McNicholas  
2 High School is outlined in red. This is, this is the boundary Mt. Washington  
3 Presbyterian Church to the left of West. The boundary comes along the south side of  
4 the properties, (Inaudible) jogs north, drops down, comes around here, goes down  
5 along these property lines back here to Berkshire. This is Beechmont Avenue, the  
6 section (Inaudible) Berkshire.

7 The predominance of the school buildings right here on Beechmont Avenue.  
8 The parking lot on each side of the school buildings, the large parking lot on the west  
9 side. There is also maybe a large parking lot at the athletic facilities south of the  
10 stadium, north of the school buildings. This parking lot here is accessed directly from  
11 Berkshire. As you can see, we have a baseball diamond here, baseball diamond here.  
12 Also, this is the soccer field. This is the stadium. The stadium is used for soccer,  
13 lacrosse and Football. And it will be boys football, boys' and girls' soccer, boys' and  
14 girls' lacrosse, and the running track around the stadium.

15 The four lights are outside the running track, two on each side. These are the  
16 stands to exist. The speakers fit on the press box. Scoreboard is this location right  
17 here, just north (Inaudible). South the running track. And, excuse me, I think we  
18 (Inaudible) track. And right in this location (Inaudible) running track. Again, the  
19 recommendation of the sound consultants is to have the speakers on this base of the  
20 scoreboard, below the base of the scoreboard. On the supports, no higher than ten  
21 feet. Tall enough that someone couldn't reach up and tamper with them. I think it  
22 was a nine-foot range.

23 (Inaudible) due south for the middle of the field away from all those  
24 mentioned properties. Previously when they were on the press box the noise would

1 (Inaudible) west to northwest. The Presbyterian Church has a large parking lot here.  
2 The school has a shared parking arrangement with both the Presbyterian Church and  
3 Guardian Angles Parish. You see this very large parking lot that warps around  
4 Guardian Angles school and Parish Church. And the school, the high school can use  
5 this parking lot, Presbyterian parking lot, two school parking lots on each side of the  
6 school buildings, plus the athletic parking area here. (Inaudible) to park.

7 Again, --

8 MR TIDD: Is that parking arrangement new or is that something that has  
9 always been there?

10 MR. BARRETT: It's been in existence.

11 MR. TIDD: Okay.

12 MR. BARRETT: And um, Mr. Jackson can answer any particular details that  
13 you may wish to know about that. Um, again, the purpose of this was to have the full  
14 high school experience. So, Friday nights in particular it's so important to a full  
15 curriculum high school which is Friday night football. Also, by having a building use  
16 the stadium in the fall and spring we have included to have soccer games and lacrosse  
17 games as well.

18 Again, as we went through this process we tried to stay in contact with the  
19 City Planning Department, City Zoning Department. Again, they talked about  
20 reaching out to the neighborhood. And one of the things that came to the (Inaudible)  
21 as a result of that were conditions of zoning approval. I was invited to meet on more  
22 than one occasion the City Zoning Administrator, Matt Chad, who took over this case  
23 himself because he felt as the City Zoning Administrator, he should be responsible.  
24 Zoning plans examiner was Henry Trade Sheldon. Henry Sheldon, who reviewed this

1 extensively.

2           And as a result of those meetings I had with them, they are aware of issues  
3 that had come up in the neighborhood. So, they asked me to specify the types of  
4 events and activities. I did that in the first paragraph. And it's (Inaudible) staff  
5 reporting to being prepared. They also wanted to know the months of the year. So,  
6 we specified that. They also wanted to know the days of the week. We specified  
7 that. The hours of usage, we also specified.

8           And again, when I was asked to address these topics I went back and met the  
9 representatives of the school. I invited the consultants, all of the ones I've introduced  
10 to you, to participate in these meetings. We looked at our notes of the concerns of all  
11 the neighborhood meetings then tried to be as responsive as possible to all the  
12 concerns that the neighborhood expressed. And I think I understood that one of the  
13 things the neighborhood wanted was certainty and predictability. That was the  
14 purpose in coming up with, uh, with these on one hand. And on the other hand, it was  
15 to have certain restrictions in place that would allow the City to enforce these if there  
16 was any issue.

17           And I was asking the school, do you want to make these conditions for  
18 approval. So, I went back and got permission from the school to (Inaudible). Again,  
19 for the protection of the neighborhood. We also asked to talk about the frequency  
20 (Inaudible) and activities and specified those. Then specific lighting controls. We  
21 have a paragraph on this, but we are going to incorporate the (Inaudible) lighting  
22 plans.

23           And I would again mention that when I met with the zoning office and they  
24 reviewed the lighting plans, they expressed to me how impressed they were with the

1 controls on the state of the art lighting. They were (Inaudible) all kinds of lighting  
2 plans for all kinds of commercial projects, multifamily residential projects,  
3 institutional uses, and they were really impressed with the management of the spillage  
4 and glare –

5 UNIDENTIFIED SPEAKER: Excuse me, please, he's testifying about what  
6 City staff members said and I don't think that's appropriate. (Inaudible).

7 MR. TIDD: I'll allow it.

8 MR. BARRETT: I'll move on. Then we talked about sound controls. And  
9 again, we were asked specifically by the City staff to address sound controls. And we  
10 again met with the school and their sound consultant and appropriated this language.  
11 So, we believe that we have dotted all the I's and crossed all the T's. And we would  
12 like to now present our witnesses. If you have any questions of me, I will be happy to  
13 answer them.

14 MR. TIDD: Okay thank you, Mr. Barrett. Who is your first witness?

15 MR. BARRETT: Uh, I would like to ask uh, first of all, Mr. David Jackson,  
16 who is seated next to me. Just to introduce himself and explain his position in the  
17 school.

18 MR. JACKSON: I'm Dave Jackson. I'm the Executive Director of  
19 Archbishop McNicholas High School. In that capacity I oversee the business  
20 operations of the school. That (Inaudible) that includes the finance function, the  
21 communications function, the admissions and (Inaudible) function, technology, and  
22 facilities.

23 I have been at the school for approximately four years and I am in, in this, in  
24 this capacity I, I served as the primary liaison between our attorney and the

1 community for this particular issue. I would be the one that the neighborhood would  
2 contact if there were issues with regard to the lights or sound.

3 MR. BARRETT: Mr. Jackson, just explain briefly what you did to reach out  
4 to the neighborhood on one hand. And secondly, what you did to be responsive to the  
5 issues they raised.

6 MR. JACKSON: Well, we always tried to maintain good relationships with  
7 the neighborhood. Um, we have, we have had in the past many opportunities to  
8 interact with the neighbors. We always try to make sure that we take the interests of  
9 the neighbors to heart. We, with regard to the lighting issue, we began as Mr. Barrett  
10 said, we began back in the late fall of 2016 to begin to put together some  
11 neighborhood meetings.

12 I believe the first one was held in December and it moved into several more  
13 meetings in the spring time frame. In February, then again in March we had, we held  
14 a couple of meetings with Mr. Fratianne and one or two others that have attended  
15 those from the neighborhood, which were individual meetings, in addition to the  
16 neighborhood meetings where everyone was invited to attend.

17 So, I think the record will show that we've held no less than six or seven  
18 meetings with the neighborhood.

19 MR. BARRETT: Did you also meet with Mt. Washington Community  
20 Council?

21 MR. JACKSON: We did meet with the Mt. Washington Community Council.  
22 We've met with them on a couple of occasions. The last one being where the Mt.  
23 Washington Community Council voted for this action and approved it.

24 MR. BARRETT: And did you take to heart all of the issues that were raised

1 by the neighborhood?

2 MR. JACKSON: We did. We looked what the neighbors were saying. There  
3 were some, some concerns over lighting, spillage and glare issues. We believe we've  
4 addressed those as Mr. Barrett has said. We also, there is an issue that came up as we  
5 went through this process with the sound. And that seemed to be, at least, a people  
6 concern to the lighting issue.

7 And it was for that reason that we retained the services of a sound consultant  
8 who did some tests to identify the best place to position the sound equipment so that  
9 we would mitigate any sound concerns to the neighborhood. And that's where we  
10 came up with this proposal to put these sound speakers on the scoreboard and aim  
11 them due south.

12 MR. TIDD: So when compared to the existing sound, the sound that is used  
13 right now in that stadium. When you compare that to the plan you have now, how do  
14 they compare? Will there be less of an impact on the neighborhood?

15 MR. JACKSON: I believe there will be. Um, currently the speakers are set  
16 up. They are kind of portable speakers. They are set up on the side of the press box,  
17 the sides of the press box. They are aimed, as Mr. Barrett said, they are aimed due  
18 west or slightly northwest to try to capture the coverage of the majority of the  
19 spectators that are at the game.

20 By positioning them in that fashion, the sound then moves across the field and  
21 directly towards the neighborhood in question on the north and west side of the  
22 stadium. That, there, there is some trees and some shrubs that are there which could  
23 block the sound, or serve as a barrier to the sound. But by positioning them in the  
24 fashion that we are talking about now, with the back of the speakers to the houses on

1 the north, and having the sound come due south across the field. That will allow  
2 additional space for the sound to lesson as it moves across the field, across the plaza  
3 and out into the rest of the school campus.

4 MR. TIDD: In Mr. Barrett's submission he noted that you were proposing a  
5 10:00 o'clock, 10:00 o'clock cut off for all events unless overtime for football I  
6 assume, probably a playoff game. How many events actually go that late? Like, do  
7 soccer games, lacrosse games, like what time do they normally start?

8 MR. JACKSON: No events, no events, no events currently go that late  
9 because we don't play any evening sports to speak of at this point. The sports that we  
10 do play might go in the, in the fall when the light gets short. It might go, we  
11 sometimes have to speed those events up.

12 MR. TIDD: When you do play away games, I guess, what time are you  
13 hoping to play these games at? Especially soccer, lacrosse?

14 MR. JACKSON: Those would either be a 5:00 p.m. start time or possibly a  
15 7:00 p.m. Football would be a 7:00 p.m. start time.

16 MR. TIDD: Uh-huh.

17 MR. JACKSON: Seven or 7:30. Those games would run approximately two,  
18 two and a half hours.

19 MR. TIDD: How long to lacrosse matches really last? I imagine soccer will  
20 be two hours though. Probably end before 9:00 o'clock.

21 MR. JACKSON: Right. And I believe lacrosse would be similar.

22 MR. TIDD: Were you planning on having night track meets? I was a little  
23 surprised by track meets.

24 MR. JACKSON: We, we wouldn't, we wouldn't normally have night track

1 meets. But I think in our proposal, in our conditions we allowed for one evening  
2 event. In the event that at the end of the track and field season sometimes we have an  
3 invitational or a regional, district or regional track meet. We would love the  
4 opportunity at some point to host one of those. If there was ever an opportunity to do  
5 so, and the organizers of that particular meet wanted to hold it at McNicholas, and  
6 wanted to do it at a time in the afternoon or evening, we wanted to have that  
7 opportunity to be able to host one of those.

8 MR. TIDD: Also, from the submission, Mr. Barrett mentions that the  
9 marching band would allow apart from football games, I guess, one other time under  
10 the lights. That is what you are proposing. So, they would not practice under the  
11 lights at all?

12 MR. JACKSON: That is correct.

13 MR. TIDD: What time do they normally practice now?

14 MR. JACKSON: Normally it's during the day on the weekends or –

15 MR. TIDD: So I can imagine that's pretty long?

16 MR. JACKSON: Or right after school, yeah. It's not at night.

17 UNIDENTIFIED SPEAKER: (Inaudible).

18 MR. JACKSON: Usually they practice between –

19 MR. TIDD: Remember, you are only speaking to me. Don't answer any  
20 questions from the crowd. It's just me. And you are always speaking to me, so you  
21 are not speaking to anyone in the audience.

22 MR. JACKSON: Sorry.

23 MR. TIDD: Mr. Barrett?

24 MR. BARRETT: I have nothing further. Maybe Mr. Burke has a question.

1 MR. TIDD: Mr. Burke?

2 MR. BURKE: Mr. Jackson, are you the decision maker for the school  
3 regarding this application?

4 MR. JACKSON: Myself and our principal, Ann \_\_\_\_\_.

5 MR. BURKE: And the principle is here today or not?

6 MR. JACKSON: She is here.

7 MR. BURKE: She is here today?

8 MR. JACKSON: Yes.

9 MR. BURKE: Do you know whether or not she intends to testify?

10 MR. JACKSON: I do not know.

11 MR. BURKE: And you had indicated you wanted (Inaudible) for about four  
12 years?

13 MR. JACKSON: About four years.

14 MR. BURKE: So you don't know the history of the football field (Inaudible).

15 MR. JACKSON: Well, I wasn't there for the first part of it but I do know  
16 some things.

17 MR. BURKE: Are you aware of the fact the City of Cincinnati and the  
18 Director of the Department of Building Inspections with that time conducted the kind  
19 of hearing that is being conducted here today, denied the (Inaudible) the ability to put  
20 lights on that field in 1994? Were you aware of that and are you aware of why he did  
21 that?

22 MR. JACKSON: Not, not entirely.

23 MR. BURKE: What is your understanding as to why he did that?

24 MR. JACKSON: My understanding is that there were some conditions that

1 were proposed at that time and that they were not, that the conditions that were  
2 proposed were not completely curative, at least, in the view of the City.

3 MR. BURKE: Specifically, are you aware that the Director of the Department  
4 of Building Inspections stated in his decision, “The request for the illumination light  
5 poles is denied. The denial is based upon the finding of the Director that such  
6 illumination (light posts) would be materially detrimental and injurious to the  
7 property in the vicinity.”

8 MR. JACKSON: I was aware of that. But that was at that time. The proposal  
9 that we are currently making is at a different time with a different set of lights, and  
10 the technology has come so much further since that time.

11 MR. BURKE: Why is it necessary for you to play at night?

12 MR. JACKSON: You play in a, you play sports in a league that most of the  
13 participants have night games.

14 MR. BURKE: Not all (Inaudible).

15 MR. JACKSON: That is correct but most of them do. And sports in general  
16 at lease in the Cincinnati area. That is part of the fabric, culture of high school  
17 athletics, that is to have Friday night football games. That is why we want to be able  
18 to participate. Furthermore, if I could, if I might, we also note that it is a difficult  
19 thing for us, as a school, to have to schedule our games on Saturday afternoons when  
20 others are being allowed to play on Friday nights.

21 Other schools really do not like to have to come to McNick on Saturday  
22 afternoons because it just –

23 MR. BURKE: Do you anticipate that you will have larger crowds on Friday  
24 nights than on Saturday afternoon for a football game?

1 MR. JACKSON: I don't know how to answer that. Because we have never  
2 held any games on – during the week, so I would not know what the crowd contains.

3 MR. BURKE: Have you ever bothered to ask to visit the back yards of any of  
4 the folks on Spindlewick during a major event at the stadium?

5 MR. JACKSON: Yes, I absolutely have. The Bloom's, Gina Bloom.

6 MR. BURKE: Uh-huh.

7 MR. JACKSON: I, at the uh, at the hearing that was held at the Mt.  
8 Washington Community Council where she and her husband testified I specifically  
9 indicated that I would be more than happy to come to a game, to their back yard to sit  
10 on their deck to listen to the sound to see what was going on. And I was, I offered that  
11 up to be able to do that. I was never contacted.

12 MR. BURKE: so you, I misunderstood you. I though you indicated that she  
13 had – I take she did not.

14 MR. JACKSON: No, I did not.

15 MR. BURKE: Did not?

16 MR. JACKSON: No. Which I would have gladly done so had I been invited.

17 MR. BURKE: Are you still willing to do that?

18 MR. JACKSON: Absolutely.

19 MR. BURKE: Do you – you have heard complaints from the neighbors even  
20 before this proposal for light (Inaudible), haven't you?

