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Via U.S. Mail and Email

Virgil de la Cruz and Charles Pia, Jr., Co-Chairs
Land Use-Urban Redevelopment Committee
Stamford Board of Representatives
888 Washington Boulevard, 4th Floor
Stamford, CT 06901

Re: Agenda Item LU30.014, Verification of Signatures for Petitions

Dear Co-Chairs de la Cruz and Pia:

This office represents Riverturn Condominium Association, Inc., Turn of River Road, Stamford, Connecticut ("Condominium Association"), as well as unit owners Peter and Yolanda Licopantis, who live in Unit #13B of the Condominium Association.

On May 22, 2018, the Zoning Board of the City of Stamford ("Zoning Board") voted to approve the proposed zoning text changes so as to allow Lifetime Fitness to utilize the High Ridge Park premises as a potential site for a fitness center. The residents within the surrounding residential neighborhood, comprised of both single-family homes and multifamily common ownership interest facilities, expressed their concerns over anticipated dramatic increases in traffic on the narrow and limited access roads to Long Ridge Road as a result of the proposed zoning change. The residents sought to have the Zoning Board's decision reviewed by the Land Use Committee of the Board of Representatives.[1] This is a right granted to residents to redress their government leaders by the City of Stamford Charter ("City Charter").

Pursuant to City Charter Section C6-40-9, the initial petitioners were informed by the City's Land Use Bureau that the proposed zone change was deemed Citywide, and thus, three hundred (300) signatures would be required for the Petition. C6-40-9 provides that the number of signatures required on any such written petition "that applies to two or more zones, or the entire City, [requires] the signatures of at least three hundred (300) landowners…and such signers may be landowners anywhere in the City."

[1] To challenge the proposed amendment to the Zoning Regulations, Article III, Section 9-BBB(C-D designed commercial district) to create definitions for "new development", "adaptive re-use", and "redevelopment" in the C-D zone; allow a Gymnasium or Physical Culture Establishment in the C-D zone following special exception approval of the Zoning Board; create new standards for commercial special exception uses in the C-D zone and require certain findings relating to lighting, screening, noise and sight plan design to be made before a commercial special exception use may be approved in the C-D zone.

On June 28, 2018, City Attorney Valerie T. Rosenson, Esq., issued an opinion to co-chairs Virgil de la Cruz and Charles Pia opining that the Petition seeking review by the Board of Representatives was flawed, in part, due to co-owners of property not signing, but most importantly, upon an incorrect conclusion condominium unit owners did not qualify as landowners under the City Charter, and also reaching the incorrect conclusion that even if they did qualify, all of the units within a condominium would only count as one (1) vote for the purposes of the three hundred (300) signatures required for the Petition. Our office writes to you to show that the City Attorney's conclusions are incorrect and the Board of Representatives should consider this Petition.

The Stamford City Charter appears to utilize the term "owner" and "landowner" interchangeably. The term "owner" appears in numerous places in both the Charter and the Code of Ordinances. In none of the situations would it make any sense, when those terms are used, to exclude condominium unit owners[2]. In the definition section of the Stamford City Charter, Section 1-12, "Owner" is defined as follows: "As applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership, or joint tenant of the whole or of such part of such building or land."

Connecticut law, and in fact City of Stamford procedures, already deem condominium unit owners as landowners. Pursuant to C.G.S. 47-202(10), "Condominium" means a common interest community in which portions of the real property are designated for separate ownership and the remainder of the real property is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners. C.G.S. 47-204 in turn provides that each condominium unit vested with a proportional interest in common elements shall be treated as a separate piece of parcel by the municipality for both land title purposes and taxation. Stamford recognizes this law and each condominium unit, which was a party to this Petition, receives separate tax bills from the City. Additionally, each of these units received their own notice of the proposed zoning change.

The Connecticut Courts, consistent with the Connecticut Statutes, have emphatically determined that a condominium unit owner is a person owning land. Such ownership interest, in turn, provides that landowner with standing to allege they are aggrieved and to pursue appeals to Court from decisions of zoning agencies. See: *Slade v. Zoning Board of Appeals of the Town of Branford*, 1995 WL681661 (1995). Under Connecticut's condominium law, a common interest community means that the common elements are vested in the "unit owners". Condominium ownership does not fall neatly into the proportional land interest ownership, as the City Attorney's office might suggest. C.G.S. 47-202(a) makes it clear that common elements are

[2] For example, see Section 160-5 requiring a letter to landowners, as listed on the Grand List, within a 500 foot radius of the property boundaries, for a proposal for a microwave transmittal tower. Would the City not require the notice be sent to condominium unit owners? Of course not.

designated for common ownership by the unit owners. Owing an undivided interest in a common element is equivalent of owing land, under Connecticut law, this court properly held. As such, a condominium unit owner has a right to assert a traditional zoning appeal that goes directly to the courts. Why would an appeal to the Board of Representatives be any different?

