

Rec'd @ PH 1/6/14

KAREN A. MURPHY

January 6, 2014

Members of the City of Stamford's Zoning Board
City of Stamford, Zoning Board 7th Floor
888 Washington Blvd.
Stamford, CT 06904-2152

Re: Map/Zone Change from R-20 to RA-1 for Seven Properties on Saddle
Rock Road - File # 213-33 ("ZB Application")

Dear Members of the City of Stamford's Zoning Board:

The purpose of this letter is to briefly summarize why the Zoning Board does not have jurisdiction to hear the above referenced ZB Application, and, in any event, assuming the Zoning Board does have jurisdiction (which it does not) the ZB Application should be denied. The detailed facts relating to this rezoning matter are presented in the attached Exhibit A¹. The supporting documents for the allegations in this letter are in the two Appendixes that have been submitted into the record.

As the overwhelming evidence shows, the Zoning Board does not have jurisdiction in the matter and ZB Application involves numerous violations of the City's Charter, the Master Plan, the Coastal Area Management Act, state and federal constitutions and other laws and the American Institute of Certified Planners ("AICP") Code of Ethics and Professional Conduct ("AICP Code").

Jurisdiction

There are at least two bases why the Zoning Board does not have jurisdiction to hear this ZB Application.

First, before the Zoning Board can consider this ZB Application there must be a Master Plan Amendment to change the Land Use Category from Residential #2 to Residential #1. The Zoning Board may not amend the Zoning Map contrary to the use established by the Master Plan. ¶¶ 56-57

Second, Mr. Redniss is shown as the Applicant in this matter. According to the Tax Assessor's records, Mr. Redniss does not own property in the City. Only property owners and city officials may file applications to amend the Zoning Map. ¶¶ 41-45

Constitutional Violations

The equal protection and due process violations with this ZB Application are summarized in ¶¶ 59-69.

The property owners have a property right to meet with the Planning Board before it reaches a decision in a map change referral. This right was denied due to, among other things, misrepresentations which occurred during the zoning application process. ¶ 40 The property owners, for example, did not

¹ References to Exhibit A are shown as "¶".

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receive two letters – an October 10th letter and an October 16th letter – in this matter contrary to Mr. Redniss' representation otherwise. ¶¶ 5, 8, 10, and 40.

Charter Violations:

In addition to the Charter violations noted in the Jurisdiction discussion, the criteria considered in the Staff Report to analyze the zone classification change were inconsistent with Charter Section C6-40-1. ¶¶ 22-34

Further the findings of the Staff Report are contrary to the evidence. The approval of this ZB Application will allow for larger homes and, therefore, there will be more people, not less, living in this Coastal A Flood Zone. The evidence indicates that the probability that a subdivision of any of the seven properties would be approved is remote. ¶35

Coastal Area Management Act ("CAM") & Master Plan

The inconsistencies with CAM are listed at ¶ 54.

Inconsistencies with the Master Plan at noted at A 82-94.

Zoning Regulations

The ZB Application satisfies neither the intent nor purpose of RA-1 zoning. ¶30

AICP Code

AICP Code violations are noted in ¶¶ 20, 34, 45, and 70-72.

Misrepresentations

The many misrepresentations in this matter are summarized in the Second Appendix, Table of Contents, Part 13, p. xvi.

Suggested Findings

Suggested Findings in this matter are noted in the Second Appendix, Table of Contents, Part 15, p. xviii.

In conclusion, this ZB Application constitutes "Spot Zoning" as any non-conflicted, professional planner knows and as has been acknowledged by knowledgeable City employees. "Spot Zoning" is invalid because it is not in accordance with a comprehensive or well-considered plan.

Respectfully,

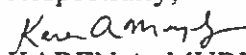

KAREN A. MURPHY

EXHIBIT A¹

Map/Zone Change from R-20 to RA-1 filed on October 11, 2013 for Seven Properties on Saddle Rock Road - File # 213-33 ("ZB Application")

Background

1. In May of 2013, led by Susan Cullman and John Kirby, some of the neighbors on Saddle Rock Road, Rogers Road and Ocean Drive West got together and agreed to hire Roberge Associates and Redniss & Mead to prepare a report for how coastal and upland flooding could be mitigated in the area. Although the neighbors thought the study/report was underway, they learned on or about Thanksgiving that apparently that was not the case. (A1-A14)
2. In early October 2013 Susan Cullman asked certain Saddle Rock Road neighbors if they would agree not to subdivide their properties, and that she would pay the fees to file the zoning application to restrict future subdivisions.
3. Ms. Cullman did not reveal that the true purpose of the zoning application was to obtain height and story relief via a zoning map change (in lieu of a variance) for the new home intended to build at 74 Saddle Rock Road by Susan Cullman and John Kirby.
4. In fact the cover letter to the ZB Application, which Mr. Redniss represented the neighbors received but did not, does not even mention the fact that the purpose of the ZB Application was to restrict future subdivisions. (A34)
5. As the following facts demonstrate, the Included Property Owners (except for the conflicted Included Property Owners) and the owners of property within 500 feet of the area proposed to be rezoned knew nothing about the details of the ZB Application (i.e., the resulting