21 MR. JACKSON: (Inaudible) complaints.

22 MR. BURKE: (Inaudible) complaints?

23 MR. JACKSON: I have not specifically received, myself, any noise  
24 complaints.

1 MR. BURKE: Are you aware of anybody from McNicholas High School who  
2 has received noise complaints from the neighbors?

3 MR. JACKSON: I have not.

4 MR. BURKE: I, I do have a copy of the state's decision from 1999, or I have  
5 extra copies of it. I have marked it as Exhibit No. 1.

6 MR. TIDD: Uh-huh.

7 MR. BURKE: And I would like to make that as an exhibit.

8 MR. TIDD: Sure.

9 MR. BURKE: (Inaudible). I have also handed you what we've marked as  
10 Exhibit No. 2 which is labeled "McNicholas High School Anticipated Evening  
11 Stadium Usage". You are familiar with this exhibit, Mr. Jackson?

12 MR. JACKSON: Yes.

13 MR. BURKE: This amounts to roughly 50 games?

14 MR. JACKSON: Very roughly, I would say, without adding them up  
15 individually, I would say that's a good estimate.

16 MR. BURKE: This is not the limit of what the conditions Mr. Barrett  
17 presented (Inaudible).

18 MR. JACKSON: I don't understand the nature of the question.

19 MR. BURKE: Let me ask the question this way, then. What I've marked as  
20 Exhibit No. 3 is the Conditions of Zoning Approval that Mr. Barrett talked about.  
21 You have both Exhibit No. 2 and Exhibit No. 3. Which of these is the controlling  
22 document?

23 MR. BARRETT: Do you want me to explain that?

24 MR. TIDD: I'd rather have the witness answer.

1 MR. BURKE: It's a legal question, what is the controlling document?

2 MR. JACKSON: I don't know the –

3 MR. TIDD: Mr. Burke, you can address that at the end.

4 MR. BURKE: All right. I'm not sure he knows that (Inaudible).

5 MR. TIDD: And if you don't know the answer, say you don't know the  
6 answer.

7 MR. JACKSON: Yeah, I do not know the answer to that.

8 MR. BURKE: Have you read the conditions that Mr. Barrett has provided –

9 MR. JACKSON: Yes, many times.

10 MR. BURKE: that he is asking the state to approve?

11 MR. JACKSON: Many times.

12 MR. BURKE: You testified earlier that you want one track event, correct?  
13 That's what you testified to just a few minutes ago?

14 MR. JACKSON: That is what I indicated was that we would like that  
15 opportunity to have the track event.

16 MR. BURKE: Why does this ask for three?

17 MR. JACKSON: Because there, there are other, there are other track and field  
18 events besides the invitational that I referred to.

19 MR. BURKE: So this list of fifty is augmented by whatever other (Inaudible)  
20 Mr. Barrett has included in this set of provisions?

21 MR. JACKSON: I'm not, I'm not sure how to answer your question. We  
22 would like the opportunity for our students both male and female, who are track and  
23 field athletes, to be able to participate under the lights if we get to the situation where  
24 that is required and necessary.

1 MR. BURKE: Would you like to have the opportunity to have homecoming  
2 celebrations or reunions at the football field under the lights, as well?

3 MR. JACKSON: We would like to have a reunion, yes.

4 MR. BURKE: That's not on this list, is it?

5 MR. JACKSON: No, but it is in with the conditions of the zoning approval.

6 MR. BURKE: In fact, you've asked for everything you could possibly think  
7 of that you might want to do on that field, to be able to do it under the lights, is that  
8 right?

9 MR. JACKSON: Well, what we've tried to do is we've tried to not  
10 disadvantage particular students and groups at the school in favor of another. If we,  
11 if, if a young man or woman is an athlete and plays lacrosse or soccer, we would like  
12 them to also be able to participate under the lights as well as a football player.

13 MR. BURKE: And have you studied what other schools have done to attempt  
14 to accommodate (Inaudible) and accommodate their neighbors under similar  
15 circumstances, desiring to do the same thing you've just described?

16 MR. JACKSON: We have looked at other schools.

17 MR. BURKE: Have you talked to the folks at Summit County Day?

18 MR. JACKSON: Not specifically.

19 MR. BURKE: So you don't know what kind of conditions they have?

20 MR. JACKSON: They have (Inaudible) Summit County Day –

21 MR. BURKE: -- Opinion as included in their approval of the lights at  
22 Summit? You have not, you have not done that?

23 MR. JACKSON: I have not talked to them specifically.

24 MR. BURKE: Are the folks on Spindlewick any less entitled to have their

1 piece and quite protected than those on (Inaudible)?

2 MR. BARRETT: I'm going to object to that. That's argumentative.

3 MR. TIDD: It is argumentative, Mr. Burke.

4 MR. BURKE: Then let me ask it this way. As I do not state to take, consider  
5 what controls have been put on Summit, they have been in effect for the last 25 years  
6 and that have worked very well and have promoted cooperation between Summit and  
7 their neighbors. They include limiting the use of lights to 15 nights a year.

8 MR. TIDD: Wait, Mr. Burke, is this a question?

9 MR. BURKE: Would you consider limiting your field use in the same  
10 manner that Summit is limited?

11 MR. JACKSON: I think we can take a look at it (Inaudible) do an outer  
12 limited and then in consultation we would see if we could accommodate that.

13 MR. BURKE: Find your copy of Exhibit No. 4.

14 MR. TIDD: I'm on that right now.

15 MR. BURKE: So you have not looked, for example, at Summit's website that  
16 tells me that your women will have the opportunity to play varsity soccer under the  
17 lights at Summit on October 3<sup>rd</sup> this year? You are not aware of it? Would you  
18 consider posting in advance, on McNicholas's website, the schedule for the annual  
19 use of the lights on the field just as Summit has?

20 MR. JACKSON: I think so.

21 MR. BURKE: Hand you what I've marked as Neighbors Exhibit No. 7.  
22 Moeller High School has a pretty good football program, don't they?

23 MR. JACKSON: Sorry?

24 MR. BURKE: Moeller High School has a pretty good football program, don't

1           they?

2           MR. JACKSON: So they say.

3           MR. BURKE: Where did you go to high school?

4           MR. JACKSON: Not around here. Out west.

5           MR. BURKE: The fact of the matter is, you would agree that they have a  
6           pretty good football team?

7           MR. JACKSON: If I believe everything I read, yes.

8           MR. BURKE: And you are aware of the fact that they do not have lights on  
9           their field?

10          MR. BARRETT: I'll object to that. That's in Sycamore Township and it has  
11          no basis to this case.

12          MR. TIDD: I'll let him continue.

13          MR. BARRETT: Pardon?

14          MR. TIDD: I'll let him continue.

15          MR. BARRETT: Go ahead.

16          MR. BURKE: Are you aware of the fact –

17          MR. TIDD: Mr. Burke, hold on for a second. Sir, I, I don't answer questions  
18          right now.

19          UNIDENTIFIED PERSON: No, I wanted to make a comment –

20          MR. TIDD: No, you, you don't get to make a comment right now. Right  
21          now, the applicant is –

22          UNIDENTIFIED PERSON: (Inaudible).

23          MR. TIDD: Right now, the applicant is presenting its case. Mr. Burke is  
24          cross examining the first witness. Mr. Burke, continue.

1 MR. BURKE: Are you aware of the fact that Moeller does not have lights on  
2 its fields?

3 MR. JACKSON: I am aware of that.

4 MR. BURKE: Can you see the decision that Sycamore Township issued  
5 denying the use of lights on the fields?

6 MR. JACKSON: I have not seen that decision.

7 MR. BURKE: I do want to include it for the Hearing Examiner's  
8 consideration. A copy of what will be marked as Exhibit No. 5, which is the  
9 Sycamore Township Decision and Exhibit No. 6, which is the decision by the  
10 Magistrate upholding that decision. And by the way, when McNicholas was denied  
11 putting up lights on its field back in the early '90's, that decision was not appealed by  
12 McNicholas, was it?

13 MR. JACKSON: I don't think it was.

14 MR. BURKE: And with regard to sound, I will also call to your attention that  
15 the Sycamore Township decision limits the maximum volume of the speaker system  
16 to 55 DBA at all external property lines. It is a standard that one of your fellow  
17 schools is required to meet. Will McNicholas meet that standard?

18 MR. JACKSON: I think we have indicated in our conditions what we would  
19 be willing to do. I think we indicated in, under point seven of our conditions of  
20 zoning approval, under sound controls, that we would be willing to meet the City of  
21 Cincinnati Zoning Ordinance standards and those I believe, are 55 decibels for any of  
22 the time periods there indicated. And also, that we would be willing to set the public  
23 address equipment at a five, level five on a zero to ten scale.

24 MR. BARRETT: (Inaudible) do they?

1 MR. JACKSON: I can tell you it's going to be louder than one and not as  
2 loud as ten.

3 MR. BURKE: And the standard that you are proposing to meet is the  
4 standard that defines whether or not the noise constitutes a crime.

5 MR. JACKSON: It's the standard that the City of Cincinnati has set for the  
6 noise ordinances.

7 MR. BURKE: And if you violate that standard, it's a crime?

8 MR. JACKSON: Well, I would guess that's the case, yes.

9 MR. BURKE: But also, all you are agreeing to do is not commit a crime.

10 MR. BARRETT: Objection. That's argumentative.

11 MR. TIDD: Mr. Burke, it is argumentative. Move on.

12 MR. BURKE: Is it McNicholas's position that as long as you comply with  
13 the City's noise ordinance so that they don't commit a crime, that you are not  
14 disturbing the adjacent neighbors?

15 MR. BARRETT: I'll object to the form of the question.

16 MR. TIDD: Rephrase Mr. Burke.

17 MR. BURKE: Is it your position that as long as the noise produced by your  
18 sound system is 55 DBA at the appropriate highs, and with the City standard, let me  
19 back up. Are you aware of the fact that the City Ordinance says 55 DBA times 6 in  
20 an average size stadium?

21 MR. JACKSON: I am, I am aware of that.

22 MR. BURKE: So you are aware of the fact that the noise may greatly exceed  
23 55 DBA at any given time as long as it doesn't last over six minutes.

24 MR. JACKSON: I am aware of that.

1 MR. BURKE: So unlike the Moeller standard, which is simply you can't  
2 exceed 55 DBA, you are not being held to that, are you?

3 MR. BARRETT: He doesn't know what the lowest standard is, so.

4 MR. BURKE: 55 DBA. It's in the documents.

5 MR. TIDD: It's been established it's 55 DBA. Just answer the question.

6 MR. JACKSON: Can you rephrase it?

7 MR. TIDD: No, answer that question.

8 MR. JACKSON: Could you restate it?

9 MR. TIDD: Could you ask it again, Mr. Burke?

10 MR. BURKE: I will try. The City's noise standard on any given day, is 55  
11 DBA average over a six minute period. All of the standards contained in the  
12 Sycamore Township decision which I have here, simply says you can't exceed 55  
13 DBA. McNicholas's position is I take it, that you can exceed 55 DBA, and exceed  
14 any level you want as long as over the six minute period you have the average of  
15 (Inaudible).

16 MR. BARRETT: That's, that's argumentative. That's –

17 MR. TIDD: Mr. Jackson, do you plan to exceed 55 DBA?

18 MR. JACKSON: Mr. Tidd, I can't say because during a football game, for  
19 example, if the crowd erupts and there is noise and it goes above 55 then I would be  
20 exceeding 55.

21 MR. TIDD: What about your audio system?

22 MR. JACKSON: Audiences?

23 MR. TIDD: The audio system?

24 MR. JACKSON: Oh, the audio system? No, we don't plan to do that with the

1 audio system, no. We, we, we plan to whatever we need to do with the audio system  
2 to make sure it is not going to be disruptive to the neighborhood.

3 MR. TIDD: Mr. Burke, continue.

4 MR. BURKE: Would, I think you understand that what would happen once  
5 the field is lighted and you are playing games, football games (Inaudible) players to  
6 factor in.

7 MR. JACKSON: More than likely that is correct.

8 MR. BURKE: And more than likely, those are also games that are getting up  
9 the biggest crowds?

10 MR. JACKSON: That is also true.

11 MR. BURKE: And those are the instances that are going to have the greatest  
12 impact on the neighbors, correct?

13 MR. JACKSON: I would say yes.

14 MR. BURKE: Are you willing to take any steps to attempt to reduce crowd  
15 control such as prohibiting noisemakers in the crowd?

16 MR. JACKSON: That would be very difficult to do. You would have to  
17 attempt to screen everybody coming into football games to make sure that they were  
18 not bringing noisemakers into the stadium. That would introduce a whole new  
19 element into admission to football games. A new screening process. I don't think, I  
20 don't think that's something you would want to do.

21 MR. BURKE: You would for basketball, wouldn't you? You don't allow  
22 people to bring in air horns or (Inaudible) can be heard and separate soccer matches  
23 (Inaudible).

24 MR. JACKSON: I'm not, it's not something that we would, we would -- what

1 would happen is we would ask somebody if it became a problem we would just ask  
2 them to please refrain from its use.

3 MR. BURKE: Do you understand that noise (Inaudible) by the defense in  
4 your stadium does have an impact on the adjacent (Inaudible) family homes?

5 MR. JACKSON: I completely understand. Yes, I do and that's why I offered  
6 to go to the neighbor's homes and sit there and listen to the noise and to see if it  
7 exceeded a reasonable level to try to put myself in their shoes and try to see what they  
8 were complaining about, what their issues were. Apparently, they did not want to do  
9 that.

10 MR. BURKE: And can you explain what project paradise is, and how the  
11 group that is project paradise relates to McNicholas High School.

12 MR. JACKSON: All right. Project Paradise is a group of McNick supporters.  
13 Volunteers and individuals who have been in existence for ever since before the  
14 stadium came into being and had a vision for an athletic complex for the school to  
15 allow our students to not only mature academically and intellectually, but mature  
16 athletically. Because they were underserved, the belief was that they were being  
17 underserved because they didn't have the facilities that they needed to be able to  
18 participate in athletics to the fullest extent. And so that group took it upon themselves  
19 to do fundraising and to come up with the funds, the requisite monies to be able to put  
20 together a facility that we affectionately refer to as project paradise. Which is the  
21 overall athletic complex of the school behind, behind the school that (Inaudible).

22 MR. BURKE: Your neighbors residing (Inaudible) asked for a master plan,  
23 correct?

24 MR. JACKSON: I did not, I was not aware of that until such time as we had

1 our first meeting with Mr. Fratianne.

2 MR. BURKE: (Inaudible).

3 MR. JACKSON: We retained the services of Michael Schuster & Associates  
4 in the early days of project paradise. He put together a number of different plans.  
5 The plans have been modified many times as we go, as we have gone forward.

6 MR. BURKE: You have read the staff report that has been provided today?

7 MR. JACKSON: I have.

8 MR. BURKE: You are aware of the fact that the staff report states in part that  
9 may be some negative impact on development, usefulness or value of neighboring  
10 (Inaudible)?

11 MR. JACKSON: I read that.

12 MR. BURKE: That's in the second one, right? And McNick doesn't care  
13 about that?

14 MR. BARRETT: That's argumentative.

15 MR. TIDD: That's argumentative, Mr. Burke.

16 MR. BURKE: What has McNick done to address that fact?

17 MR. JACKSON: We've, we've done quite a bit, actually. We uh, made sure  
18 that everything that we've done for project paradise is getting done in a top-notch  
19 fashion. We've made sure that we have not exceeded in any way the boundaries that  
20 we've established early on in the process, we have had great cost and great expense.  
21 We have put up freeze and barriers to the neighbors.

22 MR. BARRETT: We were required to do that by the City of Cincinnati.

23 MR. JACKSON: Sorry. But we have, we have done along the fence line.

24 We have done a lot to make sure that we are keeping kids from crossing the

1 (Inaudible) fences, over the fences. We try to make sure that we are being good  
2 neighbors.

