

**Frost
Brown Todd** LLC
ATTORNEYS

OHIO · KENTUCKY · INDIANA · TENNESSEE · WEST VIRGINIA

Scott D. Phillips
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March 20, 2009

VIA HAND DELIVERY

Melissa Autry
Clerk of Council
City of Cincinnati
801 Plum St. Rm 308
Cincinnati, OH 45202-1979

Re: Westwood School - 2981 Montana Avenue, Cincinnati, OH 45211
Appeal of Report and Decision dated March 10, 2009
Owner: The Board of Education of the City School District of the City of
Cincinnati, Ohio
Applicant: Roth Partnership Inc.

Dear Ms. Autry:

This letter is being submitted contemporaneously with a notice of appeal letter to Steven A. Kurtz, Zoning Hearing Examiner for the City of Cincinnati. I am submitting both letters as legal counsel for the Board of Education of the City School District of the City of Cincinnati, Ohio ("CPS") as owner of the Westwood School property located at 2981 Montana Avenue, Cincinnati, Ohio 45211 (the "Site"). Pursuant to the notice of appeal letter, CPS appeals the Report and Decision that Mr. Kurtz issued on March 10, 2009. Case Type: CU & VAR, Case No.: ZH20090001 (the "Decision").

CPS strongly opposes the Decision, which disapproved the application for the renovation and development of Westwood School on the Site, along with the conditional use and variance approvals necessary for the renovation and development.

CPS has worked diligently with the staff of Westwood School as well as the members of the Westwood community to create plans that balance two priorities: (1) preserving the Westwood School building (the "Building") and (2) providing a new home for Westwood School that meets current standards for a safe, modern, and functional school structure and site. As part of the preservation of the Building all interested parties understand that an addition is needed on

the Site to provide space for a gymnasium and free up space in the Building for classrooms. In order to maintain the view of the façade of the Building, CPS has pursued plans to put the addition on the back portion of the Building. Furthermore, as part of its community engagement process and at the specific request of the community, CPS examined the possibility of putting the addition on the western side of the Site, adjacent to Epworth Avenue, as opposed to the preferred location on the eastern side of the Site adjacent to Harrison Avenue. After careful study of the proposal to put the addition on the western side of the Site, the architects and planners contracted by CPS have concluded that the Site simply does not work from functional, safety and budget perspectives if the addition is placed on the western side of the Site. Therefore, the Decision jeopardizes CPS's plans to move Westwood School back into the Building and ultimately the long-term preservation of the Building.

Further, CPS believes that the Decision is arbitrary, capricious, unreasonable, and unsupported by a preponderance of substantial, reliable, and probative evidence on the record as a whole because the Decision fails to correctly apply the following factors enumerated in Section 1445-13 - General Standards; Public Interest of the Cincinnati Municipal Code:

(a) Zoning. The work proposed by CPS conforms with the underlying zone district regulations and is in harmony with the general purposes and intent of the Cincinnati Zoning Code.

(b) District Guidelines. There are no guidelines adopted or approved by Cincinnati City Council for the Westwood Business District.

(c) Plans. There is no Urban Design Overlay District for the Westwood Business District, therefore there are no objective standards to apply to the plans presented by CPS beyond the generally applicable Cincinnati Zoning Code.

(d) Traffic. There has been no objection to the traffic plans presented nor has there been any objection to the internal circulation of the Site with the addition on the eastern side. Alternatively, the Decision failed to properly consider the significant challenges to both the internal circulation and vehicular access to the Site if the addition was to be placed on the western side. CPS consultants have advised CPS that a curb-cut from Harrison Avenue would likely be required if the addition was placed on the western side of the Site.

(e) Buffering. The Decision fails to properly consider the impact of an addition on the western side of the Site and the adjacent residential uses along Epworth Avenue, as opposed to the business and church uses on the eastern side of the Site.

(f) Landscaping. There has been no specific objection to CPS's landscaping plans for the Site.

(g) Hours of Operation. There has been no specific objection to CPS's hours of operation for Westwood School.

(h) **Neighborhood Compatibility.** The renovation of the Building and its use as a school is compatible with the predominant or prevailing land use, building and structure patterns of the neighborhood surrounding the Building, and the renovation of the Building will ensure its long-term preservation. Further Westwood School was in operation on the Site for nearly 100 years prior to its move to swing space.

(i) **Proposed Zoning Amendments.** CPS is not aware of any proposed amendment to the Cincinnati Zoning Code that would affect plans for the Site.

(j) **Adverse Effects.** No adverse effect as to plans for the Site have been raised other than the aesthetic and visual objections to the addition on the eastern side of the Site.

(k) **Blight.** The renovation of the Building will ensure its long-term use thus avoiding blight associated with vacant buildings.

(l) **Economic Benefits.** A newly renovated Building as a home for Westwood School will promote the Cincinnati economy.

(m) **Job Creation.** The renovation of the Building will provide construction jobs during renovation as well as permanent jobs to the staff and teachers at Westwood School.

(n) **Tax Valuation.** The Site is exempt from real estate taxes.

(o) **Private Benefits.** Benefits will accrue to the surrounding property owners in the form of a newly renovated, attractive school building and a high-quality venue for Westwood School.

(p) **Public Benefits.** The renovation of the Building will result in an attractive, preserved historic structure and a high-quality venue for Westwood School bolstering public education in the Westwood neighborhood.