¹ References to the Appendixes submitted at the Public Hearing are indicated as "A_" The initial/first Appendix was submitted at the December 2, 2013 Public Hearing and includes 50 pages. A second Appendix (starting at page 51) was submitted at the continuation of the Public Hearing scheduled for January 6, 2014.

building height, story and set back changes for the neighborhood) until sometime after November 21, 2013, the date of the notice of the Zoning Board's public meeting on the ZB Application. (Collectively, the "Non-Conflicted Property Owners")

6. Upon learning shortly before the Thanksgiving holidays of the building height and story changes that Mr. Redniss and others planned for neighborhood, and that the Public Hearing was scheduled for December 2nd, the Monday following Thanksgiving, some of the neighbors requested that the ZB Application be withdrawn. Mr. Redniss refused this reasonable withdrawal request of the neighbors. (A20-A27)

Inadequate, Unclear and Misleading Information Provided to Decision-Makers

7. On October 11, 2013, with a cover letter dated October 10th, Richard Redniss, AICP, filed as the Applicant with Norman Cole, AICP, the City's Land Use Bureau Chief, a Map/Zone Change from R-20 (20,000 square feet minimum lot size) to RA-1 (one acre minimum lot size) for the seven properties located at 68, 74, 88, 89, 102, 107 and 123 on Saddle Rock Road in the City of Stamford, County of Fairfield and the State of Connecticut. ("ZB Application") (A34)

8. Although the October 10th cover letter indicates that the Included Property Owners were copied on the rezoning filing, Mr. Redniss has admitted in a November 27th email that a copy of the cover letter and the Zoning Application were not sent to all of the Included Property Owners. (A22)

9. On October 16th Mr. Redniss filed, as an agent of an unidentified person, with Mr. Cole a one page CAM Application to accompany the aforementioned ZB Application that was previously received by the Zoning Board on October 11, 2013. (A98)

10. Similar to the ZB Application and notwithstanding Mr. Redniss' representation to the contrary, the Included Property Owners did not receive (at least not all) a copy of the CAM Application cover letter or the Application for Coastal Site Plan Review, both dated October 16, 2013.

11. Needless to say, no Non-Conflicted Property Owner knew that the ZB Application was referred on October 25th by Mr. Cole pursuant to Charter Sec. C6-40-10 to the Planning Board with notice that that Public Hearing was tentatively scheduled for December 2nd. (A101)

12. Non-Conflicted Property Owners also did not know that on October 25th Mr. Cole also referred the ZB Application to the Office of Long Island Sound Programs, the Harbor Commission, the Zoning Enforcement Officer, EPB, the Engineering Bureau, WPCA and the Chief Fire Marshall and advised such parties that the Public Hearing was tentatively scheduled for December 2nd. (A102-105)

13. For informational purposes on October 25th Mr. Cole provided the two Board of Representatives members for District 1 with a copy of the ZB Application, but did not mention that the Public Hearing was tentatively scheduled for December 2nd. (A104) Based on information and belief, the District 1 representatives never contacted, or communicated with, any of the Non-Conflicted Property Owners about the ZB Application prior to December 30, 2013.

14. Based on a December 16th email from David Woods, AICP, Principal Planner, the only documents Mr. Cole provided to the Planning Board and the other parties were documents prepared by Mr. Redniss. (A113-A117) Specifically, the documents attached to Mr. Cole's October 25th cover memos to the Planning Board and the other parties were the following:

- a) Application for Change in the Zoning Map of Stamford, Connecticut,
File # 213-33

- b) Area Description (Exhibit A)
- c) Property Owners List (Exhibit B)
- d) Map by Redniss & Mead, dated October 7, 2013; and
- e) Application for Coastal Site Plan Review, dated October 16, 2013

15. Except for the Planning Board, discussed below, as of the December 2nd Public Hearing only the Engineering Bureau responded to the Zoning Board's referral. In an October 30th email, the Engineering Bureau simply stated that it had no authority in this matter. (A106)

16. No board, commission, agency, bureau or City official could make an informed decision based on the scanty and misleading information provided to such decision-makers by Mr. Cole in his October 25th communication. More alarming is the fact that only information from Mr. Redniss was forwarded to the boards, agencies, bureaus and others.

