

KAREN A. MURPHY

April 3, 2014

Randall M. Skigen, President of the City of Stamford's
Board of Representatives 4th Floor
888 Washington Blvd.
Stamford, CT 06904-2152

Re: Redniss' Proposed Zoning Map Amendment to Change the District for
Six Properties on Saddle Rock Road from R-20 to RA-1: File # 213-33
("Redniss Zoning Application")

Dear Mr. Skigen:

The proposed new zoning district for six waterfront properties on Saddle Rock Road is "spot zoning" in that it favors the interests of Susan Cullman and John Kirby in ways that are not consistent with the comprehensive plan in the City of Stamford. The Appeal to the Board of Representatives challenges the Zoning Boards' jurisdiction to consider the Redniss Zoning Application as well as both procedural and substantive infirmities relating to the Proposed Zoning Map Amendment. Among the opponents' claims are the combination of the Zoning Board's and the Board of Representatives Land Use-Urban Development Committee's ("Land-Use Committee") failure to be guided by the standards and follow the procedures set forth in the City's Charter for the approval of zoning map amendments, coupled with the lack of any Board, to include the Zoning Board and the Planning Board, finding that the challenged amendment is consistent with the City's comprehensive plan as required by law, or with the Master Plan.

The history of the zone change began prior to the submission of Mr. Redniss' Application. According to the audio of the Planning Board's November 19, 2013 meeting, Mr. Redniss' initial scheme was only to change the zoning district for the two properties owned by Cullman/Kirby. In other words, as the opponents' testimony and evidence submitted into the record shows, the Redniss' Proposed Zoning Map Amendment was not designed to achieve a legitimate police power purpose but to advance the purely private interest of Cullman/Kirby. It was not proposed in furtherance of the comprehensive plan and was designed in an unreasonably discriminatory manner.

Numerous City Charter Violations

When acting on the Proposed Zoning Map Amendment, the Zoning Board, the Co-Chairs of the Land Use Committee, the Planning Board Chair, personnel of the City's Land Use Bureau and others intentionally and wrongfully conducted the review in a manner that was contrary to law. At least six Sections of the City's Charter have been intentionally and wrongfully violated in order to obtain the desired result, and not a result in furtherance of the comprehensive plan or the protection of constitutional protected property rights. Table I identifies the Charter Sections violated and the underlying, undeniable facts supporting the City's Charter violations.

Table I

Charter Section Violated	Facts Supporting Charter Violations
Charter Section C6-40-4	Only property owners and government officials may file a written application with the Zoning Board for an amendment to the Zoning Map. According to the City's tax records, Mr. Redniss, the applicant here, is not a property owner; and he is not a government official.
Charter Section C6-40-1 sets out the criteria the Zoning Board and the BOR must be guided by when acting on amendments to the Zoning Map (See Charter Section C6-40-5)	Inexplicably, neither the "Staff Report" nor the Zoning Board minutes ever mention or note Charter Section C6-40-1. And except for the reference I made, Harry Day's report for the Land Use Committee never mentions or notes Charter Section C6-40-1 either.
<p>Charter Section C6-30-3 requires that the Master Plan "show the division of Stamford into land use categories such as....</p> <ol style="list-style-type: none"> 1. Residential—single family plots one acre or more. 2. Residential—single family plots less than one acre..." <p>The Master Plan uses land use category "#1 Residential" for zone districts one acre or more (i.e., RA-1, RA-2 and RA-3) and "#2 Residential" for zone districts less than one acre (i.e., R-20, R-10 and R-7 1/2.)</p> <p>Charter Section C6-40-3 provides that: "The Zoning Map shall not be amended by [the Zoning] Board to permit a use in any area which is contrary to the general land use established for such area by the Master Plan."</p>	The Boards do not have authority to consider the Redniss' Proposed Zoning Map Amendment because, as required by Charter Section C6-40-3, the Master Plan was not amended to change the general land use established, #2 Residential, for the six properties currently in a R-20 district to #1 Residential for RA-1 districts.

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<p>Charter Section C6-40-10</p>	<p>Barry Michelson for the Zoning Board and Norman Cole for the Land Use Committee falsely put into the record at the public meetings that the Planning Board found that the Redniss' Proposed Zoning Map Amendment complies with the Master Plan which is not the case. The Planning Board never made such a finding.</p>
<p>Charter Section C6-40-10</p>	<p>Opponents were denied a meeting with the Planning Board before it rendered its decision on the Redniss Zoning Application due to the fact that (1) the Application was materially misrepresented to the neighbors; (2) Redniss concealed from both the neighbors and the Boards the true purpose of the Application - height and bulk relief for Cullman/Kirby; (3) although it was represented to the Boards that the neighbors received Redniss' October 10, 2013 letter that was not the case as Redniss has subsequently admitted; and (4) Redniss falsely implied to the Planning Board that the owners of the properties to be re-zoned agreed to the Application which was not the case. First, the owners of the property at 102 never agreed, and second, there is no agreement under the law when one party withholds or conceals material information from the other party as occurred in this case.</p>
<p>Charter Section C6-40-5</p>	<p>The Zoning Board's referral did not include written findings, recommendations and reasons, a prerequisite pursuant to the City's Charter C6-40-5 before an amendment to the zoning map amendment can be referred to the Board of Representatives.</p>
<p>Charter Section C5-20-17 Oath of Elected and Appointed Officers</p>	<p>Many elected and appointed officers have failed to discharge the duties of their office in this matter according to law.</p>