3 MR. BURKE: None of that reduces the noise in the neighbor's back yard,  
4 does it? Would you be surprised some of the neighbors have even paid to put in noise  
5 reducing windows in their houses?

6 MR. JACKSON: I wouldn't be surprised to learn that, no.

7 MR. BURKE: I have no other questions.

8 MR. TIDD: Thank you, Mr. Burke. Mr. Barrett?

9 MR. BARRETT: (Inaudible) Mr. Jackson.

10 MR. TIDD: Okay. Who is your next witness, Mr. Burke, Mr. Barrett, sorry.

11 MR. BARRETT: Mr. Michael Clark. State your full name and address?

12 MR. CLARK: Yeah, Mike Clark, 67987 True Ridge Drive. I live out in  
13 Anderson Township.

14 MR. BARRET: Explain your position with McNicholas High School?

15 MR. CLARK: I am an alumnus and I have, I am a parent, pre-alumni. Strong  
16 supporter and the most relevant fact is that I help lead with other alumni the project  
17 paradise.

18 MR. BARRETT: Please explain how project paradise originated and how it  
19 came to prurition with regard to the current submission?

20 MR. CLARK: Uh, I have to go back to the original roots. There were some  
21 supporters that, as Dave Jackson stated, came together and ever since I was a student  
22 there was a vision of having some sort of athletic facility behind the school. And un,  
23 you know, I think it was '08 or '09 came together and the initial thought was to get a  
24 turf field. Ideally would like to get the bleachers.

1           There have been some revisions on what the master plan might look like. I  
2 think the original drawings had a concession stand. Brand new building out front that  
3 cost, that wasn't too cost affective so we, we revamped the plans to redo the existing  
4 concession stand. And uh, so it's just kind of um, had this vision. And this is really  
5 one of the last pieces of the vision is the lights. Wanting to make it improve the high  
6 school experience.

7           MR. BARRETT: And explain your role in this endeavor over the last ten  
8 months or so?

9           MR. CLARK: About a year ago, maybe it was sometime last summer we  
10 have a supporter approach us about funding the lights. And we knew that was going  
11 to be an issue that we were going to have to go to the neighborhood with. And so, we  
12 contacted legal counsel. We organized neighbor meeting, you have heard a lot of  
13 details on the neighbor meetings. Mt. Washington, Mt. Washington's Community  
14 Council and just from the get go, since I've kind of been spearheading this effort, the  
15 get go is to really get as much feedback from the neighbors as we can.

16           This isn't just a one-time thing. They are not going away. So, we want the  
17 communication to strengthen between the neighborhood and the school. So, that's  
18 what we endeavor to do, and we got a lot of good feedback. Some of it was good,  
19 some of it was we need to make some improvements. And I think the biggest thing  
20 we realized was our focus was on getting the right lights.

21           But the biggest improvement that came to our attention at that time was  
22 sound. So, that's when we contacted Fran and said we need a sound expert to see  
23 what we need to do. And that's where we are.

24           MR. BARRETT: And have you participated in most of these neighborhood

1 meetings?

2 MR. CLARK: I think I have been in every meeting, yeah.

3 MR. BARRETT: That would include the meetings (Inaudible) Mt.

4 Washington Community Council?

5 MR. CLARK: Yes.

6 MR. BARRETT: And all the meetings that were held at the Mt. Washington

7 Recreation Center?

8 MR. CLARK: Yes.

9 MR. BARRETT: All the meetings that were held at the high school?

10 MR. CLARK: Yes. I might have missed some of the meetings one-on-one  
11 with Dave Jackson.

12 MR. BARRETT: Have you personally taken into consideration the issues the  
13 neighbors raised?

14 MR. CLARK: Yes.

15 MR. BARRETT: And did you try to be responsive to the neighbors?

16 MR. CLARK: Yes.

17 MR. BARRETT: Anything else you want to add?

18 MR. CLARK: Uh, the only thing I would add is this, this can't be understated  
19 how much of a game changer this is going to be for the high school. Very important.

20 MR. BARRETT: That's all I have, Mr. Tidd.

21 MR. TIDD: Thank you, Mr. Barrett. Mr. Burke.

22 MR. BURKE: Mr. Clark, do you understand that this is also going to be the  
23 issue before your (Inaudible).

24 MR. CLARK: It is. I think so far um, the new facility out there has been, I

1 know for some people maybe not as positive but McNicholas has done a good job of  
2 opening up to the community. Frequently, when I am up there I see non-McNicholas  
3 affiliated people, neighbors walking around the track. You know, they have done a  
4 good job of securing the facility. Uh, you know, locking it at night. Opening it in the  
5 morning. Not just for the school. It's during the summer and uh, I think this will add  
6 to the community.

7 MR. BURKE: You've heard, you heard at these various meetings talk about,  
8 you've heard from the neighbors along Spindlewick, many of them talk about how  
9 they have been already neighborhood affected by the noise of the stadium, correct?

10 MR. CLARK: Uh, some of them, yes. I've also had some positive feedback.  
11 You know, for instance, there has been a lot of people have said, we love when we  
12 hear activity back there. We love hearing the kids. We love hearing there is an event  
13 on Saturday. We love hearing the marching band. So, yeah there has been some  
14 negative, but I think there has been a lot of positive too.

15 MR. BURKE: Do you think that the folks who have raised concerns are not  
16 (Inaudible)

17 MR. CLARK: I respect their concerns. I mean, that's why we, that's why,  
18 you know, that's why I said, I think we focused a lot of the lights and (Inaudible) than  
19 realize they might have legitimate concern here with the sound. I live close to public  
20 high school, Turpin High School. So, I understand a little bit. I don't live as close as  
21 some of these neighbors do but I understand that.

22 MR. BURKE: And in understanding their concerns, what steps have you  
23 taken to try to really put some reasonable limitations on your use of the field?

24 MR. CLARK: Uh, to be honest, I think the, I think everybody is supposed to

1 be (Inaudible) so (Inaudible). The uh, you know, I think they don't want to box  
2 themselves in with restrictive (Inaudible) because you know, lacrosse wasn't even a  
3 sport a few years ago. So, they are not, now, they are a little bit hesitant on when to  
4 restrict it. So, I think on the other side the neighbor's concern was, we don't want  
5 events out here every single night. I mean, we see what happens at other schools.  
6 Turpin, Anderson, they rent the fields to the soccer clubs and everything else.

7 So, you know, as tempting as that might be, for a private school, we need to  
8 raise money to replace the tarp, etc. It was hard to come down to it. What is that  
9 restriction? Unless we are going to have to have some sort of compromise with the  
10 neighbors. And that's when we came up with the, you know, I think I did read  
11 through the conditions of the Zoning (Inaudible) and tried to put a max on it of 58. I  
12 could be three track meets, it could be zero track meets. But they didn't want to box  
13 themselves in.

14 MR. BURKE: Can you describe what this compromise with the neighbors  
15 was?

16 MR. CLARK: Well, I think they wanted it, they thought that maybe that the –  
17 we were looking for every single night we were going to have activities up there.  
18 And, and that's not what we were realistically looking for.

19 MR. BURKE: Have you had any contact or considered at all what Summit  
20 did?

21 MR. CLARK: So here is what we did. We got, we contacted, we had our  
22 athletic director and the high school's athletic director contact probably at least a  
23 dozen athletic directors. Some in our conference, some outside our conference, some  
24 in the City. I think Summit was part of that. I think St. Ursula was part of that. So,

1 they all had different restrictions. But it was obvious that some of these go back  
2 pretty far. So, um, 25 years ago, for instance, for Summit, they didn't have lacrosse.  
3 They didn't have – all they wanted was football. I don't even know if they had girls'  
4 soccer. I couldn't tell you. But I know that there was much more, as much more  
5 when you have a boys and girls school, you are going to have twice as many sports as  
6 an all-boys school, for instance.

7 So, you know, when we started this process, we didn't even consider lacrosse.  
8 It was boys, girls' soccer, football, and then track meets to be there. And then as  
9 lacrosse became a sport of McNick, you know, that was, that was one thing that we  
10 did want to eliminate that sport. That's why it's, you know, I think the dates make  
11 more sense. Because it could be any sport.

12 You know it could be a (Inaudible) ten years from now so, we don't want to  
13 keep coming back to here. As much as I enjoy being here, I don't think we want to  
14 do this anymore. So, we are trying to, we are trying to, we are trying to pain the,  
15 come to some sort of compromise at what makes sense for the neighbors and the  
16 school.

17 MR. BURKE: McNick was denied lighting on the (Inaudible) about the same  
18 time that Summit came to an agreement with their neighbors that (Inaudible) into the  
19 City's decision. The next school following (Inaudible) 15 minus a year. I understand  
20 that.

21 MR. CLARK: Well, yeah, but (Inaudible) wasn't too happy about it. Yeah,  
22 yeah, it's restricted them competitively, it's restricted them high school experience  
23 wise with the kids. It's been restrictive. And it, that was the message that we heard  
24 from the athletic department.

1 MR. BURKE: But it's a compromise to what you need?

2 MR. CLARK: I think, I think that any kind of neighborhood relationship, you  
3 are going to have to (Inaudible) and I think that we learned a lot by hosting these  
4 meetings. I have several meetings several years ago because we have had some stuff  
5 going on up at McNick and a lot of times the neighbors not really choose to come for  
6 whatever reason, but lights got everybody's attention. We understand that.

7 But we need to keep that communication strong. Because it's going to be – I  
8 don't know what the incidents are but they are living right next to our high school.  
9 So, there is bound to be some incidents happening. And I think the focus from  
10 McNick is a new administration has been we need a point of contact on either side so  
11 that we can keep communication lines open.

12 MR. BURKE: No other questions.

13 MR. TIDD: Thank you, Mr. Burke. Mr. Barrett:

14 MR. BARRETT: Nothing further with Mike.

15 MR. TIDD: Thank you.

16 MR. BARRETT: I would like to ask Dr. Riley Kinman to come forward.  
17 Would you state your name and address and put it in the record, please?

18 DR. KINMAN: Riley N. Kinman, 415 Stephenson Road, Erlanger, Kentucky  
19 41018

20 MR. BARRETT: Will you explain your qualifications and background?

21 DR. KINMAN: I have a Bachelor's Degree in Civil Engineering, a Master's  
22 Degree in Environmental Engineering, a PhD in Biochemistry and (Inaudible) for  
23 over 50 years. I am registered in the state of Ohio Professional Engineering.  
24 (Inaudible).

1 MR. TIDD: That was enough.

2 MR. BARRETT: And what is your role at McNicholas High School?

3 DR. KINMAN: I was retained by McNicholas to evaluate the best situation  
4 for their (Inaudible) system in the additions to the stadium here. And then, I carried  
5 out a study to do this. Evaluating the present location where they put the speakers  
6 that's been indicated to you, up behind the stands. They look high and level when we  
7 propose them in this view, this position.

8 MR. BARRETT: Did you attend a number of meetings with the  
9 neighborhood?

10 DR. KINMAN: Yes, I've attended every one.

11 MR. BARRETT: At the meetings at both the high school and the Mt.  
12 Washington Recreation Center?

13 DR. KINMAN: Yes.

14 MR. BARRETT: And what did you do to address the issues concerning noise  
15 that the neighbors raised?

16 DR. KINMAN: We carried out a study with the noise monitor as close as we  
17 could get to the closest property and we monitored the existing procedures that they  
18 use during a practice and game of lacrosse. And we monitored those while I was there  
19 and then we moved the speakers in the vicinity of the scoreboard (Inaudible). And  
20 we evaluated the noise level there at the closed property and then from that those two  
21 parts of that study we recommend that they put the (Inaudible) speakers now that they  
22 have the scoreboard that is about nine feet off the ground.

23 Now this offers protection both of the closest property and it also offers  
24 protection to most, at least the largest number of neighbors that they have in terms of

1 the sound levels. And um, we believe that they will be totally in compliance with the  
2 City of Cincinnati noise ordinance using this procedure of using the controls on the  
3 sound system.

4 MR. BARRETT: Explain the controls that you put on the sound system?

5 DR. KINMAN: Basically, the speakers will be aligned straight down the field  
6 (Inaudible) close to the ground on this board you can see that nine feet off the ground.  
7 And then the electric controls that actually control the volume of the speakers will be  
8 set at mid-point level. And these also will be only operated by qualified people,  
9 senior people. Not students. And that's the main part of it.

10 MR. BARRETT: What mitigation of noise is the result of the benefit of the  
11 property owners on Spindlewick?

12 DR. KINMAN: The, having the speakers headed down the field, there is an  
13 embankment behind this (Inaudible). And also, not having them at the same  
14 elevation as we would, they are presently used, where the sound has a chance to  
15 travel through distances and further from the field. Being close to the field, the field  
16 will do some mitigation on that sound. And of course, the distances and the further  
17 the sound is from quote-unquote, (Inaudible) the less the sound level is.

18 MR. BARRETT: What will the effect of the sound be on the homes near the  
19 stadium?

20 DR. KINMAN: Basically the speakers emit a level that is just slightly above  
21 the normal conversation and as long as that is controlled and be in control, that noise  
22 level is not going to exceed the 55 decibels that has been talked about here. Now, in  
23 your speech, you could actually really quick, get up large and exceed 55 decibels.  
24 But the 6-minute LAQ is going to, you know, will be in compliance with the noise

1 ordinance by the law. And the neighbors will be able to hear it because many times  
2 sound is bounced off objects and you can hear it miles away and it depends on the  
3 (Inaudible) and it's a very complicated (Inaudible).

4 It can be refracted, it can be something that is (Inaudible) and it can be  
5 sometimes a (Inaudible). And basically, the way we are proposing this is the controls  
6 on the generation (Inaudible) actual announcements and the actual calling on the field  
7 the players need to hear. We will be able to hear it and it will not really negatively,  
8 you know, in a terrible way, the neighbors. So, you will be able to hear it. But it's  
9 not going to impact them (Inaudible).

10 MR. BARRETT: That's all I have. Thank you.

11 MR. TIDD: Thank you, Mr. Barrett. Mr. Burke?

12 MR. BURKE: Dr. Kinman, the noise from a night football game comes not  
13 only from the sound system, correct?

14 DR. KINMAN: No, there is noise from the crowd.

15 MR. BURKE: And that might really be above louder or higher DBA than the  
16 sound system?

17 DR. KINMAN: It will be momentarily, but will drop back as soon as the  
18 crowd ceases to cheer.

19 MR. BURKE: The study that was included in Mr. Barrett's application, can I  
20 mark that as Neighbor's Exhibit No. 8. I want to understand. This particular study  
21 was done during a lacrosse game, am I correct?

22 DR. KINMAN: Say it again?

23 MR. BURKE: This particular study was done during a lacrosse game?

24 DR. KINMAN: Correct. Saturday morning.

1 MR. BURKE: Even on a Saturday morning lacrosse game draws a very small  
2 crowd?

3 DR. KINMAN: I would say it was less than a football game on Friday night.  
4 But there was a fair crowd there. I mean, it was –

5 MR. BURKE: A hundred people?

6 DR. KINMAN: I didn't count them.

7 MR. BURKE: How many, have you heard the football team catch McNick?

8 DR. KINMAN: No.

9 MR. BURKE: This – the numbers in this study, do these relate to the  
10 proposed sound system that you were measuring?

11 DR. KINMAN: The numbers that we provided are following the noise  
12 ordinance in the sense that we evaluated whether that you would be in compliance  
13 with the speakers at the scoreboard in this location.

14 MR. BURKE: Dr. Kinman, that's what I was first trying to understand. But  
15 this is, this study is measuring the sound from speakers placed at the scoreboard, is  
16 that right?

17 DR. KINMAN: That is correct. We placed them right in front of the  
18 scoreboard. And we also compared them with the sound levels when they were  
19 placed behind the crowd in the stadium.