17. What is also disconcerting about Norman Cole's correspondence is the fact that there is no effort by the Land Use Bureau's officials to review the Zoning Map Change Application or the CAM Application for consistency with the City's Charter, the Connecticut General Statutes or other governing laws, or provide specific local knowledge and information related to the properties involved in the rezoning before referring such applications to the Planning Board, CT DEEP and other agencies and bureaus and City officials.

18. This utter lack of credible, verified and complete information can only result in subpar reviews, at best, by the boards, agencies and bureaus.

19. Based on information and belief, the Planning Board at its November 19th regular meeting did not know at the time it approved the ZB Application that it involved height, story and set back changes for the Saddle Rock Road neighborhood.

20. What is also unsettling is that Richard Redniss, Norman Cole, and David Woods are all members of the American Institute of Certified Planners ("AICP"). As professional planners they

are obligated to provide adequate, timely, clear and accurate information on planning issues to their clients, employers, Planning Boards, Zoning Boards and others. That did not happen in connection with the above referenced Zoning Application. The residents have a significant expectation that City and State officials, including Zoning and Planning Board members, have adequate and accurate information (not material misrepresentations and omissions) before making planning decisions.

21. Put simply, the residents have a reasonable expectation of an effective Planning and Zoning process which did not occur with this ZB Application.

Staff Report

22. The Staff Report, prepared by David Woods, AICP, is dated November 26 and was received by the Zoning Board on November 27, 2013.

23. The Staff Report states:

The key criteria in analyzing any request to change a zoning classification for properties are: (1) whether the properties in question are contiguous to each other, and (2) whether the change in question would enhance properties ability to meet the provisions of the Zoning Code. (Staff Report, p.3 at A41)

24. The Staff Report provides no legal basis for the criteria selected to analyze the appropriateness of the change in the zoning classification in this matter.

25. I asked Mr. Redniss in an email dated November 29th, and Mr. Woods at a meeting we had in his office on December 6th, what was the legal basis for the criteria selected in the Staff Report to analyze the Zoning Map change from R-20 to RA-1.

26. Mr. Woods could not point to any authority for the criteria he selected to analyze the ZB Application. Mr. Redniss knew, or should have known, in responding to the question that he was misleading the neighbors when he stated: "We assume [Mr. Woods] is referring to section 7.1

the flood prone area regulations.” (See A29, Question 3) Map changes occur in all areas of the City of Stamford. It is disingenuous to suggest that the criteria for zoning map changes are in the flood prone area regulations.

27. The City’s Charter Section C6-40-5² provides that the Board of Representatives when acting upon a Referral by the Opponents Proposed Amendment to Zoning Map shall be guided by the same standards as are prescribed for the Zoning Board in Section C6-40-1 of this Charter. The guidelines in Section C6-40-1³ were neither referenced nor considered in the Staff Report.

² **Sec. C6-40-5. Referral to Board of Representatives by Opponents of Proposed Amendment to Zoning Map After the Effective Date of the Master Plan.**

After the effective date of the Master Plan, if twenty percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Zoning Map, or if the owners of twenty percent or more of the privately-owned land located within five hundred feet of the borders of such area, file a signed petition with the Zoning Board, within ten days after the official publication of the decision thereon, objecting to the proposed amendment, said decision shall have no force or effect but the matter shall be referred by the Zoning Board to the Board of Representatives within twenty days after such official publication, together with written findings, recommendations and reasons. The Board of Representatives shall approve or reject such proposed amendment at or before its second regularly-scheduled meeting following such referral. **When acting upon such matters the Board of Representatives shall be guided by the same standards as are prescribed for the Zoning Board in Section C6-40-1 of this Charter.** The failure of the Board of Representatives either to approve or reject said amendment within the above time limit shall be deemed as approval of the Zoning Board's decision. **(emphasis added)**

³ **Sec. C6-40-1. Powers and Duties of the Zoning Board.**

The Zoning Board is authorized to regulate the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land or trade, industry, residence or other purposes; and the height, size, location and character of advertising signs and billboards. Said Board may divide the City into districts of such number, shape and area as may be best suited to carry out the purposes of this Chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. **All such regulations shall be uniform for each class or kind of buildings or structures throughout each district, but the regulations in one district may differ from those in another district, shall be made in accordance with a comprehensive plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulation shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City. (emphasis added)**

The guidelines provide that there should be a comprehensive plan for a district. Severing seven properties from the R-20 district and rezoning them RA-1 was not done in accordance with a comprehensive plan. Further there was no consideration of (i) the dangers from flooding, (ii) of the character of the district, or (iii) a view to conserving the value of buildings due to, among other things, converting conforming lots into non-conforming lots.