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The Redniss Proposed Zoning Map Amendment is also inconsistent with the Guidelines for Zoning Amendments. The primary reason for the Redniss amendment, as disclosed in his October 10th cover letter to the Zoning Application, is to increase the height and bulk 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.

In this case, the opponents had to deal with a random set of governing laws. As discussed above the Boards completely ran afoul of the requirement of the Charter for amendments to the zoning map and changed the rules for the Land-Use Committee's public hearing at will as discussed below. Also, the Zoning Board and Land Use Committee conducted the review of the Redniss Application as administrative agencies not as legislative bodies. Consider:

- (a) The Co-Chair of the Board of Representatives stated unequivocally that the Board of Representatives was not acting in a legislative capacity in approving or rejecting the Zoning Board's decision to approve the Redniss Application, as modified.
- (b) Redniss, the applicant, stated to the Boards that the Boards could only eliminate properties from his Application; the Boards could not add properties to the proposed zoning change.
- (c) Jay fountain, a Land Use Committee member, stated during the Land-Use Committee's deliberations that: "Once 71 said no, [the Zoning Board] could not include other properties."

Simply stated, what was characterized as a zoning map amendment was in fact a site-specific review application - a particular decision about a particular project at a particular place (i.e., 74 Saddle Rock Road) – and, as noted above, the review was conducted as a site-specific review situation.

Board of Representatives' Jurisdictional Issues

Summarized in the attached Exhibit A are the jurisdictional issues I requested Corporation Counsel to advise Board of Representatives on before the Board votes on April 7th. As President of the Board of Representatives and a Connecticut attorney, you have a duty to make sure the Zoning Board and Board of Representatives act within their jurisdictional authority which will not be the case if Redniss' Proposed Amendment to the Zoning Map is approved.

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Constitutional Violations

It is illegal for the Zoning Board or the Board of Representatives 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.

Further, the Redniss' Application violates the uniformity requirement within districts. (See Charter Section C6-40-1) 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.

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". See *Mackenzie v. Planning and Zoning Commission of the Town of Monroe*, 146 Conn. App. 406 (2013).

Due Process Violations

The due process violations are numerous as well. The Zoning Board and the Co-Chairs of the Land Use Committee intentionally and wrongfully prohibited the opponents from speaking on the criteria set forth in the City's Charter for amendments to the zoning map, to include, flooding concerns in this high hazard coastal flood area. The Co-Chairs of the Land Use Committee intentionally and wrongfully limited the opponents' right to speak at the public meeting (see videos of Land-Use Committee's meetings); and apparently there were secret meetings with Mr. Redniss given that Mr. Redniss knew he was not going to be able to present at the March 11th public hearing. The Planning Board Chair failed to take corrective action once she learned, *inter alia*, about the deception visited upon the opponents to the zoning amendment and the false statements Mr. Redniss made to her Board (See Opponents' Exhibit 2 entered into the record at the March 11th public meeting).

Further evidence of the conduct that occurred in this case and is prejudicial to the administration of justice, includes: (1) the undue pressure put on Mr. Wood to draft the so-called "Staff Report" not in accordance with the law, but based on the false premise that the neighbors supported Redniss' amendment to the zoning map; (2) the failure of the Board of Representatives to disclose that the Land use Committee's reports are not minutes approved by Committee members, but are document drafted and edited behind closed doors by undisclosed individuals; and (3) the unreasonable reliance by some

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Planning and Zoning Board members and Land Use Committee members to rely on Mr. Cole and Mr. Redniss, both non-attorneys and conflicted, to interpret and apply the City Charter and Zoning Regulations for such members in this matter.

Redniss' Unlawful Three Step Scheme

Mr. Redness' application to change the zone from R-20 to RA-1 for six waterfront properties is only the groundwork for the eventual variance application to construct a four story building, as he has depicted all along during these proceedings, and then run roughshod, without opposition from the neighbors, over the flooding issues during the Coastal Area Management Act ("CAM") review.

