KEGLER BROWN HILL + RITTER

Kegler Brown Hill + Ritter Co. LPA
65 East State Street, Suite 1800
Columbus, OH 43215
(614) 462-5400
www.keglerbrown.com

January 14, 2015

Via E-mail to wloveland@lovelandlaw.net

William L. Loveland, Esq.
Loveland Law, LLC
3300 Riverside Drive, Suite 125
Upper Arlington, OH 43221

RE: Appeal of October 27, 2014 Decision of Bexley Planning Commission
Capital University – Berhlor Stadium Lighting and Sound Matter
Application No. 13-004PC

Dear Mr. Loveland:

This will acknowledge your letter of January 9, 2015 stating your conception of the "appeal" which you filed and the process the Bexley City Council will take in reviewing the appeal.

The first issue raised in your letter is that your clients do not agree that the decision made by Planning Commission on the Capital University application is "quasi-judicial" even though there was a hearing and your clients participated. Obviously, if the hearing was not "quasi-judicial" and administrative, there is no "appeal." If the determination was legislative, appeal would not be available since appeals deal only with administrative and "quasi-judicial" determinations, not making a law.

As to conducting the hearing, Council believes that your characterization of "de novo" is incorrect. This is an appeal of a decision of the Bexley Planning Commission. There was a transcript prepared by the Planning Commission on the hearing and material presented to them, as well as statements and comments made by your clients in opposition to the application. After reviewing that material, the Planning Commission approved that application which is what led to your appeal.

De novo appeals really relate to the question of whether or not the City Council will independently determine if the application should have been granted. Similar to a R.C. 2506.01 appeal, should additional evidence be brought before City Council in this appeal, it will be considered along with the materials from the Planning Commission hearing and will be dealt with

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independently by City Council. If no additional evidence is presented to City Council, the matter will proceed on the record before the Planning Commission.

Council does not believe the burden of proof changes in any way since it is your appeal contesting the validity of the action taken by the Planning Commission. Capital University went through the process dictated by the Bexley City Code in obtaining approval of their application and it is therefore not Capital University's burden in this appeal. Appellant has the burden to prove by a preponderance of the evidence that the decision of the Planning Commission was in error.

You are hereby advised that pursuant to Bexley City Council's previously established procedures Council will hear the appeal based on the record, decision of the Planning Commission and any new evidence you bring forward at the time of the appeal, will listen to Capital University's position as well as anyone in support or opposed and will consider it de novo.

We believe this process will provide an opportunity for your clients as well as any other participants to bring the matter fully and completely before City Council for its independent determination.

Sincerely,

Catherine A. Cunningham
Bexley Special Counsel

cc: Roger Schantz, Esq. *via e-mail* to: rschantz@beneschlaw.com
Lou Chodosh, City Law Director
Members of Council