28. The ZB Application does not enhance the property owners' ability to meet the provisions of the Zoning Code as Mr. Wood states in the Staff Report. To the contrary, the grant of this ZB Application will place at least three (3) currently conforming lots into nonconformity status. Due to erosion a new survey of the lot located at 89 Saddle Rock Road may show that it is less than one acre as well.

29. Rezoning to RA-1 will result in larger homes and as a consequence, contrary to the Staff Report's conclusion, result in more people living on Saddle Rock Road, a "high coastal flood area" according to the Staff Report. (A96)

30. The ZB Application satisfies neither the purpose nor the intent of RA-1 zoning. RA-1 districts are meant to protect large lots in rural settings. The seven properties are located in anything but a rural area. The Stamford Zoning Regulations states that the purpose of RA-1 "districts is to set aside and protect areas which have been developed... predominantly for single family dwellings on large lots in a rural setting." (Article 3, Section 4, paragraph AA 1.1, Stamford Zoning Regulations) Further there is no plan or intent for the non-conforming lots to be merged with adjacent lots to allow for the substantial purpose of a RA1 land regulation to prevail - minimum one acre lots. Without such an intent or plan the proposed change in zoning is ineffective and serves no purpose.

31. As further evidence that there is no comprehensive plan involved here consider:

- a) Mr. Redniss unilaterally agreed to reduce the number of properties to be rezoned from seven to six by eliminating 68 Saddle Rock Road at the December 2nd Public Hearing (See Response to Question 1 at A28; A123)
- b) The reason 71 Saddle Rock Road is not one of the included lots to be rezoned is because the owner wants any acquirer of his property to be able to subdivide it. This owners' decision precluded other owners from having their properties rezoned.
- c) The persons involved with this ZB Application just did not want the lot located at 75 Saddle Rock Road included in the ZB Application.
- d) The owners of the property located at 60 Saddle Rock Road and others were not asked to participate in the rezoning.

32. Most alarming is the fact that David Woods, AICP, Principal Planner, admitted to me at our meeting on December 6, 2013, that the Staff Report was written on the premise that all of the included property owners wanted the Map/Zone Change – i.e., not on the law.

33. On December 15, 2013, under the circumstances I asked Mr. Woods to withdrawal the Staff Report. He said he would discuss the withdrawal suggestion with Norman Cole. On December 16th I learned that the Staff Report would not be withdrawn and Mr. Cole would not meet with me.

34. Members of the American Institute of Certified Planners may not direct or coerce other professionals to make analyses or reach findings not supported by available evidence. There is the appearance at least that someone directed Mr. Woods to make findings based on misguided criteria for zoning map changes.

Planning Board

35. In approving the Zoning Board referral the sole reason given by the Planning Board in approving the ZB Application change from R20 to RA1 was that it would “lessen density in a

flood prone area.” (A90) What was not disclosed in the ZB Application, dated October 10, 2013, or by the Land Use Bureau’s officials was the following:

- a) First and foremost, Redniss & Meads’ admission that the City of Stamford has “strong policies and practices that 99.9% preclude introducing yet another house that would be subject to flood hazard inundation.” (Richard Redniss’ email to the neighbors, dated November 27, 2013 at A22, point 4)
- b) Second, three of the lots (68, 74, and 88) have a private restriction limiting such lots to one dwelling. (A44)
- c) Third, three other lots (102, 123 and 107) are accessway lots and as such have more restrictions than interior lots in a district and, therefore, probably cannot be subdivided.⁴
- d) Fourth, as for the seventh lot (# 89) and many of the other lots, based on information and belief, such lots could not be subdivided due to, among other things, the requirements of the Coastal Area Management Act, Section 7.1 – Flood Prone Area Regulations, the City’s current zoning regulations⁵ and the

⁴ Zoning Regulations - Article III, Section 7:

O – Accessway lots, each limited to one (1) single-family residence whether now existing or hereafter created, shall be permitted only in the RA-3, RA-2, RA-1, and R-20 One Family Residence Districts. The division between the accessway and the remainder of an accessway lot shall be shown on any record map dated after August 1, 1959 by a dotted or dashed line. The area of each accessway lot, exclusive of its accessway, shall conform to the area regulations for the district in which it is located. Its area shall be designated on any record map dated after August 1, 1959 as "exclusive of accessway". Not more than two (2) abutting accessways shall be permitted. Every accessway lot shall be so designed that a circle of the following diameter can be drawn within the boundaries of the lot; two hundred feet (200') in a RA-3 or RA-2 One Family Residence District; one hundred fifty feet (150') in an RA-1 One Family Residence District; and one hundred twenty feet (120') in a R-20 One Family Residence District. The record map shall include arcs demonstration that such a circle can be included within the lot. On any accessway lot, the main dwelling and any accessory building or buildings shall be located at least: (a) the same distance from any two boundaries as is required of a main dwelling from the front and rear lot lines on an interior lot in the district, and (b) from each of the other boundaries, at least thirty feet (30') in an RA-3 or RA-2 One Family Residence District, twenty-five feet (25') in an RA-1 One Family Residence District, and twenty feet (20') in an R-20 One Family Residence District. In no event shall any building on an accessway lot be located nearer to any street than the minimum front setback regulations for the district in which it is located.