To reiterate CPS strongly disagrees with the Decision as failing to properly apply the criteria enumerated under Section 1445-13 of the Municipal Code and properly balance the clear public interest of preserving the Building and creating a functional and safe site for a public school against the subjective criticisms of CPS's plans for the Site.

Seven members of Cincinnati City Council have gone on record in opposition to CPS's plans for the addition to the Building along Harrison Avenue pursuant to the Motion authored by Councilmember Qualls dated February 25, 2009 (the "Motion"), and thus have prejudged the appeal of the Decision. Pursuant to Section 111-3 appeals to Cincinnati City Council are referred to a committee of Council to consider the appeal. Given the support of the Motion by such seven Councilmembers, CPS requests that the Mayor appoint a Special Committee to hear the appeal pursuant to Section 10.3 of the Rules of Council. CPS requests that such Special Committee include Councilmembers Crowley and Thomas and one additional Councilmember to comply with Section 10.1 of the Rules of Council which states that each committee must include

Scott D. Phillips
March 20, 2009
Page 4

at least three members. Such third Councilmember would be subject to recusal as having prejudged the appeal. Following the recommendation of such Special Committee as to the appeal, City Council (with any member that signed the motion recusing him/herself) should be directed to adopt such recommendation in accordance with the last sentence of Section 111-3 of the Cincinnati Municipal Code.

Should you have questions, feel free to contact me at your earliest convenience.

Sincerely,



Scott D. Phillips

cc: Steven A. Kurtz (hand delivery)
P. Richard Krehbiel
John Tsuchiya
Bruce Breiner
Margo Warminski
Randy Hammann
Melva Gweyn
Michael Burson
Edwin C. Price, Jr.
Kathleen Ernst
Tom Klayer
Adrienne Cowden
EJ Foltz
Frank Woolard
Ron Kull
Eric Landen
Jan Robinson
Westwood Civic Association
Sara Overstake
Mark Thompson
John Curp, City Solicitor
Julia Carney, Assistant City Solicitor
Mayor Mark Mallory
Councilmember Roxanne Qualls
Councilmember Greg Harris
Councilmember Chris Bortz
Councilmember Laketa Cole
Councilmember Leslie Ghiz
Councilmember Chris Monzel
Councilmember Jeff Berding
Councilmember David Crowley
Councilmember Cecil Thomas

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March 20, 2009

Hand Delivery

Steven A. Kurtz
Zoning Hearing Examiner
Two Centennial Plaza
Suite 110
805 Central Avenue
Cincinnati, Ohio 45202

Re: Westwood School - 2981 Montana Avenue, Cincinnati, OH 45211
Notice of Appeal of Report and Decision dated March 10, 2009
Owner: The Board of Education of the City School District of the City of
Cincinnati, Ohio
Applicant: Roth Partnership Inc.

Dear Steve:

As legal counsel for the Board of Education of the City School District of the City of Cincinnati, Ohio ("CPS") I tender this letter to you as written notice of appeal on behalf of CPS as owner of the Westwood School property located at 2981 Montana Avenue, Cincinnati, Ohio 45211. CPS hereby appeals the Report and Decision that you issued on March 10, 2009, Case Type: CU & VAR, Case No.: ZH20090001 (the "Decision").

This appeal is being filed in accordance with Sections 1449-01 and 111-3 of the Cincinnati Municipal Code. Section 1449-01(a) specifies that Cincinnati City Council shall hear appeals arising out of the use of property owned or operated by CPS. Accordingly, I am filing/serving copies of this notice of appeal to the Clerk of Council and all persons who expressed a position in writing or who testified in opposition at the hearing, among others, pursuant to Section 111-3 that governs appeals to Cincinnati City Council. Pursuant to Section 111-3, a list of all persons who may have expressed a position in writing or testified in opposition to Case No. ZH20090001 Zoning Hearing Examiner Hearings is enclosed.

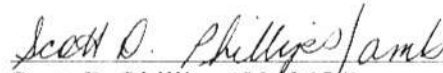
On behalf of CPS I hereby request duplicate audio tapes of the hearing that you conducted between January 28, 2009 and March 4, 2009 on or before March 27, 2009, in order

Steven A. Kurtz
March 20, 2009
Page 2

to file a complete record of the Decision with the Clerk of Council within 21 days of the date of this letter.

Thank you in advance for your cooperation. This letter is being submitted contemporaneously with a letter to the Clerk of Council summarizing CPS's positions opposing the Decision.

Respectfully submitted,



Scott D. Phillips (0043654)

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*Legal Counsel for the Board of Education of the
City School District of the City of Cincinnati, Ohio*

OF COUNSEL:
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties, via regular U.S. mail unless otherwise specified, this 20th day of March, 2009:

Melissa Autry (via hand delivery)
Clerk of Council
801 Plum St. Rm 308
Cincinnati, Ohio 45202

P. Richard Krehbiel
Roth Partnership, Inc.
302 West Third Street
Cincinnati, Ohio 45202

John Tsuchiya
Roth Partnership, Inc.
302 West Third Street
Cincinnati, Ohio 45202

Bruce Breiner, Principal
Westwood School
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March 20, 2009

Page 3

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Cincinnati, Ohio 45211

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Councilmember David Crowley
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Councilmember Cecil Thomas
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List of all persons who may have expressed a position in writing or testified in opposition to
Case No. ZH20090001 Zoning Hearing Examiner Hearings:

P. Richard Krehbiel
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