20 MR. BURKE: And any more study, even at a Saturday morning lacrosse  
21 game, when the crowd got loud, you measured 62P, didn't you?

22 DR. KINMAN: This is correct.

23 MR. BURKE: And a larger crowd at Friday night football game is quite  
24 likely to generate even higher DAB's isn't it?

1 DR. KINMAN: It's possible but it's short term and it still meets the normal  
2 compliance in the noise ordinance that we have to meet with the City of Cincinnati.

3 MR. BURKE: Well, now, you have to meet that ordinance in order not to be  
4 fined for a criminal violation, right?

5 DR. KINMAN: (Inaudible) ordinance.

6 MR. BURKE: But that wall off is not necessarily the minimum that you  
7 should strive for when it comes to how you are going to impact neighbors, is it?

8 DR. KINMAN: Well, you cannot control a crowd at a sports event. I am a  
9 Bangles fan and sometimes the crowd is very quiet, believe me.

10 MR. BURKE: It's easy.

11 DR. KINMAN: (Inaudible). Being out of control (Inaudible). What we've  
12 done is to evaluate the impact. And the impact is believed to be insignificant of the  
13 crowd standpoint. And all the data that we have researched day one noise levels, this  
14 should not be a problem for the locals.

15 MR. BURKE: You indicated that you were at, I think, all of the  
16 neighborhood meetings. Do you recall hearing Airforce Dr. Dave Madison, who is  
17 one of the neighbors, express his concerns about the health impacts on the night time  
18 noise?

19 DR. KINMAN: I heard it. I don't believe it.

20 MR. BURKE: Do you believe him when he says that DVs of as low as 30 can  
21 interrupt sleep?

22 DR. KINMAN: Well, I'm an outdoorsman and I'm awakened by a coon  
23 coming by. Because I'm in a state of being in the wilderness. But normally, I sleep  
24 like a log. But (Inaudible) my wife sometimes can't wake me. 30 decibels

1 (Inaudible).

2 MR. BURKE: And would you agree with Dr. Madison when you talked  
3 about the fact that the kind of interrupted sounds that you describe at a football game  
4 that goes up and down, and up and down, and up and down, can even be more  
5 disturbing to sleep?

6 DR. KINMAN: I don't believe it would be more disturbing because you grow  
7 accustom to is. I have a train that comes by my house about a mile away. And I hear  
8 the whistle blow when it comes to the crossing. I get accustomed to that. It doesn't  
9 wake me even though the decibel on that whistle (Inaudible) 120, 130 decibels. It  
10 doesn't wake me. And I don't know the research or whatever that that man was  
11 talking about when I, over the years, I've (Inaudible) eight hours a day, 60 decibels.  
12 If you are going to get up in the 70's you've got to wear hearing protection. So  
13 obviously, there is a factor with some time how long are you exposed (Inaudible)  
14 decibel of 55 or 60 you are normally used to.

15 MR. BURKE: McNick's sound system had to meet the standard of Moeller's  
16 sound system, didn't it? And that is forget about the six-minute average. It can't  
17 exceed 55 decibels at the property line, would McNick's system beat that?

18 DR. KINMAN: Which property line are you talking about? You know, the  
19 property line there is significant from the (Inaudible) 90 feet to three or four hundred  
20 feet of the individuals involved.

21 MR. BURKE: Moeller's must meet every adjacent property line.

22 DR. KINMAN: I would say they would meet 55, probably 98 percent of the  
23 time.

24 MR. BURKE: No other questions.

1 MR. TIDD: Thank you, Mr. Burke. Mr. Barrett?

2 MR. BARRETT: Nothing further.

3 MR. TIDD: Mr. Barrett, do you have any additional witnesses?

4 MR. BARRETT: Yes. I would like to ask Mr. John Kaufman to come  
5 forward, introduce himself.

6 MR. KAUFMAN: John Kaufman, MUSCO Sports Lighting. I reside at 8309  
7 Trail Lake Drive in Powell, Ohio 43065.

8 MR. BARRETT: Would you tell Mr. Tidd your experience with sports  
9 lighting?

10 MR. KAUFMAN: I have been with MUSCO for 11 years. I started off as an  
11 application engineer. I was an application engineer for two years and then  
12 transitioned into field smith.

13 MR. BARRETT: How did you become involved in this project?

14 MR. KAUFMAN: I was contacted by McNicholas to do a lighting study and  
15 to provide some budgetary estimates for the new lighting system.

16 MR. BARRETT: How have lighting systems evolved over the years?

17 MR. KAUFMAN: Lighting systems have evolved greatly, with the most  
18 evolution here in the last few years. This is a demonstration of where lighting used to  
19 be to where it is today. And this is the fixture we are proposing on this project. We  
20 hear a lot about Summit County Day, that is this fixture. It is our lighting system.  
21 So, we know which fixture it is.

22 MR. BARRETT: This is for clarification, how does the lighting fixture at  
23 Summit County Day compare to what you are proposing for McNicholas High  
24 School?

1 MR. KAUFMAN: It, the fixture at Summit County Day produces more off-  
2 sight spill and more off-sight glare. Lighting on the field will be a similar light  
3 (Inaudible).

4 MR. BARRETT: Can you explain the proposal you are recommending and  
5 have submitted for approval from McNicholas High School?

6 MR. KAUFMAN: Yes. What we do is we first look at the type of sport and  
7 who is going to be playing on that field and we follow lamination, lamination,  
8 luminating engineering society recommendations for both pole light and the  
9 elimination lights. They base those on the player's safety as number 1. So, the way  
10 to think about it, real quick, is the faster the sport where the object moves, the more  
11 light you need to have on that surface to be able to safely follow accordingly.

12 From there, they make recommendations on all heights to limit the impact of  
13 offsite spill light. So that's where we started. We refer to who is playing on it? High  
14 school. What the, how much seating capacity is there? There is some seating  
15 capacity, about up to 2000. So, the recommendation is an average of 50 lit candelas  
16 on the field.

17 MR. BARRETT: Let's back up one second. Show Mr. Tidd again, the light  
18 that we see from Summit that you did, and the light which we will see at McNick  
19 which you are proposing.

20 MR. KAUFMAN: Summit and what we are proposing.

21 MR. BARRETT: And describe those for the record just so it's in the record?

22 MR. KAUFMAN: Metal A light source and Summit County Day. At  
23 McNicholas we are looking to use a LED light source.

24 MR. BARRETT: In layman's terms, how would you compare the difference

1 in glare and spillage?

2 MR. KAUFMAN: With our fixture we are able to greatly reduce spill and  
3 glare without light source due to the optics where you will put around the light  
4 source.

5 MR. BARRETT: What type of glare and spillage does Summit experience?

6 MR. KAUFMAN: We did some fine tuning - they call this fine tune  
7 forcefield and glare back in, I don't know if this was in 2006. And their maximum  
8 number behind their S1 and S2 poles is roughly 200 feet behind the poles. Their  
9 highest (Inaudible) you can measure light on two planes. The horizontal plane and  
10 the vertical plane. Most of the times when you are a neighbor you are going to be  
11 concerned about the vertical light. So light that hits your house, light that comes in  
12 your window, as opposed to the light that hits the ground of your yard.

13 So Summit County Day, we were taking a look at them on the vertical plane.  
14 They had 2.05 book handles before we did our fine tuning. That was the maximum  
15 vertical number that we measured. And after we adjusted the lights while still trying  
16 to maintain the (Inaudible) on the field and reduce off, off-sight light, you are talking  
17 a match down to about 1 (Inaudible).

18 MR. BARRETT: That's a distance of 200 feet?

19 MR. KAUFMAN: At a distance of two-hundred feet from the poles.

20 MR. BARRETT: And if we are at a distance of 200 feet from the poles that  
21 you are proposing for McNicholas High School, what type of book handles would we  
22 have?

23 MR. KAUFMAN: Um, our lighting photometric scans show it's going to be  
24 on the horizontal – zero book handles; on the vertical, we might have a maximum they

1 have vertical was, because you could take those from different heights. Summit  
2 County Day was taken actually 15 below grade because that field sits up. And where  
3 those holes were, there was rain down lower, so we are actually 15 below field grade  
4 there. So, if we take our highest level in the vertical plane, we get 1/10<sup>th</sup> of the book  
5 handle. One, one (Inaudible).

6 MR. BARRETT: Your lighting plan has been submitted to the City. Can you  
7 explain those lighting plans?

8 MR. KAUFMAN: Sure. Basically, the first page of our lighting plan is just a  
9 general summary of everything we took wherever we took readings. And then each  
10 page is a detailed layout of, of those readings. So, one of the things we did, there was  
11 some mention at one of the meetings I attended with the community about have you  
12 measured, because there is a bowl effect on that north end, where this was – well, I  
13 don't know if this was submitted or not, but on the north end you can see the  
14 bleachers and the property line.

15 So, there at similar heights on that northeast corner (Inaudible) parts, it's  
16 higher than the field. So, we took readings at zero-foot field grade. We took them at  
17 ten feet above field grade, 20 feet above field grade and 30 feet above field grade on  
18 the property line. And again, our max readings (Inaudible) so –

19 MR. BARRETT: Can you explain the location of the poles?

20 MR. KAUFMAN: We have two poles on the west side. They are positioned  
21 at the, between the ten and 15-yard line. Right outside the track. There is no, there is  
22 nothing that obstructs us from putting poles in that location. On the east side due to  
23 the embankment at the northeast location, we have to come back almost to the, knock  
24 into the bleachers with our pole location. Again, on the ten or fifteen-yard line.

1           On the southeast location, we are a little closer than the northeast pole but still  
2 about the ten or fifteen (Inaudible).

3           MR. BARRETT: How tall are these poles?

4           MR. KAUFMAN: The poles are, we have three 80' poles and one 90' pole.  
5 Now, if you measure them from field grade, there is an elevation across 14 feet at the  
6 northeast corner. So that pole winds up being, if you measured field grade to the top,  
7 94. And there is a little bit of an elevation on the southeast side of about four feet. So  
8 that pole would be, also be at about 94 feet field grade.

9           MR. BARRETT: And describe the process of determining the height of the  
10 poles.

11          MR. KAUFMAN: Um, basically, it just, it comes down to a math equation.  
12 We are trying to get about 25 degrees down from horizontal to (Inaudible) of the side  
13 of the field to where the fall is. That 25 degrees is going to be able to supply the  
14 greatest control of light. If you use a lower light, you are going to have to open up  
15 the fixture to the property line. So, you are going to start shining light on the property  
16 line. So, whenever there is a spill or glare concern, we typically use taller poles. You  
17 can control light better with a taller pole.

18          To give you a quick visual, it kind of shows, I don't know if you can see this.  
19 You (Inaudible) copy, I want to give an extra copy to you both.

20          MR. TIDD: Thanks. You are referring to this right here? (Inaudible).

21          MR. KAUFMAN: If you were to aim this fixture on the lower to the same  
22 point this most intense part of your beam is going to start to go on the property. So a  
23 taller pole keeps that light on the field as opposed to on the property line.

24          MR. TIDD: Mr. Barrett, is this Exhibit No. 3 for you?

1 MR. BARRETT: That would be correct, thank you.

2 MR. BARRETT: (Inaudible). Mr. Kaufman, can you explain the fixture at the  
3 top of this pole?

4 MR. KAUFMAN: Um, the fixture, you can see right on the front of that  
5 (Inaudible). So, the LED lights for spacing, there is lots of, there is about 220  
6 individual LED chips inside a fixture as opposed to, with your metal (Inaudible)  
7 lights, of course, you'd have one 16-foot light bulb in each, or 16-inch thick light bulb  
8 inside each fixture. So, if you have a bunch of smaller light sources and we actually  
9 build optics around those individual light sources as well as a visor on the fixture to  
10 limit the amount of light source that neighboring properties can see.

11 So that is the cause of the glare, is being able to see the light source itself. So,  
12 when you talk about Summit County Day and having this affect, that fixture is not  
13 shielded. There is no visor. You can see the light source, as opposed to the fixture we  
14 are proposing to shield in as much as we can and still get light on the field.

15 MR. BARRETT: Is this considered to be state of the art?

16 MR. KAUFMAN: Yes, it is. Last year we had wise installations in Ohio of an  
17 LED light source. This year we've got orders for about six more installations so far,  
18 this year. (Inaudible) light source. That's just in Ohio. I only cover the state of  
19 Ohio. So, projects in Indiana and Northern Kentucky, I would not, I could look up  
20 that date. But I'm not aware of them off hand (Inaudible).

21 MR. BARRETT: In Southwest Ohio, would this lighting be superior in terms  
22 of minimizing glare and spillage as to any other stadium lighting situation?

23 MR. KAUFMAN: Yes, it would.

24 MR. BARRETT: Do you have any graphics of drawings that show the control

1 of the lighting?

2 MR. KAUFMAN: We do. We have lit a facility up in Wisconsin. We took  
3 photos of that facility and that's with a similar viewing angle to what some of the  
4 neighbors might have if you were on that northeast corner. So, similar light level on  
5 the field, poles are all up against the track in this application. The only difference is  
6 these poles in our application would be back further into the site. (Inaudible) of not  
7 being able to get to that location.

8 So, these pole lights are also lower than the pole light that we are using  
9 because this one did not actually have any spill or (Inaudible) concerns. It's out in  
10 the middle of (Inaudible) country. But, this demonstrates how we can keep the light  
11 on the field and not out on the track (Inaudible).

12 MR. BARRETT: Do you have an extra copy of that?

13 MR. KAUFMAN: I do.

14 MR. BARRETT: Will you give it to Mr. Tidd and we will mark it as Exhibit  
15 No. 4?

16 MR. KAUFMAN: Sure.

17 MR. BARRETT: Do you have one for Mr. Burke?

18 MR. BURKE: Thank you.

19 MR. KAUFMAN: And that is the same -- we had that photo blown up at  
20 some of the neighborhood meetings, we had it with us so they could see it and get an  
21 idea of what we were proposing for the lighting.

22 MR. BARRETT: In layman's terms, what will the effect of the lighting be on  
23 the adjoining residential properties?

24 MR. KAUFMAN: As far as spill light and measurable light on the property

1 line, it's going to be as minimal as you can get. If there is a full moon that's real low  
2 on the horizon, you could get more spill light. We got up to two-tenths (Inaudible)  
3 full moon on your house, measurable light. If it's low enough on the horizon, and  
4 that's about two months (Inaudible) big full moon was out. You can get that. So, it  
5 would be less than you get when the full moon (Inaudible). The other impact of this  
6 is what I would consider the greater concern for neighbors is glare. And we are able  
7 to minimize the glare.

8 The best way to talk about glare is when we refer to headlights, car headlights.  
9 If you are driving late at night on a country road, there is a car coming towards you  
10 with their high beams on. Those high beams generate around 50 thousand candela.  
11 That's just the raw intensity of the light. Whereas standard car headlights, most of  
12 them are in the 10 thousand/15 thousand candela range. We did, in our lighting plan,  
13 submit the candela plot and there is in the northeast corner, there is an area where we  
14 get into about 5,000 candela which is still less than car headlights. The majority of  
15 the properties will have zero to well below 500 candelas.

16 MR. BARRETT: In layman's terms, what would that look like?

17 MR. KAUFMAN: It would look like the photo that I just supplied is what it  
18 would look like.

19 MR. BARRETT: Do you have any extra copies that you could give to Mr.  
20 Tidd and Mr. Burke?

21 MR. KAUFMAN: (Inaudible) same one I just, same one you just go.

22 MR. TIDD: That's the one you submitted?

23 MR. KAUFMAN: So that's what it would, that's what it would look like so,  
24 your viewing angle, you know, as your elevation changes and your distance changes,

1 it's going to basically, it's a line of sight issue with the light source. These fixtures in  
2 here, if you look at the fixtures back there, there is no glare from it. But if you were  
3 to look up, you might be right underneath it, and you are going to get the glare. So,  
4 it's a line of sight with that light source. And we try to do our best with that visor,  
5 with our optics, to minimize the amount of that light source that you can see with the  
6 eye.