⁵ Article III, SECTION 7 - AREA AND SUPPLEMENTAL REGULATIONS

B - Where a lot is formed from part of a lot already occupied by a building, such separation shall be affected in such manner as not to impair any of the requirements of these Regulations with respect to the existing building and all yards and other open spaces in connection therewith, and no permit shall be issued for the erection of a new building on the new lot thus created unless it complies with all the provisions of these Regulations.

erosion that a new survey map would show that has taken place to-date.

36. Further, based on information and belief, because the referral information provided to the Planning Board was limited, the Planning Board did not know when the referral was approved (like the Non-Conflicted property Owners) that the ZB Application involved height and bulk changes for the rezoned properties.

37. Based on information and belief, Mr. Redniss falsely represented to the Planning Board at its November 19th meeting that the Included Property Owners agreed to the Map/Zone Change. Mr. Redniss admitted in a November 29th email that the owners of the lot located at 102 did not agree to the zone/map change. More important, the Non-Conflicted property Owners did not consent to the ZB Application because material information was intentionally and wrongfully withheld from such owners (i.e., the height, bulk and setback changes).

38. Another significant fact is that the Planning Board's November 19th minutes do not even mention whether or not the ZP Application is compliant with the Master Plan, which it is not.

(A90)

39. The Non-Conflicted Property Owners had no notice that the Planning Board scheduled for its November 19, 2013, regular scheduled meeting, the review of the Zoning Board's October 25th referral in this matter.

40. According to Charter Sec. C6-40-10 the opponents to the ZB Application had a property right to a meeting with the Planning Board before it rendered a decision in this matter.

Specifically Sec. C6-40-10 provides as follows:

Sec. C6-40-10. Referral of Proposed Amendments to the Regulations or Zone Boundaries to Planning Board.

Any proposed amendments to the Zoning Regulations or zone boundaries or changes thereof shall be referred to the Planning Board for a report at least thirty days prior to the date assigned for a public hearing to be held thereon. The failure of the Planning Board to report prior to or at the hearing shall be taken as approval of such proposals. A statement of the vote of the Planning Board, approving, disapproving, or proposing a modification of such proposal shall be publicly read at any public hearing held thereon. The full report of the Planning Board regarding such proposal shall include the reasons for the Board's vote thereon and shall be incorporated into the records of any public hearing held thereon. A proposal disapproved by the Planning Board may be adopted by the Zoning Board by a two-thirds vote of the Zoning Board. **Upon request to the Planning Board by either the applicant or the opponent, a meeting shall be held by the Planning Board with such applicant and/or opponent before it shall render a decision. (emphasis added)**

Invalid Applicant on ZB Application

41. Richard W. Redniss, AICP, is shown as the Applicant on the Application for Change in the Zoning Map. (A116) The Zoning Board does not have the authority to consider the ZB Application because according to the Tax Assessor's records Mr. Redniss does not own property in the City of Stamford. Only property owners and governmental officials may file a written application with the Zoning Board for an amendment to the Zoning Map. (Charter Section C6-40-4)

Sec. C6-40-4. Applications for Amendments to the Zoning Map After Effective Date of the Master Plan.

(a) After the effective date of the Master Plan, **any Stamford property owner or governmental agency, department, board or official, may file a written application with the Zoning Board for an amendment to the Zoning Map...**(emphasis added)

42. In letter from Susan Cullman & John Kirby to Norman Cole, dated October 15, 2013, Cullman/Kirby authorize the office of Redniss & Mead, Inc., not Richard Redniss, to act as their agent in connection with land approvals. (A99)

43. What Cullman/Kirby failed to disclose, and is not disclosed on the application, is that they were allegedly representing many applicants/neighbors associated with the ZB Application and such names, including Cullman's/Kirby's name, are not disclosed as required on the ZB and CAM Applications. (A42, A98, A113; A117)

44. At this juncture it is evident that Richard Redniss was representing only the interest of Susan Cullman and John Kirby.