Redniss' clever, but unlawful, scheme, implemented with the help of the City's Land Use Bureau, successfully lulled a willing Zoning Board and three members of the Land Use-Urban Development Committee of the Board of Representatives ("Land-Use Committee") into believing that (i) the FEMA height issues in this high hazard coastal flood area are resolved with the proposed zone change, and (ii) all concerns with regard to flooding on the surrounding areas could be addressed in the CAM step of Redniss' three step procedural scheme.

However, the willing Zoning Board and three members of the Land Use Committee failed to understand that during the zone change application, Redniss' proposal is subject to the Zoning Board's and BOR's broad legislative powers and discretion as opposed to the Zoning Board of Appeals' and Zoning Board's limited and narrow review of a variance or a CAM review, respectively.

Redniss' argument (which is contrary to the law and the City's Charter) that the zone change application is a preliminary and insignificant step and that to require more information during this initial and inconsequential step was putting the cart before the horse distracted the Zoning Board and the three members of the Land-use Committee from realizing that failing to consider the overall impact of the zone change on the surrounding homes and neighborhood would be like closing the stable doors after the horse had bolted.

Conclusion

Harry Day, the Co-Chair of the Land Use-Urban Development Committee of the Board of Representatives, said that the Opponents of the Proposed Zoning Map Amendment cannot contact the members of the Board of Representatives prior to the April 7th vote to apprise them, among other things, that the Redniss' Proposed Zoning Map Amendment was not designed to achieve a legitimate police power purpose but to advance the purely private interest of Cullman/Kirby. It was not proposed in furtherance of the comprehensive plan and was designed in an unreasonably discriminatory manner.

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One of the many purposes of this letter is to determine if you agree with Mr. Day about the Opponents' rights to contact members of the Board of Representatives. Please let me know via email as soon as possible if the Opponents to the Redniss' Proposed Zoning Map Amendment are permitted to discuss the Proposed Zoning Map Amendment issues with the members of the Board of Representatives. I have asked Kathryn Emmett, Corporation Counsel, the same question but she has not responded and time is running out.

For your information I will forward you a copy of the letter I sent Mr. Mills, Chair of the Zoning Board on March 31, 2014, regarding this matter.

If you need additional information or have any question, please do not hesitate to contact me. I would appreciate it if you would distribute the letter to the other members of the Board of Representatives.

Sincerely,


KAREN A. MURPHY

cc: Kathryn Emmett, Corporation Counsel (via email)
Thomas R. Mills, Chair of Zoning Board (via email)
Theresa Dell, Chair of the Planning Board (via email)

P.S. If Mr. Mills and Ms. Dell would share this letter with their respective board members, I would appreciate it.

EXHIBIT A: Jurisdiction Issues

The Planning Board, Zoning Board and Board of Representatives lacked jurisdiction to consider Mr. Redniss' Zoning Application 213-33, a proposed Zoning Map amendment to change the district for six waterfront properties located on Saddle Rock Road from R-20 to RA-1, for one or more of the following reasons:

- (a) Pursuant to Charter Section C6-40-4 only property owners and government officials may file a written application with the Zoning Board for an amendment to the Zoning Map. According to the City's tax records, Mr. Redniss, the applicant here, is not a property owner; and he is not a government official.
- (b) The Zoning Board's referral did not include written findings, recommendations and reasons, a prerequisite pursuant to the City's Charter C6-40-5 before a Zone Map amendment can be referred to the Board of Representatives.
- (c) Charter Section C6-30-3 requires that the Master Plan "show the **division of Stamford into land use categories** such as....
 - 3. Residential—single family plots one acre or more.
 - 4. Residential—single family plots less than one acre..."

The Master Plan uses land use category "#1 Residential" for zone districts one acre or more (i.e., RA-1, RA-2 and RA-3) and "#2 Residential" for zone districts less than one acre (i.e., R-20, R-10 and R-7 1/2.)

Charter Section C6-40-3 provides that: "The Zoning Map shall not be amended by [the Zoning] Board to permit a use in any area which is contrary to the **general land use established** for such area by the Master Plan." Therefore, the Boards did not have authority to consider the Redniss' proposed Zoning Map Amendment because, as required by Charter Section C6-40-3, the Master Plan was not amended to change the general land use established, #2 Residential, for the six properties currently in a R-20 district to #1 Residential for RA-1 districts.

- (d) The Zoning Board and the Board of Representatives lack the authority to grant variances via map amendments. As disclosed in the Planning Board's audio for this matter, Mr. Redniss' initial scheme was to change the zone only for Cullman's/Kirby's two adjacent properties on Saddle Rock Road in order to achieve the height and bulk desired changes without going through the Zoning Board of Appeals. Mr. Redniss stated that after purchasing one of the most expensive properties in the City, Susan Cullman and John Kirby should not have to "beg for a variance" from the Zoning Board of Appeals. Mr. Cole, the City's Land Use Bureau Chief, apparently agrees and described the ZBA as a "quirky board" (i.e., eccentric, peculiar, unpredictable, odd).