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July 6, 2018

Via Certified Mail and E-Mail
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 Opposing Text Change to Zoning Regulations Art. III, Section 9, BBB. C-D Designed Commercial District ("Lifetime Fitness")

Dear Co-Chairs de la Cruz and Pia:

My office represents Hank Cuthbertson and other members of the Sterling Lake Homeowners Association (the "Petitioners"). The Petitioners own property adjacent to that affected by the above change to the Zoning Regulations adopted by the Stamford Zoning Board, which would permit indoor and outdoor fitness complexes such as "Lifetime Fitness" centers in office parks in each of Stamford's C-D zones (the "Text Change"). On June 4, 2018, Petitioners filed with the Zoning Board timely petitions containing 696 signatures of Stamford citizens opposing the Text Change, pursuant to section C6-40-9 of the Charter (the "Petitions"). On June 6, 2018, the Zoning Board referred the Petitions to the Board of Representatives. I understand that the Petitions are scheduled to be discussed at the July 10, 2018 meeting of the Land Use Committee. I also understand that a member of my firm will be given time to speak at the July 10 meeting on behalf of the Petitioners. In advance of the July 10 meeting, below please find Petitioners' written submission regarding the verification of signatures.[1] Respectfully, the nearly 700 Stamford citizens who signed the Petitions should have their votes counted and their voices heard, because the Petitions more than meet the Charter's requirement that they contain "the signatures of at least three hundred landowners...anywhere in the City."

A June 28, 2018 memorandum from Valerie Rosenson, relying on a June 27, 2018 memorandum from Attorney James Minor (collectively, the "Memoranda"), contend that about 340 of the 700 signatures should not be counted for various

[1] Petitioners will address the substance of their opposition to the Text Change separately.

reasons. The Memoranda concede that there are a total of at least 360 valid signatures that should count toward the required number of signatures, 60 more than the 300 required by the Charter. But the Memoranda claim that of those 360 signatures, only 120 of them should count as a full signature and 240 of them should be counted as only one-half of a signature, such that the Petitions should be considered to contain only 240 signatures and thus fall 60 short of the total required. The Memoranda reach this strange and flawed conclusion by, among other things: (1) counting the signature of a person who owns property along with a spouse or other co-owner as only half a signature, without any basis in the Charter or case law to do so; (2) entirely disenfranchising anyone who signed the Petitions unless every cowner of the property signed; and (3) entirely disenfranchising every one of the 160-plus owners of condominium units who signed the Petitions.

The Memoranda's conclusions make no sense as a matter of law, logic, or mathematics, and would disenfranchise hundreds of Stamford citizens who have expressed their strong opposition to the Text Change. If adopted, the Memoranda's reasoning would also set the arbitrary, untenable, and discriminatory precedent that owners of condominium units in Stamford – perhaps thousands of voters – are not entitled to a say in land use matters that directly affect their property and their neighborhoods. For the reasons explained below, the Petitions contain more than the requisite number of signatures, and the Petitions should be decided by the full Board of Representatives on their merits, by an up or down vote – not on the basis of flawed purported procedural requirements imposed after the Petitions were submitted.

I. The Charter Requirement of "Signatures of...300 Landowners... Anywhere in the City" Means Just That, and Cannot Be Reworded as the Memoranda Suggest to Instead Require "Signatures Representing All Owners of 300 Non-Condominium Properties"

The Memoranda do not quote the full text of Section C6-40-9 of the Charter, which provides the necessary context for the analysis:

> [I]f following a public hearing at which a proposed amendment to the Zoning Regulations, other than the Zoning Map was considered, a petition is filed with the Zoning Board within ten days after the official publication of the Board's decision thereon opposing such decision, such decision with respect to such amendment 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 any 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 by 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. ***The number of signatures required on any such written petition shall be one hundred,*** or twenty percent of the owners of privately-owned land within five hundred feet of the area so zoned, whichever is least, ***if the proposed amendment applies to only one zone.*** All signers must be landowners in any areas so zoned, or in areas located within five hundred feet of any areas so zoned. ***If any such amendment applies to two or more zones, or the entire City, the signatures of at least three hundred landowners shall be required, and such signers may be landowners anywhere in the City.***