45. Members of the AICP must disclose, and shall not participate in an effort to conceal, the true interests of his or her client or employer when participating in the planning process. The overwhelming evidence indicates that Mr. Redniss, a member of American Institute of Certified Planners, did not disclose to City and State officials, and to the City's Planning and Zoning Boards that he was representing only Cullman/Kirby and the real purpose of the ZB Applications was to obtain building height and story relief for Susan Cullman's and John Kirby's new house.

Public Hearing

46. In letter dated November 21, 2013, the Non-Conflicted Property Owners were notified by Mr. Redniss that the date, time and place of the Public Meeting were scheduled for December 2, 2013, at 7 p.m. at Government Center, 888 Washington Blvd.

47. Present at the December 2nd Public Hearing were Zoning Board members Thomas Mills, Bill Morris, Barry Michelson, Rosanne McManus and Joanna Gwozdzowski. Present for the staff was David Killeen, Associate Planner.

48. No agency, bureau, City official or board or commission member who the ZB Application was referred to made an appearance at the December 2nd Public Hearing.

49. At the December 2nd Public Hearing Karen Murphy submitted extensive comments and supporting evidence demonstrating that Mr. Redniss misled the Non-Conflicted Property Owners, City officials and members of the Planning and Zoning Boards regarding the ZB Application. See in particular the Table of Contents to the Appendix that was submit into the Record at the Public Hearing and Reasons to Deny the Application starting at page 48 of the Appendix.

50. Mr. Redniss continued to make misrepresentations to the Zoning Board at the Public Hearing. For example, Mr. Redniss presented examples of site plans with pre-existing conditions and knowingly misrepresented the footprint of the building located at 74 Saddle Rock Road that was razed following Super Storm Sandy. (A15-A18)

51. Mr. Redniss' repeatedly stated at the Public Hearing that the purchasers of one of the most expensive properties in Stamford (i.e., Cullman/Kirby purchase of 74 Saddle Rock Road) should not have to beg for a variance. This absurd reason for the Map/Zone Change is both misguided and unlawful.

52. At the Public Hearing Mr. Redniss implied that the requested zone change was due to the impact Storm Sandy had on some of the parcels in the proposed rezone area. Super Storm Sandy affected Stamford's entire coast. This ZB Application helps only one parcel – 74 Saddle Rock Road – affected by Super Storm Sandy. Consider the following:

Two (# 102 and 123) of the seven homes involved in this Map Change have been uninhabitable since Super Storm Sandy and the owners are in discussions with City Officials about their options. There is no written evidence that either of these owners need or support this Map Change. In fact one of these owners (#102) is on the record as still reviewing with their attorney the implications of the Map Change and the preference of the owners of #123 is not to raise the existing house. One home (#68) meets the base flood elevation requirements and none of the other three homes (#88, #89 or #107) are considering raising their homes at this time. That leaves the seventh property (#74) where the owners, the

conflicted proponents of the Map Change, after razing the prior home want to build a large new house without going through the variance process and in disregard of, among other things, the (i) property rights' of others, (ii) public views of Long Island Sound, and (iii) the potential loss of life and property resulting from flooding of the other properties.

53. In summary, as the record reveals, the reason for the zone change as articulated by Mr.

Redniss and others to the neighbors, the Planning Board and others – to prevent future subdivisions - was simply false.

Coastal Area Management Act (“CAM”)

54. There is no indication that anyone has reviewed this proposed Map Change for consistency with the applicable policies of the Connecticut Coastal Area Management Act, CGS Sections 22a-90 through 22a-112, inclusive⁶. Listed below are four inconsistencies with the Coastal Management Act.

- a) The proposed Map Change is not proceeding in a manner consistent with the rights of private property owners. This relevant policy is contained in CAM’s general goals and policies, which includes but is not limited to (1) the development... of the coastal area proceeds in a manner consistent with the rights of private property owners....(CGS Sec 22a-92(a)(1))⁷ (See Constitutional Violations, infra)
- b) The planning process for the Map Change failed to consider the potential impact of coastal flooding so as to minimize damage to and destruction of life and property. This relevant policy is contained in CAM’s general goals and policies, which includes but is not limited to the need to consider the potential impact of coastal flooding in the planning process. CGS Sec 22a-92(a)(5)⁸
- c) Views of Long Island Sound will be materially altered by the proposed Map Change. The relevant CAM policy is contained within the minimization of “adverse impacts on coastal resources” policy, which includes but is not limited to... (F) degrading visual quality through

⁶ Link to CGS: <http://law.justia.com/codes/connecticut/2012/>

⁷ CGS Sec. 22a-92(a)(1) “ (a) The following general goals and policies are established by this chapter: (1) To ensure that the development, preservation or use of the land and water resources of the coastal area proceeds in a manner consistent with the rights of private property owners and the capability of the land and water resources to support development, preservation or use without significantly disrupting either the natural environment or sound economic growth;...”