The clear answer to the question before this Committee can be found in the case of *Stamford Ridgeway Associates v. Board of Representatives of the City of Stamford*, 214 Conn. 407 (1990). This case dealt specifically with the rights conferred upon property owners under the City of Stamford's Charter. The background of this case was a proposed zone change that included multiple amendments throughout the City. The opponents to the petitioners who were seeking review of the zone change by the Board of Representatives claimed that a petition would have had to have been filed for the requisite property owners around each impacted zone change in order to allow a review by the Board of Representatives and that the Board of Representatives could only review the entirety of the proposal and not parse out each zone change. In an emphatic rejection of those arguments, the Connecticut Supreme Court made the following observations with respect to the right to petition the Stamford Board of Representatives for a review of the Zoning Board's actions.

- When acting on such matters, the Board of Representatives is guided by the same standards as the Zoning Board. It is acting in its own legislative capacity and is not bound by the decisions of the Zoning Board. *Id* 422

- The City Charter must be construed, if at all possible, so as to promote its ultimate purpose. *Id* 423

- In arriving at the intention of the framers of the Charter, the whole and every part of the instrument must be taken and compared together. Words should be given their normal intent. *Id* 423

- The real intent vs. literal interpretation of the words should be followed. *Id* 424

- Words are to be used in their context to avoid mischief. *Id* 424

- The language employed must be given its plain and obvious meaning. Word should not be arbitrarily added or subtracted from those employed. *Id* 424

- When interpreting the Charter you must avoid reaching a conclusion that would lead to a bizarre or irrational result or frustrate the purposes of the Charter. *Id* 426

- If the arguments of the opponents, in this case prevailed, it would have been impossible for the landowners to obtain enough signatures to petition the Board of Representatives. *Id* 426

- Such a holding would enable a municipal agency to ensure passage of a highly objectionable zoning amendment by simply combining it with another large unobjectionable amendment. A statute must not be construed in a manner that would permit its purpose to be defeated. *Id* 426

- No zoning statute should be interpreted in a way to thwart its purpose. *Id* 426

- In construing a statute, common sense must be used with an assumption that the legislature intended to accomplish a reasonable and rational result. Again, absurd consequences and bizarre results are to be avoided. *Id* 427

- A construction of a term within the Charter that would limit the right of property owners to petition the Board of Representatives would be in contravention of the legislative intent and purpose of the City Charter intended to provide landowners with a right to appeal to the Board of Representatives. *Id* 428

- It must not be overlooked that in most jurisdictions the interest of property owners in the stability and continuity of zooming regulations is protected by affording them not only an opportunity to appear at public hearings, but also to protest specific changes in a formal manner.[3] *Id* 428

- The Court ultimately concluded that the Charter's purpose was to give a right to land owners to protest proposed zone changes. *Id* 430

So while the *Stamford Ridgeway Associates* case did not deal specifically with the issue of who was a "landowner", it has the strongest language possible of what the intent of the City Charter was, and that was to give the right of redress to disgruntled property owners concerning zone changes in their neighborhood that might impact their lives and their property. Concluding that condominium unit owners are not landowners is not only against Connecticut Law, but it is also against Connecticut policy and the purpose and intent of the City of Stamford's Charter.

In the case of *AEL Realty Holdings Inc. v. Board of Representatives of the City of Stamford*, 82. Conn. App. 613 (2004) and Connecticut Appellate again reiterated the normal rules of statutory construction apply to discerning the meaning of Stamford's City Charter. In so holding, the Court concluded that explicit words govern, and the language employed must be given as plain and obvious meaning. The Court went on to hold that the Stamford Charter language could not be expanded upon to empower the Board of Representatives to modify a zoning proposal that had been brought before them because that language is simply not in the

[3] What the Court was saying was that the right of a group of property owners to challenge the zone change immediately in their neighborhood should not be impacted or constrained by their inability to get signatures challenging another zone change proposed at the same time in a different section of town.

Charter. Similarly, the Board of Representatives here cannot add requirements to the language of the Charter granting the right to petition to any landowner. The term "landowner" is not ambiguous and has already been clearly established by Connecticut law to include condominium unit owners. This Board of Representatives cannot add requirements to the language to impose impediments upon landowners petitioning the Board of Representatives.