7 MR. BARRETT: Anything else you would like to (Inaudible).

8 MR. KAUFMAN: No, not really.

9 MR. BARRETT: Okay Mr. Burke has some questions.

10 MR. BURKE: Just a few questions.

11 MR. KAUFMAN: Sure.

12 MR. BURKE: First of all, I'm confused because your report indicates two 80-  
13 foot poles, three 80-foot poles; and one 90-foot pole.

14 MR. KAUFMAN: Correct.

15 MR. BURKE: That report speaks of two 80-foot poles and two 94-foot poles.

16 MR. KAUFMAN: Again, that is, when you – the poles themselves, there is  
17 three 80-foot, one 90-foot. If you were to measure the pole on the ground, that would  
18 be the height. But the elevation at the site, because there is a higher elevation at that  
19 northeast corner, slope goes up.

20 MR. BURKE: So one of those 80-foot poles –

21 MR. KAUFMAN: So it –

22 MR. BURKE: Ends at a higher (Inaudible).

23 MR. KAUFMAN: So if you are measuring, if you are standing at field grade  
24 and measuring the poles, it depends on where you are measuring that pole from. If

1 you are talking about field grade, field elevation versus the actual pole laying on the  
2 ground. That is the difference in the elevation. So, we list, we always list two items  
3 on our lighting design. The actual pole height, and we list an elevation is plus or  
4 minus. And we list the mounting height of the fixtures. So –

5 MR. BURKE: Were you present at many of the neighborhood meetings?

6 MR. KAUFMAN: Many of the meetings, yes.

7 MR. BURKE: And did you hear Airforce Dr. Madison talk?

8 MR. KAUFMAN: I heard, yes, sir. One of the meetings, I believe it was one  
9 of the council meetings for the Mt. Washington community.

10 MR. BURKE: And did you hear him discuss concerns about new tactic lights  
11 over time?

12 MR. KAUFMAN: I did hear him say what, what (Inaudible).

13 MR. BURKE: And when these lights are installed, if they are installed, what  
14 steps will be taken to ensure that in use, they are actually producing the limited affect  
15 that you describe in what's been filed with the City?

16 MR. KAUFMAN: Our process is initially, we work off a cite plan. We  
17 computer it, computer generated designs like we've done. We go out into the field,  
18 measure those points to where the pole locations are going to be. We have laser  
19 aiming tools to aim in those exact locations so we get the poles where they are  
20 supposed to be.

21 All of our fixtures are designed, assembled in factory based on that location so  
22 that we know the aiming is correct at the factory. Now, when it arrives in the field,  
23 how do we make sure the thick of the pole is going to be aimed in right? We actually  
24 have a laser which you can see on the front of this brochure, there is this little box

1 right here. That is a viewing laser to aim in the poles. Just like a little laser gun. Runs  
2 on double A batteries. Lasts for three hours. And then we will never see it  
3 (Inaudible). It fits in the battery compartment and replaces the batteries.

4 We aimed in the poles to the center of the field. And the closer we get to the  
5 center of the field, the closer to our computer predicted design we get. Now, if there  
6 is also, we did this at Capital University. After the installation, we come out and  
7 check the levels on the field. We check the levels on the property line. If there is  
8 neighbors that want to come out and show us their concern, we take a look at it.

9 So, we take that initial report and compare it to our computer design. Do we  
10 meet it, yes or no. If we don't, like we did for Summit County Day, we get out  
11 lighting technicians out and do what we call a lighting fine tune and we change the  
12 aiming angles on the fixtures at the top of the pole.

13 MR. BURKE: The question ultimately is, prior to games will you go through  
14 the process that you have just described to ensure that the poles are aimed in such a  
15 way as to produce what you (Inaudible).

16 MR. KAUFMAN: Yes.

17 MR. BURKE: And I think I take it for the (Inaudible).

18 MR. KAUFMAN: Yes.

19 MR. BURKE: No further questions.

20 MR. TIDD: Thank you, Mr. Burke.

21 MR. BARRETT: Just one area of clarification. Mr. Burke asked you about  
22 the Mt. Washington Community Council meeting where Dr. Madison talked about  
23 the impact of light?

24 MR. KAUFMAN: Yes.

1 MR. BARRETT: Anything with those types of allegations in the past?

2 MR. KAUFMAN: There have been many concerns raised about LED light  
3 source and some pulsating rhythm or interrupting sleep. But there have been, to our  
4 knowledge, there have been no studies that scientifically set perimeters around the  
5 amount of light and the length of duration that you need to have that light for it to  
6 have an impact. For most of us, when we see a bright object with our eye, our natural  
7 response is to close your eye.

8 So anything, like when you are at your doctor office and he shines that light in  
9 your eye, you, you are, you are trying to close, you are trying to close that eye. And  
10 most of the time he is holding it open because he wants to see what your pupil does.  
11 So, there have been no studies that say how much and how long you need to have that  
12 light source for that wavelength, particularly referring to blue light, the blue wave.

13 To be able to see the color blue, the blue wave length has to be present. So, in  
14 this room, we are already all getting blue light. Now, how much, I think we would  
15 have to look at this light source and see how much it's omitting and how much  
16 (Inaudible). There hasn't been a study that says what is the amount and duration that  
17 I have to be at to stay safe? We have not seen any, any studies that state that.

18 MR. BARRETT: Has your company been made aware of those issues?

19 MR. KAUFMAN: Yes, we've heard those issues before. And again, we  
20 continually search for scientific studies that back up with hard, you know, hard data.  
21 You get a control group, you can submit them to less than this other group and see  
22 what happens. And so, we, we have not. We continually look for those studies, but  
23 we have not found one yet that is conclusive on the amount and duration you'd have  
24 to be exposed to that light source.

1 MR. BARRETT: That's all I have.

2 MR. TIDD: Thank you, Mr. Barrett.

3 MR. BARRETT: Our next witness is Mr. Timothy Hershner. Will you please  
4 state your full name and address?

5 MR. HERSHNER: Timothy P. Hershner, 903 Adam's Crossing, Unit 208,  
6 Cincinnati, Ohio 45202.

7 MR. BARRETT: What is your occupation?

8 MR. HERSHNER: Planning consultant.

9 MR. BARRETT: And how did you become involved with this project?

10 MR. HERSHNER: I was contacted late 2016 to attend public meetings and,  
11 of which I believe I attended all of the public meetings, at McNicholas High School  
12 as well as at the Mt. Washington Community Council. And also, circulated emails to  
13 400 residents behind the football field in which I believe there were five, maybe ten  
14 people that showed up for the meetings.

15 So, it involved quite some time working with McNicholas High School as a  
16 consultant. Looking over how their proposal compares to other schools. In my letter  
17 submitted to the City I did visit at least six different schools with a concentration of  
18 those schools that McNicholas plays against as well as just others throughout greater  
19 Cincinnati.

20 MR. BARRETT: So let me back up just a second.

21 MR. HERSHNER: Yes.

22 MR. BARRETT: How long have you been a (Inaudible) consultant?

23 MR. HERSHNER: For over 30 years. I started my own consultancy in 1982.  
24 And then in 2000, I went on the public side. Development director for Deerfield

1 Township. Then went to Clermont County as a planning supervisor for the  
2 department. And then did a short stint over in Afghanistan as a master planner.  
3 Within a month of being there, they had me master plan their whole country. All the  
4 military bases. And then came back and most recently was the assistant administrator  
5 for Iris Township. And then began a new chapter and since July of last year, I'm  
6 back on my own enjoying the consultancy.

7 MR. BARRETT: And is it correct that over the years you have done a  
8 number of planning and zoning projects for myself?

9 MR. HERSHNER: Yes.

10 MR. BARRETT: And also, Mr. Burke?

11 MR. HERSHNER: Yes.

12 MR. BARRETT: And what was your specific role with regard to McNicholas  
13 High School?

14 MR. HERSHNER: Overall, I was, I was hired to attend public meetings,  
15 understand what the issues are, (Inaudible) between the neighborhood concerns, as  
16 well as the school itself. And then, also to study the different high school football  
17 fields, athletic stadiums, get a sense of what the lighting technology is out there in the  
18 field. And also, attended the sound study. And have done some research on lighting  
19 issues over the years. But certainly, I'm not the expert that the (Inaudible)  
20 consultants are.

21 MR. BARRETT: Did you work with both Mr. Kaufman on the lighting and  
22 Dr. Kinman on the sound?

23 MR. HERSHNER: I have as part of this project (Inaudible), yes, (Inaudible).

24 MR. BARRETT: And did you prepare a written report?

1 MR. HERSHNER: Did you submit it to the City?

2 MR. HERSHNER: I did.

3 MR. BARRETT: (Inaudible) is that the submission dated July 21?

4 MR. HERSHNER: Correct.

5 MR. BARRETT: Do you have that file, I don't need to mark this as an  
6 exhibit, do I?

7 MR. TIDD: I have it. No.

8 MR. BARRETT: Fine. And just explain to Mr. Tidd what the purpose of  
9 your study was? What you did to accomplish that (Inaudible)?

10 MR. HERSHNER: Well, in my career, I generally understood that lighting  
11 and sound can be an issue. And my concern with this project was understanding what  
12 high schools have as standards, out in the Cincinnati area. And what I'm finding is  
13 that the majority, the vast majority of schools do have athletic fields that are lit, do  
14 have high poles, lighted poles.

15 And that unfortunately, with the type of lighting yielding this over the years is  
16 not the LED. The LED is a recent technology that vastly improves lighting  
17 conditions. Prior to that we could only hope the shields placed on light fixtures to  
18 help shield the light glare to adjacent properties. It's a, it's been a continuing  
19 problem in the field. The old lighting and sound at high schools.

20 MR. BARRETT: And how were those issues dealt with (Inaudible).

21 MR. HERSHNER: Well, very impressed with the LED light fixtures what  
22 they can do to help keep light spillage on adjacent properties. We are seeing, the only  
23 other school that has LED lights when I initially did my study, was Springfield High  
24 School. So, I travelled all the way up there to see those lights. Since then, I

1 understand Covington Catholic has installed LED lights. But that is all I know of as  
2 far as high school lighting in the area that has LED. So, this is a new technology and  
3 a little bit more expensive. So, I was pleased to hear that McNicholas was (Inaudible)  
4 at that level to provide that, that technology.

5 MR. BARRETT: As a planning and zoning consultant, did you take into  
6 consideration the impact of that lighting on the neighborhood's residential properties?

7 MR. HERSHNER: I did. You know, the problems even in my own practice  
8 I've worked for say, Deerfield Township, we have lighting controls. And the issue  
9 there has always been you can see a light in the distance, but you might not get a  
10 reading at all from that light. But you still see it just as sometimes you can see the  
11 moon at night. But it doesn't mean you are going to get a (Inaudible) of that.

12 In this instance, the LED light, with it being able to shine downward, you  
13 don't see those light fixtures as much. You might see the heads a little bit in the  
14 distance, and there is some shielding capacity to shield the light fixture itself from  
15 adjacent properties. But you don't have to (Inaudible) with the extreme shields that  
16 we used in the past and protect adjacent properties.

17 MR. BARRETT: Now, in your opinion, what impact, if any, would this have  
18 on the, the lighting have, on the neighboring residential properties?

19 MR. HERSHNER: Well, um, I, I do recognize that in the distance you can  
20 see the lit field. There is no getting around that. But as far as light shining in  
21 somebody's back yard and illuminating their yard, it's minimal. There is always just  
22 some ambient light source. If it's a cloudy night, you might get some cast of that  
23 light off of the clouds. Generally, the neighborhood could light up a little bit. But,  
24 it's, it's so minimal that I don't see it as an impact.

1 MR. BARRETT: And what about the sound? Did you also participate in that  
2 study?

3 MR. HERSHNER: I did. Um, what you can control is the sound equipment.  
4 And so, the study did involve the existing equipment. And, I proposed conditions to  
5 yield with that existing equipment at a certain sound level. The number 5 that was  
6 mentioned earlier, is the level at which we tested it and knew that it would not exceed  
7 the 55 decibels.

8 MR. BARRETT: And all physically present (Inaudible) what was your role?

9 MR. HERSHNER: Just to monitor. I did help set up, you know, during that  
10 time. But, it was more so to monitor and understand the location of the speakers and  
11 how they sound, as they've been used in the past and how they would sound as  
12 (Inaudible).

13 MR. BARRETT: What in fact, if any, (Inaudible) sound system have on the  
14 neighboring properties with all we've talked about?

15 MR. HERSHNER: Um, well, it's an improvement. Because at present, the  
16 way they are set up they are directed toward some of the residential homes. With the  
17 proposed location, they are directed away and towards the back of the school. And  
18 fortunately, the back of the school is so far away that the amount of bounce back  
19 many of the residents would get would be fairly minimal.

20 So, it's an improvement. And, I think the biggest issue is (Inaudible)  
21 procedures on settings of the equipment. Because we did hear from the readings, and  
22 from being at the field testing them, some of the operators would just crank it up. So  
23 it's important that the procedures are followed.

24 MR. BARRETT: Would you recommend that as a condition for them?

1 MR. HERSHNER: Yes.

2 MR. BARRETT: Do you believe that is something that should be enforced  
3 (Inaudible)?

4 MR. HERSHNER: Absolutely.

5 MR. BARRETT: Now, in terms of all of the other schools, institutions, high  
6 schools and so forth that you inspected as part of your study, was some 56 different  
7 schools and institutions, how would the lighting system and sound system proposed  
8 for McNicholas High School compare with all of those other schools?

9 MR. HERSHNER: Far superior except for Springfield. And of course, now,  
10 Covington Catholic. (Inaudible).

11 MR. BARRETT: How about the sound?

12 MR. HERSHNER: Sound, I know, I didn't do any testing but it's pretty  
13 standard that high schools have loud speakers mounted even on the light poles  
14 themselves, and oftentimes, take Wyoming as an example, you know, Musco handles  
15 that account as well. I, I, I have noticed that the loudspeakers are mounted up on the  
16 lights. Fortunately, those are pointed into the field away from the residents to  
17 (Inaudible) but that field in particular is bounded on three sides with resident  
18 adjacent. The different stadiums that I looked at, high school athletic stadiums, it  
19 went all the way from rural high schools where, throughout the (Inaudible) to many  
20 that are within neighborhoods with existing residents nearby like McNicholas is.

21 MR. BARRETT: I assume over your, over your career, you have dealt with  
22 numerous issues involving neighborhood concerns, neighborhood complaints with  
23 regard to all different types of land uses?

24 MR. HERSHNER: Yes.

1 MR. BARRETT: And do you have any recommendations or opinions with  
2 respect to the quiet enjoyment of the neighboring residential properties in this case  
3 with respect to (Inaudible)?

4 MR. HERSHNER: Well, um, my recommendation was that these two have  
5 an ongoing relationship with those neighbors. Particularly these adjacent. And that  
6 they should push to try and go meet with those neighbors on a default game night, so  
7 they can directly appreciate their experience. I happen to, a person experience, I  
8 raised my family for 25 years backing up to Withrow High School. We moved there  
9 before the athletic recreation facilities. And, yes, we enjoyed most of all games,  
10 sports activities. But I don't think it altered my frame of mind or health. But that's  
11 just my personal experience. I chose to live there.

12 And in fact, back within that 25-year period, buying the house and selling it,  
13 my experience was the price went 250% higher over the 25 years. Does it have  
14 something to do with the school? Sure, but more so probably just with the economics  
15 of homes in general.

16 MR. BARRETT: In your professional opinion, are you comfortable  
17 recommending Mr. Tidd's approval of the application of McNicholas High School?

18 MR. HERSHNER: With, with the conditions I, I had proposed, certain  
19 conditions and of those conditions they are all (Inaudible).