(Emphasis added.) Thus, if a text change applies to only one zone, "***the number of signatures required***" on a protest petition ***"shall be one hundred,"*** where all "signers" are landowners within 500 feet of the area so zoned, or alternatively, the protest petition may be signed by a total of "twenty percent of the owners of privately-owned land within five hundred feet of the area so zoned," whichever is least. Thus, unless petitioners are seeking to meet the Charter requirement by the alternative means of obtaining signatures representing "20% of the owners" of nearby properties, the Charter specifically keys the requirement to "the number of signatures" obtained, which in the case of a text change affecting only one zone is 100.[2]

[2] Allowing petitioners to meet the Charter requirement based on "whichever is least" between the two signature requirements where only one zone is affected is an example of the Charter clearly expressing an intent to be expansive and inclusive, rather than restrictive, in order to "effectuate the ultimate charter purpose [of] giving the right to landowners to protest proposed [text] changes." *Stamford Ridgeway Assocs. v. Bd. of Representatives of City of Stamford*, 214 Conn. 407, 430 (1990).

Similarly, where a text change applies to two or more zones or the entire City, the Charter provides that a valid protest petition need only contain "***the signatures of at least three hundred landowners***," and that "***such signers may be landowners anywhere in the City***." (Emphasis added.) Thus, the Charter again focuses on the number of signatures required on a protest petition and the individuals who sign it, by providing that the "signers" may be "landowners" anywhere in Stamford. The Charter's parallelism between the requirement of 100 signatures where the text change affects one zone and 300 signatures where it affects more than one zone could not be clearer; there is no indication that the intent of the Charter was to interpret the 300-signature requirement differently from the requirement of "100 signatures."

Moreover, the Charter specifically contemplates that each "signe[r]" will be himself or herself a "landowner" – not that each signer may or may not be a "landowner" depending on whether there are other "landowners" who jointly own a property with him or her. "Landowner" is not defined in the Charter, but Merriam-Webster's Dictionary defines it as simply "an owner of land." Certainly in plain language, a person who jointly owns property with his or her spouse would consider each of them to be an "owner of land, i.e., a "landowner." Accordingly, under the plain language of the Charter, so long as the Petitions contain at least 300 signatures (which they do) of "landowners" in Stamford (which they do), the Petitions are valid. Indeed, by the Memoranda's own admission, the Petitions contain ***360 valid signatures of individual owners of land in Stamford***. That should be the end of the matter.

The Memoranda, however, ignore the plain language of the Charter and engage in a tortured analysis to attempt to show that "300 signatures" means something other than "300 signatures." First, the Memoranda argue that the Charter contains an unwritten requirement of signatures representing *all of the owners* of 300 *properties*. In other words, according to the Memoranda, if 300 people signed protest petitions, but each of them co-owned a property with another owner, then 600 signatures would be required as opposed to 300, because the co-owners of each of the properties would have to sign as well, and each of the co-owner's "signatures" would not be a signature but only one-half of a "signature." That argument has no basis in the Charter or case law.

The Memoranda insist that because the "signers" must be "landowners," that all of the owners of a particular property must sign the petition in order for a particular signer to be a "landowner." That does not make sense. Again, the Charter

contemplates that each "signer" will be a "landowne[r]...anywhere in the City." Take the scenario where a husband and wife both own a property in Stamford jointly, and both sign the protest petition – first the wife, then the husband. Under the reasoning in the Memoranda, at the moment the wife signs the petition, she is not a "landowner" and her signature is not valid. But absurdly, once the husband signs, then the wife suddenly becomes a "landowner," her husband is also a "landowner" because his wife has previously signed, and both the husband's and wife's signatures are valid.

Yet where the logic of the Memoranda truly breaks down is how they treat the number of signatures where multiple co-owners of property sign. The Memoranda conclude, without any support in the Charter, that when there are two co-owners of Property who both sign a protest petition, each co-owner's signature only counts as half a signature toward the requirement of 300 signatures. Accordingly, the Rosenson Memorandum states (at 4) that "240 signers were determined to be joint landowners of 120 parcels of land in the City of Stamford, constituting 120 landowners." According to the Memoranda, then, the Charter does not require 300 signatures of landowners – it requires 300 signatures of sole owners of property. The Memoranda attempt to add a clause to the Charter that is not there, which would say something like "in the event a property is owned by two or more owners, the signature of each such owner shall count only for a proportional fraction of a signature."[3] That is not the law.