So, you ask, how could the City Attorney's office get it so wrong? The answer is fairly simple. Where the City Attorneys' office went off track is when they failed to distinguish that both the Connecticut and New Jersey decisions they relied upon concerned a requirement that the land had to vote for something or petition for something which was a distinctly different analysis than when an ordinance, rule, regulation or Charter gives the right to a ***landowner*** to petition for something. In the later situation, the only test is whether or not the petitioner is a "landowner". The test is not whether the totality of the land had voted its interest, nor whether the totality of the land is for or against something. They have committed the sin that our Supreme Court preached against, and that is, not to add words that are not in the City Charter, and not to reach a conclusion that amounts to an absurd result. Depriving ~36% of single family unit owners the right to petition for redress has to be concluded as nothing but an absurd result.

To illustrate that the *Jennings* and *Gentry* decisions do not apply to the issue now before the Board, consider the following. In *Jennings v. Borough of Highlands*, 418 N.J. Super. 405, 13 A.3d 911 (App. Div. 2011), the petition threshold was "sign[ature] by the owners of 20% or more *of the area* either (1) of the lots or land included in such proposed change, or (2) of the lots or land extending 200 feet in all directions therefrom." 418 N.J. Super. at 420, 13 A.2d at 920 (emphasis added). The signature requirement, in other words, was not measured by the number of landowners, but the area they accounted for. For this purpose, there is some logic to looking at whether an individual condominium unit owner's interest in land is equivalent to the full area of the common interest community. But no such logic applies where the petition threshold is expressed, as it is here, in terms of "signatures of at least three hundred landowners … anywhere in the City." Charter Section C6-40-9.

Similarly, in *Gentry v. Norwalk*, 196 Conn. 596 (1985), the question was how to allocate votes to condominium unit owners in a referendum on historic district designation. In that case, however, the statute itself contained a crucial hint. It did not speak to common-interest communities as such, but it did link voting power to proportional land ownership, providing that "[a]ny tenant in common of any freehold interest in any land shall have a vote equal to the fraction of his ownership in said interest." 196 Conn. at 610. The Court also took pains to explain that the historic district statute imposes area-wide limitations, "focuses not on people but on buildings, structures, places or surroundings [and] … can fairly be denominated as 'site' oriented." 196 Conn. at 607. For this purpose and in this context, the Court concluded that

individual condominium unit owners should be treated like tenants in common and permitted a vote in proportion to their "fractions of ownership" of the property under common ownership – that is, 1/67 of a vote. This reasoning does not apply to Stamford's ordinance, which defines the petition threshold as a specific number of signatures by "landowners."

Our office is also in possession of the opinion letter of Attorney William Hennessey. What Attorney Hennessey, on behalf of the Applicant, claims is long standing precedent, in fact is a combination of lower Court decisions extrapolated to an improper result, and aforesaid Appellate Court decisions which in fact do not support the arguments he makes. The simple reality is that no Connecticut Superior or Appellate Court has decided the issue of whether or not a condominium owner is a "landowner" for the purposes of obtaining 300 landowners' signatures to petition the Stamford Board of Representatives. The requirement for obtaining the signatures of a percentage of ownership of land is different than obtaining simply the signature of a landowner. It is the later which the City Charter requires for the issue now before this Board of Representatives, though I fully appreciate why Attorney Hennessey doesn't want to see the matter reviewed by the Board of Representatives. Attorney Hennessey should not be so quick to mock the concept of "fairness" when in fact that is exactly the intended policy of the City Charter and the requirement imposed upon it by the State Supreme Court. Fairness, so as to avoid disenfranchisement of landowners of their right to seek redress over disagreements with zoning changes is exactly what the City Charter allows, and exactly what the landowners are entitled to.

Our case can only be based upon the Stamford City Charter language that only requires that the signatory be a landowner. It does not require that a percentage of all landowners' sign, nor that all fractional landowners sign. It is a distinction that at first may seem hard to grasp but it is really pretty black and white when you think about it. These condominium unit owners are seeking to redress their grievances with their government. They are not voting for, or against, something. It is only the Board of Representatives that can, in turn, vote for or against the proposed zoning amendment. They just want to the Board to consider the issue.

The City of Stamford's Assessor's Office reports that as of 2018, there are over 11,500 condominium units in the City of Stamford representing 12.6% of the City's tax base. This compares to over 18,400 single family homes representing approximately 42% of the City's tax base. Thus, the City Attorney's Opinion Letter proposes to disenfranchise approximately 36% of the single family homeownership units from having any practical remedy to seek a petition to the Board of Representatives to review a proposed zone change. This can only be concluded as an absurd result, not envisioned by the drafters of the Stamford City Charter[4].

[4] The City Assessor also reports 7,000 multi-family units representing 5.7% of the City's tax base; 11,900 apartment units representing 10% of the City's tax base, and 2,000 commercial, industrial or public utility properties representing 27.3% of the City's tax base. There is a miscellaneous category of 2.3% identified as well.

In conclusion, we hope that you will agree with us that this Petition must be considered by the Board of Representatives.

Very truly yours,

Edward P. McCreery III

EPM:ama
Enclosure