20 MR. BARRETT: Are you completely comfortable?

21 MR. HERSHNER: Yes.

22 MR. BARRETT: That's all I have. Thank you.

23 MR. TIDD: Thank you, Mr. Barrett. Mr. Burke?

24 MR. BURKE: Mr. Hershner, you indicated that (Inaudible) control, noise

1 (Inaudible) control the sound system, correct?

2 MR. HERSHNER: Correct.

3 MR. BURKE: The fact measures also control the time (Inaudible) in terms of  
4 the impact on neighbors, correct?

5 MR. HERSHNER: Yes.

6 MR. BURKE: And today, the neighbors are (Inaudible).

7 MR. HERSHNER: (Inaudible).

8 MR. BURKE: That's going to change. Whether or not the dBs created by the  
9 sound system exceed 55 dBs, the crowd noise can reasonably be expected to exceed  
10 those levels (Inaudible)? It really doesn't matter, correct? I realize you said, "over  
11 time". And that will interrupt their piece of mind.

12 MR. HERSHNER: They will hear it. I guess it's the frame of mind. Whether  
13 you feel some cheering in the background is a negative or a positive.

14 MR. BURKE: And you of course, looked at the Cincinnati Zoning Code?

15 MR. HERSHNER: And you understand what the general purpose is of the  
16 single-family restriction zoning laws. And I presume you have looked at 140301A  
17 for its purpose of single-family zoning as to maintaining an existing residential  
18 housing (Inaudible)? Does this maintain (Inaudible) housing (Inaudible)?

19 MR. HERSHNER: There is a balance (Inaudible). And as much as it, noise,  
20 as well as light has some impact on the immediate neighborhood, it also has by  
21 having a full sports program like other high schools, an opportunity to raise values in  
22 the neighborhood too.

23 MR. BURKE: Like some other high schools.

24 MR. HERSHNER: Most other high schools.

1 MR. BURKE: Are you familiar with Moeller High School?

2 MR. HERSHNER: Yes.

3 MR. BURKE: Is Moeller High School in (Inaudible)?

4 MR. HERSHNER: Yes.

5 MR. BURKE: Did they have lights? No. Did they have a sound system that  
6 could get above 55 dBs at the property line? If you know?

7 MR. HERSHNER: That I do not know. But what I do know, well, what I  
8 understand is that because of, of lights, they generally play their games away, off site.

9 MR. BURKE: You've been around the Cincinnati area for a long time.

10 MR. HERSHNER: Yes.

11 MR. BURKE: You know that Moeller has a very active football program?

12 MR. HERSHNER: Very.

13 MR. BURKE: Very successful part of their athletic programs?

14 MR. HERSHNER: Yes.

15 MR. BURKE: I presume that you've also looked at Cincinnati Zoning Code  
16 standards for conditional use of (Inaudible)?

17 MR. HERSHNER: Yes.

18 MR. BURKE: One of those standards is that hours of operation, operating  
19 hours are compatible with (Inaudible) and uses, right?

20 MR. HERSHNER: Yes.

21 MR. BURKE: How will a 10:00 football game be compatible with the homes  
22 on Spindlewick?

23 MR. HERSHNER: Well, it will at least limit those games going on later.

24 There are certainly other activities in –

1 MR. BURKE: Mr. Barrett is a very good attorney. He takes care of all  
2 potential conditions. He has built into his conditions over time, delay of games, all of  
3 those things, that would allow these games to run beyond 10:00. You've reviewed  
4 these conditions, haven't you?

5 MR. HERSHNER: Yes.

6 MR. BURKE: And he has done that, hasn't he?

7 MR. HERSHNER: In those circumstances, which I would argue are rare.  
8 But, who wants to be in violation of it, if that rare occasion happens?

9 MR. BURKE: And you are also aware of the fact that neighborhood  
10 compatibility is one of the standards for conditional use approval? And that zoning  
11 code provides that the work is compatible with the predominant or prevailing land use  
12 building and structure patters in the neighborhood surrounding the proposed  
13 (Inaudible) and will have to have a material (Inaudible) to adverse and affect  
14 (Inaudible). Is it your testimony I take from what you've said, that while misuse has  
15 an adverse impact on the Spindlewick folks, the greater neighborhood (Inaudible), is  
16 that what you are saying?

17 MR. HERSHNER: The (Inaudible) there is a benefit in the net, yes.

18 MR. BURKE: I have no other questions.

19 MR. TIDD: Thank you, Mr. Burke.

20 MR. BARRETT: Just a couple of questions of clarification. You understand  
21 the starting time in the evening for sports activities is 7:00 o'clock.

22 MR. HERSHNER: Yes.

23 MR. BARRETT: And most of those games take approximately two hours?

24 MR. HERSHNER: Correct.

1 MR. BARRETT: So, for the most part it would be like 9:00 o'clock.

2 MR. HERSHNER: Yes.

3 MR. BARRETT: There are occasions, of course, we would need the field to  
4 go to 10:00 o'clock?

5 MR. HERSHNER: Correct.

6 MR. BARRETT: But no later than 10:00 o'clock?

7 MR. HERSHNER: (Inaudible).

8 MR. BARRETT: Is 10:00 a compatible time for a high school in a residential  
9 neighborhood?

10 MR. HERSHNER: Yes.

11 MR. BARRETT: You lived, as I understand it, immediately – just rephrase  
12 the question. Do I understand that you lived next to Withrow High School?

13 MR. HERSHNER: Correct.

14 MR. BARRETT: Does your property abut with the high school?

15 MR. HERSHNER: It abutted to the athletic recreational facility.

16 MR. BARRETT: Withrow is a much larger high school, isn't it? Than  
17 McNicholas High School, correct?

18 MR. HERSHNER: Yes.

19 MR. BARRETT: And they have an actual permanent stadium, correct?

20 MR. HERSHNER: Yes.

21 MR. BARRETT: And permanent lights?

22 MR. HERSHNER: Yes.

23 MR. BARRETT: And a running track?

24 MR. HERSHNER: Yes.

1 MR. BARRETT: They play football all the time on that field?

2 MR. HERSHNER: Correct, yes.

3 MR. BARRETT: And soccer, track and field meets, etc.

4 MR. HERSHNER: Yes.

5 MR. BARRETT: And Withrow has a high school band?

6 MR. HERSHNER: Yes.

7 MR. BARRETT: And is it correct to say that Withrow has a lot more activity,  
8 specially, athletic activities than McNicholas High School has?

9 MR. HERSHNER: I would expect so because I have witnessed many times  
10 where it's beyond the school (Inaudible).

11 MR. BARRETT: Are there many other organizations which conduct sporting  
12 events at Withrow High School?

13 MR. HERSHNER: Yes.

14 MR. BARRETT: And this, did any of this interfere with the quiet enjoyment  
15 of your residential home?

16 MR. HERSHNER: No.

17 MR. BARRETT: That's all I have. Thank you.\

18 MR. TIDD: Thank you, Mr. Barrett.

19 MR. BARRETT: Those are all of our witnesses. There are other people I  
20 know are with the school and support the school. But I don't intend to call them as  
21 witnesses. They may wish to speak when you call members of the public.

22 MR. TIDD: Mr. Burke, how, how long do you expect to go?

23 MR. BURKE: We have two witnesses.

24 MR. TIDD: Okay.

1 MR. BURKE: Half an hour to 45 minutes, perhaps.

2 MR. BARRETT: Can we take a five-minute break, please?

3 MR. TIDD: Yeah. Just five minutes. I'm going to start at 3:46.

4 MR. BARRETT: Thank you.

5 MR. TIDD: Yeah, back on the record, now.

6 MR. BURKE: Kevin, our first witness arrived late, so he has not been sworn  
7 in and he needs to be sworn in.

8 MR. TIDD: You know what, It's, I noticed a couple of other people also  
9 arrived a little bit late. I'm just going to swear everybody in all over again. Do you  
10 solemnly, except for obviously, the attorneys. Do you solemnly swear that the  
11 testimony you shall give will be the truth, the whole truth and nothing but the truth?

12 (At which time all parties were sworn to testify)

13 ALL PARTIES: I do.

14 MR. TIDD: Okay.

15 MR. BURKE: I call Mr. Dave Hadley. Before you come up here and sit  
16 down, why don't you go over (Inaudible).

17 MR. HADLEY: Sorry I was late.

18 MR. TIDD: I did see you sneak in.

19 MR. HADLEY: (Inaudible).

20 MR. TIDD: There were a couple of people that I made sure that nobody who  
21 testified –

22 MR. HADLEY: 805 Central Parkway and 805 Central Avenue are two  
23 completely different places and Google Maps doesn't realize that.

24 MR. TIDD: You are not the first person that's told me.

1 MR. BURKE: Mr. Hadley, can you please state your name and your address?

2 MR. HADLEY: David Hadley, 6598 Spindlewick Lane.

3 MR. BURKE: And where is that in relation to these maps?

4 MR. HADLEY: That is probably, I'm about the closest person. It's funny,  
5 we had a discussion the other.

6 MR. BURKE: It might help you, your name is actually written on there.

7 MR. HADLEY: I know, I see it. Written right there. Um, and I've been a  
8 resident there for 27 years, longer than anybody involved in this. This whole process.  
9 I moved in. But this whole area back here was just one level field. Which was, you  
10 know, that's described by an (Inaudible). All of mine has described it as paradise.  
11 That's how I came to know it, originally.

12 MR. BURKE: Were you an original home owner?

13 MR. HADLEY: Yes, I am.

14 MR. BURKE: And who else lives in that home with you?

15 MR. HADLEY: My wife, Jennifer.

16 MR. BURKE: And can you describe how you first discovered that McNick  
17 was building a football stadium?

18 MR. HADLEY: Oh, yeah. I came home on a Saturday afternoon. Had been  
19 in the house for a couple of years. And I look out in my back yard it's nice and level  
20 there is no privacy fence. And it was great, no privacy fence, it was just an open  
21 field. And there is some guy on a big yellow bulldozer like you would see on a  
22 highway construction property, construction job, moving earth. And just having the  
23 full length, this was all level here. Right now, it's about a three foot drop off, slowly  
24 cutting into the hill.

1           And I went back, and you know, kind of tried to get his attention. I said,  
2           “What are you doing?” And he basically told me it was none of my business. We  
3           will do whatever we want. So that was my first contact that something was going on  
4           back here.

5           MR. BURKE: And what did you do about that?

6           MR. HADLEY: At that time I called the City and said I just would like to  
7           know, you know, what their plans are? Do they have a permit or something like that?  
8           And I found at the time that they didn’t have a permit. The guy was just on a  
9           bulldozer, starting to build, I guess, a track or a football stadium.

10          MR. BURKE: And did McNick subsequently apply for zoning approval that  
11          you learned about?

12          MR. HADLEY: I guess they did because one of my memories is the original  
13          group (Inaudible) here that you’ve made reference to, where they originally asked for  
14          lights and where they were denied lights.

15          MR. BURKE: Can you describe to the hearing examiner how the current use  
16          of the football field impacts upon you and your wife?

17          MR. HADLEY: Yeah. I made the comment, uh, when we met earlier this  
18          week, if you stand in the end zone, you are closer to by deck than you are the other  
19          end zone. And those speakers as they are mounted up near the press box, are right at  
20          the level of my deck. When there is an event going on, I don’t get to use my house.  
21          It’s impossible. I might as well be sitting, you might as well be giving me lifetime  
22          tickets to the 50-yard line, half way up. It’s like they are sitting on my deck with a  
23          loud speaker blasting away.

24          MR. BURKE: Does the noise impact all of you from the loudspeaker?

1           MR. HADLEY: Oh no. You know, the crowd still (Inaudible). The band.  
2 Bands that have been playing besides just the school band. Um, my wife and I have  
3 pretty much rearranged our lives so that we are not home when they have an event.  
4 Which will be a while lot tougher when those events happen until 9:00 or 10:00 at  
5 night verses on a Saturday or Sunday, you know, Friday or Saturday or Sunday  
6 afternoon.

7           I mean I just, you know, I hear a lot of other neighbors talk about it because  
8 they don't have that freedom. For better or worse, my wife and I don't have kids or  
9 the, (Inaudible) by now, but we can arrange our lives so that we are doing something  
10 away from our property when those events happen. But I hear all of my neighbors  
11 talk about how loud and terrible it is and I think about that I didn't hear it but that's  
12 because we've arranged our lives so we are not home then.

13           MR. TIDD: Is it the football games or is it –

14           MR. HADLEY: Oh, no, it's everything. It's everything. You know, I can  
15 hear soccer games, I, and I'm not sure of the events because, like I said, whenever  
16 there is an event –

17           MR. TIDD: You know there is an event going on?

18           MR. HADLEY: Yeah, I mean, I can hear the announcer as clearly as you and  
19 I are talking to each other.

20           MR. BURKE: Have you ever taken it upon yourself to object to McNick  
21 about noise?

22           MR. HADLEY: (Inaudible) Scott's been a great advocate, and it's funny I  
23 hear his feedback all the time with words going nowhere with it. I've been at  
24 occasional meetings when the stadium went up. I remember they brought us over and

1 gave us a nice tour of the stadium when it was up and I remember asking someone, I  
2 don't remember who, said something about lights. And at that point they said there  
3 are absolutely no plans for lights. Not, you know, we don't have the money. Don't  
4 see it in the next ten to fifteen years. This was probably about six, seven years ago.

5 MR. BURKE: And if lights go up now, how do you envision that as  
6 impacting on the quality of your life?

7 MR. HADLEY: I can't, you know, between, it will be, the fact that you have  
8 access to do stuff at night, you will have, you know, far more events because you've  
9 got the lights that you can run events later at night. You know, you are not just  
10 limited by daylight, so you can have more events.

11 It's going to be into the evening. You know, I can't choose not to be home 56  
12 nights out of the year, or 55 nights out of the year. I can choose to make sure that I'm  
13 kind of busy on Saturday and Sunday afternoons. But I can't do that 55 nights out of  
14 the, you know, 55, 56 nights out of the year.

15 MR. BURKE: Dave, is there anything else you'd like the hearing examiner to  
16 know about how this issue is impacting you?

17 MR. HADLEY: Um, I'm very fearful of property values as well. I remember  
18 one of the pieces that came in, I'm very (Inaudible) for McNicholas denied lights.  
19 There is kind of an association which is right next to us. At that point they had hired  
20 either an attorney or consultant, I don't know which, but came in and did a study and  
21 said um, you know, they put lights in, this will decrease property values by, you  
22 know, X number of dollars on this many properties which will you know, --

23 MR. BARRETT: That's hearsay.

24 MR. TIDD: It is hearsay. Only talk about what you know.

1 MR. HADLEY: Oh, okay so even though I heard him say it? Okay. Um, I'm  
2 very fearful about my own property value. Um, you know, it may help out in the  
3 neighborhood. I get how it will help McNick recruit, you know, better facility. But  
4 the fact that my property borders on it, I am very fearful about my property value.

5 MR. BURKE: I have no other questions.

6 MR. BARRETT: I have (Inaudible).

7 MR. TIDD: Thank you Mr. Barrett. Thank you, Mr. Burke.

8 MR. BURKE: Scott Fratianne.

9 MR. FRATIANNE: Scott Fratianne, I live at 6576 Spindlewick Lane,  
10 Cincinnati, Ohio 54230. Been a resident there since 2003.

11 MR. BURKE: Let me kind of walk you through some documents during the  
12 course of your testimony. The first thing I'd like to show you is what we marked as  
13 Neighbors Exhibit No. 11. Can you identify what that is, please?

14 MR. FRATIANNE: This is a list of neighbors that we have been working  
15 together with serious concerns in opposition to McNick's plans. It's neighbors  
16 located on the northern part of Spindlewick that immediately abut McNicholas. And  
17 also, some of the neighbors on Honeysuckle Drive which are on the list also.