⁸ CGS Sec. 22a-92(a)(5) To consider in the planning process the potential impact of a rise in sea level, coastal flooding and erosion patterns on coastal development so as to minimize damage to and destruction of life and property and minimize the necessity of public expenditure and shoreline armoring to protect future new development from such hazards;

the significant alteration of the natural features of vistas and viewpoints (CGS Sec. 22a-93(15))⁹. Within this context, this policy recognizes the importance of the visual quality of the natural resources of the coastline and the visual access to them. In plain English, CAM protects “public” views of the coastline and coastal resources. The creation of a number of tall structures as proposed by this ZB Application on Saddle Rock Road, a residential street and a destination point for vistas of Long Island Sound for residents of, and visitors to, Shippan, is inconsistent with CAM.

- d) The map Change will disturb more than 8 acres, which are surrounded by water on three (3) sides, and may increase the hazard of coastal flooding through significant alteration of shoreline configurations (taller structures; also see proposed designs for new home - larger footprint, use of fill etc.) within a high velocity flood zone. (ftn 7, CGS Sec. 22a-93(15)(E))

55. Mr. Redniss’ representations regarding the beneficial impacts of the Map Change and the proposal’s consistency with the goals and policies of CAM are meritless. (See CAM Application at A117)

- First, Mr. Redniss admits that with the City’s current strong policies and practices against subdivisions in this Coastal A Zone it is highly unlikely there will ever be an increase in the number of residences in this area. (A22, point 4) And if subdivisions are a real concern, why are the two largest lots - 71 Saddle Rock Road (1.446 acres) and 91 Rogers Rogers (1.377 acres) – which would be contiguous to the area to be rezoned, not included in the proposed area to be rezoned?
- Second, the City of Stamford has never denied anyone the right to raise their existing home above the base flood elevation. And there are no pending applications or backlog requests to raise homes in the flood prone areas in the City of Stamford.

⁹ CGS Sec. 22a-93(15) “Adverse impacts on coastal resources” include but are not limited to: (A) Degrading water quality through the significant introduction into either coastal waters or groundwater supplies of suspended solids, nutrients, toxics, heavy metals or pathogens, or through the significant alteration of temperature, pH, dissolved oxygen or salinity; (B) degrading existing circulation patterns of coastal waters through the significant alteration of patterns of tidal exchange or flushing rates, freshwater input, or existing basin characteristics and channel contours; (C) degrading natural erosion patterns through the significant alteration of littoral transport of sediments in terms of deposition or source reduction; (D) degrading natural or existing drainage patterns through the significant alteration of groundwater flow and recharge and volume of runoff; (E) increasing the hazard of coastal flooding through significant alteration of shoreline configurations or bathymetry, particularly within high velocity flood zones; (F) **degrading visual quality through significant alteration of the natural features of vistas and view points**; (G) degrading or destroying essential wildlife, finfish or shellfish habitat through significant alteration of the composition, migration patterns, distribution, breeding or other population characteristics of the natural species or significant alteration of the natural components of the habitat; and (H) degrading tidal wetlands, beaches and dunes, rocky shorefronts, and bluffs and escarpments through significant alteration of their natural characteristics or function; (emphasis added)

- Third, the additional half story (i.e., increasing the number of stories from 2 ½ to 3 stories) does nothing to allow “homes to be raised above critical flood heights” as represented by Mr. Redniss.
- Fourth, other municipalities (e.g. Darien and Westport) have properly reviewed and analyzed the height and other relief Sandy victims need. Darien decided any height variance had to be decided on a case-by-case basis. Westport provided limited height relief (up to a maximum of 31 feet) to a few existing homes on small lots. Mr. Redniss’ admitted that he discussed with City officials new coastal height regulations but learned that such an analysis “would require much study and time.” (A22, para. 1) As Mr. Redniss knows, or should know, proper analyses do take time and for the general welfare of the community such studies should be undertaken, not an ad hoc map change that benefits no one except his real client.

Zoning Board Lacks Authority/Jurisdiction to Consider ZB Application

56. The proposed zone change is not in accord with the Master Plan and, therefore, the Zoning Board lacks the authority/jurisdiction to consider the ZB Application.

57. Pursuant to Charter Sec. C6-40-3 the Zoning Map cannot be amended by the Zoning Board to permit a use contrary to the Master Plan. The Master Plan’s Land Use Category for the seven properties is currently Residential #2. Land Use Category Residential #2 permits developments on less than one acre. Therefore, before the ZB Application can be approved a Master Plan Amendment is necessary to change the Land Use Category for the seven properties from Residential #2 to Residential #1. In the Residential #1 Land Use Category development cannot exceed one principal dwelling per acre. Charter Sec. C6-40-3 provides as follows:

Sec. C6-40-3. Amendments to Zoning Map After the Effective Date of the Master Plan.