The case law cited in Attorney Minor's memorandum does not support its conclusions. The memorandum does not cite a single case interpreting the "300 signature" requirement in the Charter or the meaning of "landowner" in that provision. In fact, all of the cases that Attorney Minor cites involve the separate and distinct "20%" requirement, such as the alternative Charter requirement of "twenty percent of the ***owners*** of privately-owned land within five hundred feet of the area so zoned," which involves an entirely different analysis that does not apply here.[4] Of

[3] The drafters of the Charter surely knew how common it is for properties to be owned jointly by spouses or otherwise, and if they had chosen to do so, they could easily have provided for joint owners to each have fractional signatures; instead, the drafters chose not to make such a distinction.

[4] *See Stamford Ridgeway*, 214 Conn. 407 (interpreting 20% requirement in prior version of Charter); *Woldan v. City of Stamford*, 22 Conn. Supp. 164 (1960) (same); *Warren v. Borawski*, 130 Conn. 676 (1944) (interpreting 20% requirement in New Britain ordinance); *Civitello v. Milford Planning & Zoning Bd.*, 1990 WL 289549 (Conn. Super. Ct. June 26, 1990) (interpreting 20% requirement in Conn. Gen. Stat. § 8-3(b)); *Colby Assocs. v. East Haven Planning & Zoning Comm'n*, 1993 WL 224989 (Conn. Super. Ct. June 17, 1993) (same).

course, where the Charter or another statute requires a certain percentage of all the "owners" of an area of property, it makes some sense that the Charter (and case law) would require all owners of a particular property to have signed the petition to count that property in calculating whether signatures representing 20% of the applicable *properties* have been obtained. Indeed, the Charter intentionally uses the word "owners" when discussing the 20% requirement, but "landowners" when discussing the requirement of 100 or 300 signatures. "The use of the different terms within the same statute suggests that the legislature acted with complete awareness of their different meanings and that it intended the terms to have different meanings." *Felician Sisters of St. Francis of Connecticut, Inc. v. Historic Dist. Comm'n of Town of Enfield*, 284 Conn. 838, 850 (2008) (quoting *Hasselt v. Lufthansa German Airlines*, 262 Conn. 416, 426 (2003)).

In the case of the 100- and 300-signature requirements, however, where the Charter focuses on the number of signatures, it would make no sense to calculate half-signatures where there are two owners of a property, 1/3 signatures where there are three owners, etc. Rather, the logical reading is to follow the plain language of the Charter: (1) are there three hundred signatures on the petitions? (2) If so, is each "signer" a "landowner" in Stamford, i.e., does each own (either individually or jointly) real property in Stamford? This interpretation is not only more logical and easier to administer, it serves the very important goal of enhancing, rather than limiting, citizens' right to petition their government regarding zoning issues that they care deeply about. *See Stamford Ridgeway Assocs. v. Bd. of Representatives of City of Stamford*, 214 Conn. 407, 430 (1990) (emphasizing "the ultimate [C]harter purpose [of] giving the right to landowners to protest proposed [text] changes").

By contrast, the Memoranda's unreasonably restrictive interpretation of the 300-signature requirement would frustrate the ability of laypersons to assemble the requisite number of signatures. Rather than needing to seek 300 signatures, the Memoranda would interpret the Charter to require petitioners to obtain many more than 300 signatures (given the frequency with which properties are owned by more than one person), and would also require petitioners (and the Board of Representatives) to conduct exhaustive research on the ownership of each property represented to determine whether there were additional owners, whether each of them signed, etc., at the risk of the signatures being entirely invalidated. That is not only contrary to "the ultimate Charter purpose of giving the right to landowners to protest proposed text changes," it is undemocratic, and this Committee should not allow it.

II. There Is No Basis to Disenfranchise Over 160 Condominium Unit Owners

It is clear that where petitioners protest a text change affecting more than one zone or the entire City, the Charter requires only the signatures of "300 landowners...anywhere in the City." There is no exception in the Charter stating that if the landowner who signs happens to be a condominium owner, then all owners in the condominium development must sign and they collectively count as only one vote. That, however, is the position taken by the Memoranda. Under the Memoranda's interpretation, if two owners of property in Stamford sign a petition – one who owns a 2000-square foot house and the other a 2000 square-foot house that happens to be part of a condominium development with 49 other such houses – the house owner has a valid signature but the condominium-house owner does not. In fact, according to the Memoranda, all 50 of the condominium owners ***combined*** only have a total of one vote, if they all sign the petitions; and if just one fails to sign, they have no vote at all.