18 MR. BURKE: Have you, I don't know if it's necessary to go up to the board  
19 because you are going to see on a map to see precisely where his property is, but can  
20 you generally describe where your home is perhaps in relation to where Dave's is?

21 MR. FRATIANNE: So, my home is just west of Dave's, I think  
22 approximately four houses over, four or five houses over. So, I'm in the northwest  
23 corner of it.

24 MR. BURKE: And how close to the field are you?

1 MR. FRATIANNE: My house is about 150, 200 feet from the (Inaudible).

2 MR. BURKE: And can you generally describe the current (Inaudible) use of  
3 the field as (Inaudible) adjoining property?

4 MR. FRATIANNE: Sure. So, usage of the fields have, and it's not only  
5 games that I'm hearing but they also have music playing during practices, particularly  
6 in the summer when they have two times going. You will hear music playing, you  
7 will hear music before games and still hear the announcers playing.

8 MR. TIDD: Wait, did you say music during practice too?

9 MR. FRATIANNE: The, yeah, they will have music playing during practices.

10 MR. TIDD: Okay.

11 MR. FRATIANNE: Music playing.

12 MR. BURKE: To be clear, that's not the band, it's –

13 MR. FRATIANNE: Yeah, it's recorded music.

14 UNIDENTIFIED SPEAKER: (Inaudible).

15 MR. FRATIANNE: Yeah. Um, you will hear the announcers, you will hear  
16 the crowds, you will hear the speakers playing. And so, it's not just during the games  
17 that we are getting noise, it's during some of the practices as well. And I actually  
18 work at home. On a nice cool day, I like to work on my back deck. I also like to  
19 relax on my back deck. And I also like to have my windows open in the spring and  
20 fall like most people like to enjoy.

21 Whenever McNick is using their facilities I can't have my windows open, I  
22 can't sit out on my deck. In fact, I had to replace my windows two years ago and one  
23 of the reasons was, was because of the noise. To get sound defining windows. So,  
24 it's had a dramatic impact on my usage of my house, my property.

1 MR. BURKE: And have you ever had occasion to complain to McNick about  
2 the noise?

3 MR. FRATIANNE: Yes. Over the five-year period since the bleachers went  
4 up, I have complained to McNick numerous times. I have complained to the police  
5 numerous times.

6 MR. BURKE: And how has McNick responded?

7 MR. FRATIANNE: Uh, McNick has been largely unresponsive to any  
8 complaints. I will get the standard we'll investigate. But the noise continues at the  
9 same levels.

10 MR. BURKE: And how have Cincinnati Police responded?

11 MR. FRATIANNE: The Cincinnati Police, the first noise complaint that I  
12 made and other neighbors made was immediately after the bleachers went up. They  
13 came out and did a sound measurement on the field. Probably in the six-minute so  
14 they made a measurement once a minute every six minutes. One of those six readings  
15 was beyond the allowable decibel. The other five were not so the police came back  
16 and said that they were in compliance with the noise.

17 Subsequently, a number of us got noise meters because the noise was quite  
18 loud, and we made numerous complaints to the police after that, after every time we  
19 saw exceeding by large margins on the meters that we had. And the police would not  
20 respond to our complaints.

21 We finally had, I finally had an exchange with the captain at the time, Captain  
22 Broxterman, I think his name was. He was the first Sargent there. And he said that  
23 he spoke with the school and at that time he said the school on certain events, would  
24 go from four speakers to two speakers to lessen the amount. But then he also said,

1 don't, don't kill the messenger. That was the only thing he said.

2 There was a change of the Sergeants and I think the new Sargent's name was  
3 Sargent Butler, or Captain Butler. And I complained to him a number of times and he  
4 actually met with the City Solicitor. And they got back with us and said basically  
5 inferring that the law was unenforceable. There was nothing that he could do to help  
6 us.

7 MR. BURKE: Do you know during the course of this, did you have any  
8 dealing with Dr. Denny Stanfield?

9 MR. FRATIANNE: Yes, so Dr. Denny Stanfield was one of the original chair  
10 people of the project paradise committee. And (Inaudible). Denny Stanfield was  
11 aware of the noise concerns that we had. We talked to him numerous times. He  
12 wrote back in a letter that he had spoken to the school. And that members of the  
13 school would not do anything about the noise (Inaudible).

14 MR. BURKE: Let me hand you what we've marked as Neighbor's Exhibit 17  
15 and ask if you can identify that?

16 MR. FRATIANNE: Yes, this is the email that Deborah Stanfield had sent me.

17 MR. BURKE: Can you read that into the record, it's short.

18 MR. FRATIANNE: "Just wanted you to know that I too emailed the president  
19 about my displeasure. Although I have not been present to witness the excessive  
20 noise, I have no reason to question your comments. These actions make me look  
21 dishonest! I had no intentions to mislead you or your neighbors. I will continue my  
22 efforts to resolve his issue of distrust. My apologies."

23 MR. BURKE: You've been involved in prior applications by McNick for  
24 special zoning approvals?

1 MR. FRATIANNE: Yes. So, back when McNick was originally building  
2 their bleachers, I was essentially the same person that's taking the position of going  
3 out, having a spokesperson representing a number of homes that were concerned.  
4 Abutting the school as far, abutting the school as well as at the time, the original  
5 owner who put the bleachers, the Berkshire (Inaudible).

6 MR. BURKE: In, in prior applications, what has, have the spokespeople for  
7 McNicholas had to say about lights on the field?

8 MR. FRATIANNE: So originally, when McNicholas built the bleachers, they  
9 laid out the position that the building of the bleachers, the primary use of I was for  
10 football only and it was a critical need to make their football program competitive.  
11 They originally gave us plans that showed lighting. Also, that the parking lot was  
12 being built, and so forth.

13 And we had a number of meetings with McNick to, at the encouragement of  
14 the City zoning as well as the Mt. Washington Council, to find a compromised  
15 position that we could work together. And at the end of that those meetings, the two  
16 primary concerns that the neighbors still had were the lights, or the eventual lights as  
17 well as sound conditions.

18 And we could not come to any compromise position on those. We had  
19 demanded no lights. And we could not come to any compromising position on those.  
20 We had demanded no lights. And we wanted controls around the sound. Um,  
21 McNick contended at that point. They, they changed their, the way their application  
22 to the City to say, we have no money for lights and we have no plans for lights. So,  
23 no evening uses for any sports. Is (Inaudible) that they went with for that original  
24 bleachers.

1 MR. BURKE: And more recently now, what have they said about what their  
2 plans have been all along, regarding the lights?

3 MR. FRATIANNE: In meetings that we've had with McNicholas and the Mt.  
4 Washington, in the most recent community meetings, specifically on that we held at  
5 the Mt. Washington Recreation Center, I asked the specific question, "Did you know  
6 you that you were planning lights all along?" And their response was yes.

7 MR. BURKE: What do you believe would be the impact of putting lights on  
8 the field, on quiet enjoyment of your home and property?

9 MR. FRATIANNE: I think that my quiet time has already been significantly  
10 disrupted. I think that that will extend it excessively into the evenings and of a very  
11 frequent amount (Inaudible).

12 MR. BURKE: And how will that impact you?

13 MR. FRATIANNE: Um, unable to use my deck. I won't be able to have my  
14 windows open. I'm able to, I can even hear it in my house so, this, it will deteriorate  
15 the enjoyment of my house.

16 MR. BURKE: Do you believe crowds at football games will be larger at  
17 night?

18 MR. FRATIANNE: Yes, I do.

19 MR. BURKE: Would that increase the crowd noise?

20 MR. FRATIANNE: Yes, it will.

21 MR. BURKE: And, even with the new speakers, assuming they are of some  
22 benefit because of their location, will that help solve the crowd noise at night?

23 MR. FRATIANNE: No.

24 MR. BURKE: And can you describe to the hearing examiner what concerns

1 you have about the lighting itself?

2 MR. FRATIANNE: That lighting, and the concerns I do have about the  
3 lighting, is really just, if you go into our yards today, we have nice tranquil dark yards  
4 at night that we can enjoy. But given the size of the fields and the proximity of the  
5 fields, just having that visual there, it's going to be, I like to describe it as having a  
6 300-foot long billboard in your backyard. So, all darkness from a visual (Inaudible).  
7 You may not have direct light that's going onto our property but it's definitely going  
8 to change the atmosphere in our back yards.

9 MR. BURKE: Has (Inaudible) made any effort to negotiate with the  
10 neighbors the number of nights they can involve their use of (Inaudible)?

11 MR. FRATIANNE: No.

12 MR. BURKE: Have you asked them to?

13 MR. FRATIANNE: Yes.

14 MR. BURKE: How have they responded?

15 MR. FRATIANNE: They have ignored our requests.

16 MR. BURKE: And to your knowledge, have any, has anybody from McNick  
17 asked to come up and experience the noise in your back yard?

18 MR. FRATIANNE: No.

19 MR. BURKE: How have McNick supporters responded to your efforts?

20 MR. FRATIANNE: Over the five-year period I've received hate mail. I've  
21 had my mailbox destroyed twice.

22 MR. BARRETT: I'm going to object to that. He doesn't know who  
23 destroyed his mailbox.

24 MR. FRATIANNE: I have received emails of harassment from the

1 (Inaudible).

2 MR. TIDD: I am going to stop you though, because it's not really relevant to  
3 why we are here. Mr. Burke, next question.

4 MR. BURKE: Has the responses you've received from McNicholas  
5 supporters been helpful or harmful in the possibility of reaching –

6 MR. TIDD: Mr. Burke, it's the same question. Let's move on.

7 MR. BURKE: I'm just trying.

8 MR. TIDD: I give you credit for that.

9 MR. BURKE: Just a few more questions and this is to identify some folks  
10 who were not able to be here today. With these statements I would like to move into  
11 the record, Mr. Fratianne, I want to hand you what's been marked as Neighbor's  
12 Exhibit No. 12. Can you identify what that is?

13 MR. FRATIANNNE: This is the letter from Dr. David Madison.

14 MR. BURKE: Dr. Madison is a resident of Spindlewick?

15 MR. FRATIANNNE: Yes, he lives four doors down to the east. And  
16 immediately above the field.

17 MR. BURKE: Okay. Oh, I'm sorry. Let me hand you what we've marked as  
18 Neighbor's Exhibit 13. Can you identify that, please?

19 MR. FRATIANNNE: This is the litter from Roger Zimmerman and the  
20 adjacent Roberts, they live three doors to the east of me, and immediately above the  
21 field.

22 MR. BURKE: And finally, let me show you what we marked as Neighbor's  
23 Exhibit No. 15 and ask if you could identify that?

24 MR. FRATIANNNE: This is from Rob Bloom. He is the neighbor that

1 immediately abuts me to the east now (Inaudible).

2 MR. BURKE: Mr. Fratianne, is there anything else that you would like to tell  
3 hearing examiner?

4 MR. FRATIANNNE: Um, no.

5 MR. BURKE: No further questions.

6 MR. TIDD: Mr. Barrett?

7 MR. BARRETT: I don't have any questions. I will just note for the record  
8 that since I don't have the opportunity to cross-examine the authors of these two  
9 letters, I will ask that they do not be received into evidence.

10 MR. TIDD: Your objection is noted, Mr. Barrett. I am going to accept them  
11 into evidence. I am not going to let you read them into the record, though. I am  
12 going to –

13 MR. BURKE: We didn't, (Inaudible).

14 MR. TIDD: Mr. Burke, do you have –

15 MR. BURKE: (Inaudible).

16 MR. TIDD: Okay. At this point I'm going to open it up to the public. Just a  
17 show of hands, who wants to say something today? Okay, three people. I always  
18 start on the right side. So, sir, we are going to start with you. I always start on the  
19 front of the right side. You can stand right there. Yeah.

20 MR. MURRAY: I just want to go to the map.

21 MR. TIDD: You can do that.

22 MR. MURRAY: So you can see where I am.

23 MR. TIDD: Sir, what is your name?

24 MR. MURRAY: Timothy Murray.

1 MR. TIDD: What would you like to tell me? Or actually, tell me where you  
2 live, sir?

3 MR. MURRAY: 6403 Kappa Lane.

4 MR. TIDD: Okay.

5 MR. MURRAY: Okay. My house is maybe from the corner of my lot, 25  
6 feet, 30 feet. I can sit out on my deck at any time. It doesn't bother us. My boys all  
7 went to Moeller. I'm an expert on Moeller, I'd love to have a story telling (Inaudible)  
8 about that problem because you are not telling all of it.

9 MR. TIDD: Just remember, we are only worried about this case.

10 MR. MURRAY: Right.

11 MR. TIDD: Tell me, tell me what you want to tell me about this project.

12 MR. MURRAY: I will tell you that they have been over the top  
13 communicating with us. If there is a game coming up they give us the name of the  
14 police officer if there is a problem with parking. If people are not parking in the right  
15 spots. They have the ability to tell us that. I have never had a problem with the noise.  
16 I can sit in my house and I'm as close as anybody. I'm not right here, but I'm right  
17 here. There is people that live way up here that had complaints. But you don't hear  
18 anything. We hear the band. It's pleasurable.

19 I moved in next to a school understanding it was a school. These people  
20 complaining like someone who lives next to a cemetery that doesn't want to have  
21 funeral sessions. This is a school. That's all it is. They are doing good work. I  
22 believe in all honesty they have done everything since I moved in the house for three  
23 years to communicate with us when there is going to be a game, if there is going to be  
24 loud noise, all that kind of stuff. And I just, I just think when you move in next to a

1 school, you are going to expect there is going to be noise from kids. And you are  
2 going to expect it's going to be ball games.

3 MR. TIDD: Thank you, sir. Mr. Barrett, do you have any questions for this  
4 gentleman?

5 MR. BARRETT: I do not.

6 MR. TIDD: Mr. Burke?

7 MR. BURKE: No.

8 MR. TIDD: Thank you, sir. Sir in the back, you wanted to speak, as well?

9 MR. HUTCHINSON: Thank you.

10 MR. TIDD: What is your name?

11 MR. HUTCHINSON: My name is Jeff Hutchinson.

12 MR. TIDD: What would you like to tell me, Mr. Hutchinson.

13 MR. HUTCHINSON: Do you need my address, as well?

14 MR. TIDD: I would like it, thanks.

15 MR. HUTCHISON: Okay. I don't live in Mt. Washington. (Inaudible)  
16 residence is 2615 (Inaudible) Street.

17 MR. TIDD: Okay what would you like to tell me?

18 MR. HUTCHISON: I have some questions for Dave Jackson, our Executive  
19 Director, about history and as a love of the school, a current staff member and current  
20 parent, I remember well the jealousy I felt as a student in the 1990s of traveling to  
21 other places where lights were there. I remember well the foundations being poured  
22 for the condos, Berkshire Club and for the foundations on Spindlewick for students  
23 who (Inaudible).

24 In addition to the classrooms (Inaudible) the soccer fields were really one of

1 the primary places where my work ethic was shaped and formed, where I learned to  
2 cooperate with other individuals, where I learned respect for neighbors, and  
3 (Inaudible). I had the pleasure of returning to do that in the 2000s to coach, and  
4 during that time I was always very attentive with previous soccer field, the adjacent  
5 soccer field at Berkshire Club there, and making sure that the volume was, it was  
6 always a very important event on the part of the entire program and that will continue  
7 to be so.,

8 When students, what I remember very well in 1994 when the application for  
9 lights was denied and feeling that jealousy and having competed at Summit County  
10 Day High School, both my junior and senior years (Inaudible) I wish, I wish we had  
11 the ability to do that sort of thing on our campus. I think what I want to say is when  
12 the, when the students' express disappointment or jealousy about the opportunities  
13 they see at other schools and other campuses, and when they play under the lights,  
14 they don't, the ones that I hear from, they don't express anger, resentment towards  
15 neighbors or these gentlemen who, who –

16 MR. TIDD: Remember, you are just speaking to me.

17 MR. HUTCHISON: Sure. Uh, think they described it as an essential role  
18 high school has in their lives to form and shape the (Inaudible) they are, that they will  
19 become. Where they will have to navigate complex relationships as you are doing,  
20 sir, in this, in this process. As just within the school community, the conversations  
21 that I've been a part of has always been respectful. I want students (Inaudible) staff  
22 and neighbors, I hope that the neighbors are hearing a desire on the part of all the  
23 members of McNicholas High School community (Inaudible) good neighbors, not  
24 just being perceived as, or just seen as neighbors but to be good neighbors in the

1 relationship.