After the effective date of the Master Plan the Zoning Map may, from time to time, be amended by the Zoning Board provided, prior to any such action, the Board shall hold at least one public hearing thereon, notice of which shall be given as hereinafter provided. If said Board is the proponent of any such change said notice shall contain the Board's reasons for such proposed change. **The Zoning Map shall not be amended by said Board to permit a use in any area**

which is contrary to the general land use established for such area by the Master Plan.

The ZB Application is Inconsistent with the Guidelines for Zoning Amendments

58. The ZB Application is inconsistent with the Guidelines for Zoning Amendments. The primary reason for this Map/Zone Change is to increase the height, bulk and setback of structures in this “new district” which according to the Zoning Guidelines should be done (if at all) by a Zoning Text Change not a Map Change. The Zoning Guidelines provide as follows:

Zoning Map Changes

The purpose of the Zoning Map is to divide the city into zoning districts of such number, shape and area as deemed necessary to guide the most appropriate use of land and provide for administration and enforcement of the Stamford Zoning Regulations.

Zoning Text Changes

The purpose of the Zoning Regulations is to establish uniform standards guiding the most appropriate use of land and buildings and controlling the height, bulk and setback of structures and site development standards.

Constitutional Violations

59. The Zoning Board lacks the power to grant variances.

60. As all knowledgeable professionals recognize, the disguised purpose of the ZB Application is to provide height and bulk relief to the property owners of 74 Saddle Rock Road via a zoning map change which they could not get by way of a variance, the proper zoning process.

61. The owners included within, and outside of, the proposed “new district” acquired their properties districted as R-20. If approved this ZB Application will, inter alia, change conforming lots into non-conforming lots and unlawfully deny abutter property rights.

62. The City's comprehensive plan consists of the zoning regulations and the zoning map. The requirement of a comprehensive plan is generally satisfied when the Zoning Board acts with the intention of promoting the best interests of the entire community. The ZB Application before the Zoning Board is intended to benefit via height and story relief the owners of 74 Saddle Rock Road and does not promote the interests of the entire community.

63. It is illegal for the Zoning Board to vary height, bulk and setbacks on a case-by-case basis (i.e, via map change application to a map change application basis), when the exclusive authority to vary the zoning regulations is vested in the zoning board of appeals. No board or commission other than the zoning board of appeals may be given the power to vary the application of the zoning regulations in individual cases.

64. The power to issue variances is specifically granted to zoning board of appeals in the enabling statutes. That logic applies with equal force here. There is nothing contained within the Connecticut General Statutes authorizing the Zoning Board to adopt arbitrary map changes empowering itself to vary the application of the zoning regulations.

65. Every municipality which exercises the zoning power is mandated by Connecticut General Statutes to have a zoning board of appeals, which acts as a "quasi-judicial" body in deciding whether to grant relief from the literal enforcement of the zoning regulations.

66. A zoning board of appeals is indispensable to the zoning process both from the constitutional and the practical standpoint. The essential purpose of the zoning board of appeals is to deal with these cases by furnishing some elasticity in the application of regulatory measures so that they do not operate in an arbitrary or confiscatory, and consequently unconstitutional, manner.

67. **This ZB Application violates the uniformity requirement within districts.**

68. The obvious purpose of the requirement of uniformity within districts in the regulations is to assure property owners that there shall be no improper discrimination, all owners of the same class and in the same district being treated alike with provision for relief in cases of exceptional difficulty or unusual hardship by action of the zoning board of appeals.

69. The uniformity requirement serves the interests of providing fair notice to applicants and of ensuring their equal treatment. Uniformity requirement "represents a reenactment in statutory form of the general principle underlying the equal protection clause — that all land in similar circumstance should be zoned alike".

Conflicts

70. It has come to my attention that Mr. Redniss and Mr. Cole are regular golf buddies and, therefore, Mr. Cole should have recused himself from overseeing the zoning and planning process for this ZB Application.

71. According to the Rules of Conduct for members of the AICP, professional planners "shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment."

72. At a minimum, this relationship between Mr. Redniss and Mr. Cole should have been disclosed in the zoning and planning process for this ZB Application as well as for all applications where Mr. Redniss is involved so that the participants in such zoning and planning matters may take appropriate action - (i.e., ask for Mr. Cole's recusal).

Conclusion

73. Put simply, the proposed Map Change is not a lawful zoning technique.