The Memoranda base this interpretation on a tortured analysis of the word "landowner" in the Charter. But in doing so, the Memoranda ignore the plain language of the controlling state statute establishing condominiums, the Common Interest Ownership Act, which states clearly that:

> ***In a condominium or planned community...each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.***

General Statutes § 47-204(b)(1) (emphasis added). The Act goes on to confirm that condominium units are each separately subject to their own real property tax, just like non-condominium parcels of real property. *Id.* § (b)(2). Of course, as "a separate parcel of real property" "for all purposes," condominium units are transferred by deed just like other real property parcels, and can be mortgaged and foreclosed on separately like other real property parcels. Dictionary definitions of "real property" confirm that it is synonymous with "land." *See* Merriam-Webster Dictionary (defining "real property" as "property in buildings and land"); Cambridge Dictionary ("land or buildings that someone owns"); Collins English Dictionary ("Real property is property in the form of land and buildings, rather than personal possessions."); Dictionary.com ("an estate or property consisting of lands and of all appurtenances to lands, as buildings, crops, or mineral rights (distinguished from personal property)"). Accordingly, the General Statutes provisions that render a

condominium unit owner an owner of "a separate parcel of real property" "for all purposes" necessarily make each unit owner a "landowner."

Even if "land" were narrowly construed as meaning only the dirt on which the buildings rest, the Memoranda concede that condominium owners own an undivided interest in the "land" along with other condominium unit owners. Thus, because each unit owner is an "owner of land," each is a "landowner" under the Charter, and the signature of each condominium unit owner is the signature of a "landowner."

The Memoranda principally base their argument for the disenfranchisement of condominium unit owners on a case from New Jersey involving a totally different statute and, again, a 20% of adjoining *properties* requirement. Even if a New Jersey case could be relevant to the interpretation of the Stamford Charter, the New Jersey case cited in Attorney Minor's memorandum is irrelevant because, like all of the authorities cited by Attorney Minor, it does not construe a statutory provision that focuses on the number of signatures obtained and allows the signature of any landowner in the city to count toward the total number of signatures required.

The only Connecticut case that Attorney Minor cites, *Gentry v. City of Norwalk*, 196 Conn. 596 (1985), is not applicable here at all. That case involved the interpretation of a very different statute involving votes on the creation of a historic district, which did not use the term "landowner" or require a specific number of signatures. Crucially, the statute, unlike the Stamford Charter, specifically provided that those who are deemed to own a proportional interest of a property may only vote in proportion to their interest:

> Only an owner...may vote.... Any tenant in common of any freehold interest in any land shall have a vote equal to the fraction of his ownership in said interest. Joint tenants of any freehold interest in any land shall vote as if each joint tenant owned an equal, fractional share of such land.

Conn. Gen. Stat. Ann. § 7-147b. The Supreme Court in *Gentry* never held that a condominium unit owner was not a "landowner" as that term is used in the Charter, or anything close to that proposition. Rather, because the statute specifically provided that persons with a fractional ownership interest in a property (such as tenants in common) should get a fractional vote, therefore, under that specific statute, the Court agreed "that each condominium owner is entitled to a fractional vote in the

referendum permitted under § 7–147b." 196 Conn. at 604. Thus, the legislature in the historic district statute did precisely what the drafters of the Charter could have done, but purposefully did not do here: provide that the votes of individual owners of jointly owned properties would count for only a fraction of a vote. Moreover, the Court in *Gentry* did not say that none of the unit owners' votes could count unless all of them voted, as the Memoranda suggest here. Thus, *Gentry* provides no basis to disenfranchise condominium unit owners under the Charter.

There are thousands of owners of condominium units in Stamford, including, as my office understands, a significant number of past and present members of the Board of Representatives. It would come as a shock to these thousands of citizens, as well as the 160-plus signers of the Petitions who would be disenfranchised by virtue of the Memoranda's recommendations, that owners of condominium houses do not have the rights possessed by owners of non-condominium houses, and cannot meaningfully participate in petitions to the Board of Representatives on land use matters directly affecting the real property they own. This Committee should not allow that illogical, inequitable, and discriminatory result.

* * *

On behalf of the Petitioners and the nearly 700 signers and countless other members of the community opposed to the Text Change, I urge the Land Use Committee and the full Board of Representatives to consider, and reject, the Text Change on its merits. A decision as consequential for the City and as publicly debated as whether to convert portions of the City's office parks into fitness complexes should not be decided on flawed and illogical grounds that disenfranchise large groups of citizens, but rather, by a free, open, and robust debate.

Sincerely,
Wofsey, Rosen, Kweskin & Kuriansky, LLP

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