2 We are situated, as many high schools in the City of Cincinnati are, within a  
3 residential area and that's, and that's (Inaudible).

4 I know I have a very different framework on housing values and I didn't  
5 come prepared to speak today so I don't have data, but in my initial glance it's just  
6 that public housing values, the majority of the housing values just what I've assessed  
7 on Berkshire and Spindlewick that appreciated in value since the construction of the,  
8 of the fields themselves. Which, I know at this time, was one of the concerns raised  
9 by residents there. I don't know if that's something that you take into consideration  
10 in the process, but I just wanted to acknowledge that point. And I want to thank you.  
11 I know you are balancing a lot of different interests and trying to ensure vibrant  
12 neighborhoods and communities that are hopeful of (Inaudible). Thank you.

13 MR. TIDD: Thank you, sir. Hold on just one second. Mr. Barrett, do you  
14 have any questions?

15 MR. BARRETT: I do not.

16 MR. TIDD: Mr. Burke?

17 MR. BURKE: No.

18 MR. TIDD: Alright, I believe there is one? Ma'am?

19 MS. HUSTON: Hi, my name is Candie Huston. I am at 6505 Spindlewick.

20 MR. TIDD: Uh-huh.

21 MS. HUSTON: I am at the other end of Spindlewick. I am not as close as my  
22 other neighbors. I am alumni, I am a current parent and kind of a neighbor. I agree  
23 with the gentleman here, when you buy your house, you know there is a school there.  
24 When I went to McNick, I graduated in the 70s. It was always McNick's intention,

1 always, to have something done with paradise. When I lived there it was a baseball  
2 field. It was all that was back there. Or when I went to school there. I grew up in Mt.  
3 Washington. So, I know McNicholas has always had plans to do something with that.  
4 If you didn't do your due diligence when you bought your house and know that,  
5 shame on you.

6 I can address the property values. There was a house, I don't know if one of  
7 those affidavits you just got from somebody, Diane Tibias just sold her house within  
8 the last year. It sold rather quickly, and she got what she wanted. So, the whole bit  
9 about property values, I don't particularly buy that. I'm, I'm looking to sell my house  
10 in a year and a half, two years, after my son graduates. We are downsizing. I don't  
11 think we are going to have a problem.

12 I think actually, McNick might help the sale of my house as Sands Montessori  
13 helps the sale of all the houses in the neighborhood. I just think McNick has been  
14 there a lot longer than the residents have. It's going to be there a lot longer than all  
15 you people that are complaining.

16 MR. TIDD: Just remember –

17 MS. HUSTON: I know, (Inaudible) be a lot longer than anybody in this  
18 room. It's going to be a lot longer than you and I, and I think we need to do it to  
19 fortify the Mt. Washington neighborhood. Thank you.

20 MR. TIDD: Thank you. Mr. Barrett?

21 MR. BARRETT: I have no questions.

22 MR. TIDD: Mr. Burke?

23 MR. BURKE: Just where would you do your due diligence to determine what  
24 the campus's plans are for the future when they state publicly to the City of

1 Cincinnati that they don't intend to install lights? How (Inaudible).

2 MS. HUSTON: It's my –

3 MR. BARRETT: I'll object, that question is not appropriate.

4 MR. TIDD: I'll let her answer.

5 MS. HUSTON: It was always my understanding, and I might be wrong on  
6 this, it was – any meeting that I ever went to at the very beginning, I know they  
7 always stated they didn't have the money for lights, but in my understanding, that was  
8 always part of the plan. I, I obviously maybe am wrong in that, but that was always  
9 my understanding. McNick always wanted to do something with that land. And now  
10 they are doing it and nobody's happy.

11 MR. TIDD: Mr. Burke?

12 MR. BURKE: Nothing further.

13 MR. TIDD: Thank you, ma'am. Mr. Barrett, I'm going to give you an option  
14 this morning. Do you want to provide a rebuttal now, or would you rather provide  
15 your rebuttal just in the closing after Mr. Burke?

16 MR. BARRETT: I will wait until (Inaudible).

17 MR. TIDD: Okay. Mr. Burke?

18 MR. BURKE: Thank you.

19 MR. TIDD: Uh-huh.

20 MR. BURKE: There are obviously a number of issues involved in this  
21 hearing. And I understand that McNicholas supporters might have (Inaudible). But  
22 what is equally (Inaudible) is the immediate neighbors are entitled to preserve the  
23 quiet enjoyment of their property. McNick has proposed now to take away their quite  
24 neighborhood.

1           If my math is correct, and there is a reason why I am a lawyer and not an  
2 accountant, if my math is correct, given the long list of use (Inaudible) Mr. Barrett's  
3 conditions would allow, some 20 percent or greater of the nights would now be  
4 occupied by events taking place at the stadium. There can be no dispute that that has  
5 a substantial impact on the adjacent property owners.

6           Everybody recognizes that this is single family owned property. Everybody  
7 should recognize that putting a football field there, putting lights on it and 94-foot  
8 poles is not a guaranteed right. That's why (Inaudible) what is a guaranteed right is  
9 to have a single-family home on that property. And having a single-family home  
10 ought to entitle people to enjoy peace and quiet of their yard.

11           It's one thing to have their days interrupted when the events take place in the  
12 stadium. But another thing to have their evenings interrupted. (Inaudible) about how  
13 many of the games are going to go until 9:00 and how many of the games are going to  
14 go to 10:00, or if a thunder storm delays a game, they have asked for it to continue  
15 until 11:00 at night (Inaudible) under Mr. Barrett's (Inaudible) conditions, going to  
16 have to do that will have a negative impact on these folks (Inaudible) heard from  
17 today.

18           (Inaudible) built their homes before there was a stadium. Having an idea that  
19 a stadium was going to go in there, not something that was in their contemplation.  
20 They like to make the argument at all high schools have football fields with lights on  
21 them. And they can use them whenever they want to. That's simply not true. Many  
22 of you (Inaudible). I have mentioned Moeller many times today and have provided  
23 you the documentation with the facts that they do not have rights, and there are  
24 reasons for that.

1           Because, just like the folks on Spindlewick, there are property owners whose  
2 homes are right adjacent to Moeller's field. Sycamore Township was good enough to  
3 deny those lights, and the denial of those lights was found to be appropriate by our  
4 (Inaudible) because Moeller did appeal that denial. It is equally appropriate to deny  
5 lights (Inaudible). If you choose not to deny lights, and I hope you do deny the lights  
6 period. Because what they've done is take rights that they have.

7           Today we want to put the field. Now we went to put the stadium. Then the  
8 bleachers came, then the press box. But we don't want to, we are not going to put  
9 lights in. Now we have got this field, now we have to put lights on it to be  
10 competitive with everybody else. In other cases, the City has taken the position that  
11 if you want something, ask for it all. Don't come back and nitpick asking for  
12 variances for this part of the (Inaudible) now and they object later. The same kind of  
13 thing that is happening in this particular case.

14           If you are inclined to approve lights, I urge you not to approve them with the  
15 conditions Mr. Barrett has written. But rather look at the carefully negotiated  
16 conditions that have worked very well at Summit for the last quarter of a century.  
17 What you are going to surmise when you look at those is, I was a part of negotiating  
18 those issues. They are still operating. Summit is obligated to meet annually with the  
19 neighbors. They are obligated to post as they have already done, what their schedule  
20 is for the academic year of 2017-2018, for the lights on the field. That's how I feel  
21 that McNick, when the soccer team will be playing under the lights at Summit.  
22 (Inaudible) nights at Summit's field will it be in use.

23           And, yeah, I was argumentative before in comparing Grandin Road and  
24 Spindlewick. I get to be argumentative in my closing argument and that's what this

1 is.

2 MR. TIDD: You do.

3 MR. BURKE: The folks on Spindlewick are entitled to just as much  
4 consideration as the folks on Grandin Road are. And I have some conditions to  
5 suggest to you and they are modeled in most instances off of Summit and to a certain  
6 extent Moeller. And I would just, I'm not going to read these off to you (Inaudible),  
7 but I will highlight them.

8 First of all, what the lighting expert had to say sounded pretty good. If the  
9 lights go up before there is ever a game played, they ought to make sure that the  
10 lighting system is targeted and does exactly what they say it is going to do. And no  
11 game should be played on that field until the lights are targeted in such a way as they  
12 produce no spill onto the adjacent properties.

13 The sound system ought to be similarly tested. And one of the interesting  
14 things is yeah, we are going to set the dial half way between zero and ten and put it at  
15 five. The reason why I said I don't know what that means is because we don't know  
16 how loud individuals talking through the microphone will be. Because, as Dr.  
17 Kinman pointed out, it can be a low voice, or it can be a very loud voice, if there is an  
18 exciting play.

19 There ought to be testing done of the sound system before any game is played  
20 to determine that they are not breaking the 55-decibel meter at the boundary line of  
21 the property. And when I am talking about 55 decibels, I'm not talking about the  
22 criminal violation that occurs if that sound exists for more than five, six minutes on  
23 an average. I am talking about controlling the sound system so that it doesn't exceed  
24 55 period, at the property line.

1 I recognize that the crowd noise can't be controlled that way. There are steps  
2 that McNick can take to reduce the impact of the crowd noise. One is to reduce the  
3 number of uses of the field like Summit has done to limit at least, the number of times  
4 that that impact is going to occur. Another way is to prohibit noise makers being used  
5 by the crowd. We all remember a couple of years ago listening to the South African  
6 horns during the soccer tournaments. And while I've got the word in here that says  
7 what they are, I am not going to try to pronounce it.

8 But we have similar horns here that ought to be banned because they simply  
9 will have a greater impact, a more disruptive impact on the quiet enjoyment of the  
10 property by the neighbors. McNicholas should designate an official from the school  
11 and an alternative, an alternate, who neighbors can contact with concerns. And they  
12 should provide a name, and phone number and email or its equivalent way for  
13 neighbors to get ahold of those appropriate decision makers at McNick who can  
14 address concerns.

15 And just as Summit is obligated to do under the decision that you are going to  
16 see, Summit –McNick ought to be meeting on an annual basis with (Inaudible)  
17 residents and discussing with them their concerns and attempting to eliminate them.

18 I don't believe that as proposed the lights are justified as a conditional use. I  
19 don't think the hours of operation are consistent with the single-family homes that  
20 exist on Spindlewick. I don't think they meet the conditions for a conditional use  
21 (Inaudible). It's a stretch. And even in the staff report, which I grant you was  
22 surprisingly positive, they recognized that, oh, there may be some consequential harm  
23 to the neighborhood. That's what we are trying to find a way to avoid (Inaudible).  
24 Thank you.

1 MR. TIDD: Thank you, Mr. Burke. Mr. Barrett.

2 MR. BARRETT: In all due respect to the opposition, I believe the high  
3 school has gone to extreme lengths to try to meet the neighbors, reach resolution with  
4 the neighbors, negotiate with the neighbors and so forth. Again, I understand Mr.  
5 Fratianne is a strong advocate for his position and those who agree similarly. But I  
6 submit that there is nothing that we could do that we haven't done that would meet  
7 with his approval.

8 In fact, if you look at the submission we made to the City on June 22, we  
9 included the letter that David Jackson, the Executive Director, wrote on June 20<sup>th</sup>, and  
10 we addressed it to Mr. Fratianne and the ten households that are in opposition. It's  
11 ten in the entire neighborhood, by the way. And he addressed every one of their  
12 concerns. They had six reasons why they could not support the, the High School's  
13 position. And he responded to every single one of those. So, to say that the school  
14 has not been responsive, it's extremely misleading, if not completely inaccurate.

15 We met with Mr. Fratianne on a number of occasions. In fact, in small groups  
16 with him. And I will note that he has been opposed to everything the school has ever  
17 tried to do throughout the many years that there has been hearings. That doesn't  
18 mean that he doesn't have the right to protest and object. But it does indicate that no  
19 only (Inaudible) be opposed. And it doesn't mean that we haven't exercised good  
20 faith with him and every other neighbor to try to mitigate, be responsible and  
21 receptive.

22 Mr. Burke has referenced Summit along with those two aberrations. Moeller  
23 is in Sycamore Township and that's a very different situation. I am very familiar with  
24 Moeller High School, I am very familiar with the issues in that case and it had

1 nothing to do with what we talked about here. With respect to Summit, again the  
2 concern there was the lights.

3 You heard Mr. Kaufman testify how the lighting has changed dramatically.  
4 You saw the exhibits. One picture is worth a thousand words. That's worth ten  
5 thousand words. (Inaudible) lights available known to anyone. And the school is  
6 willing to spend that kind of money and have down directional lights with minimal  
7 spillage, minimal glare, certainly since schools are permitted conditional in single-  
8 family districts, there are high schools throughout the City that have (Inaudible)  
9 controls. All throughout Hamilton County that are abutting residential neighborhoods  
10 that have no controls whatsoever.

11 We sat down in response to what the City staff asked us to do and drafted  
12 extensive conditions of approval and the City Zoning staff not only accepted those,  
13 but complimented us for our efforts. So, I submit we have done everything reasonable  
14 and everything appropriate. Notwithstanding the opposition, we will continue to  
15 work with the neighborhood. We will continue to address any concerns that have  
16 been raised. It's just disheartening to hear that they believe the school is totally one  
17 sided in this whole, this whole exercise, when just the opposite is true. It's  
18 documented by all the meetings we've had, all the interaction with Mt. Washington  
19 Community Council, which finally recommended approval.

20 The Staff report is very clear when it talks about the conditions. It says, quote  
21 "Is the proposed use appropriately located, designed and configured?" The Staff says,  
22 "Yes." The Staff asks, "Have any adverse impacts in the surrounding area been  
23 minimized?" Answer is "Yes." "Have there been efforts to minimize adverse  
24 impacts of adjacent residential areas?" The staff report goes on and on. In fact, I've

1 never seen a staff report in a case like this that has been as comprehensive or as  
2 positive or specific in addressing all of the issues, and resolving every single issue in  
3 favor of McNicholas High School. I would just hope that the Zoning hearing  
4 examiner realizes that when a very fine institution in the City does everything the  
5 City asks it to do, reaches out to the community council, reaches out to the  
6 neighborhood, reaches out to the adjoining property owners, hires the best possible  
7 consultants, and does everything that's possible, that that is reinforced and not  
8 rejected.

9 So, I would respectfully ask that you approve the request consistent with the  
10 staff report. I cannot say it better than the staff report. Thank you very much.

11 MR. TIDD: Thank you, Mr. Barrett. At this time, we will go off the record  
12 and close the hearing. A decision will be issued within two weeks. As long as I can  
13 read your email address, everyone in this room that gave me an email –

14 (RECORDING CUT OFF).

15 HEARING CONCLUDED

## C E R T I F I C A T E

STATE OF OHIO                   :  
  :  
COUNTY OF HAMILTON        :

SS.

I, Pamela S. Giglio, the undersigned, a court reporter for Hamilton County, Ohio, do hereby certify that I had transcribed into typewriting under my supervision the within audio proceeding, and that the foregoing transcript is a true, complete, and accurate transcription of said audio wav file.

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office, at Cincinnati, Ohio, this 10th day of January 2018.

/s/ Pamela S. Giglio  
Pamela S. Giglio  
Notary Public -- State of Ohio

MY COMMISSION EXPIRES:  
March 26, 2019