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July 18, 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 LU30.015, Review of Text Change to Zoning Regulations Art. III, Section 9, BBB. C-D Designed Commercial District ("Lifetime Fitness"): Legal Standards**

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"). I submit this letter to briefly address the legal standards that the Land Use Committee and the Board of Representatives will apply in deciding whether to approve or reject the Text Change.

**I. In Deciding Whether to Approve or Reject the Text Change, the Board of Representatives Sits in the Shoes of the Zoning Board and Exercises Its Own Independent Judgment and Discretion**

Under the clear language of the Stamford Charter, in determining whether to approve or reject the Text Change before you, this Committee and the Board of Representatives must take a fresh look at the Text Change using your independent judgment. You are not bound in any way by the decision of the Zoning Board, nor are you required to defer to the Zoning Board in any way.

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Under section C6-40-9 of the Stamford Charter, under which the Petitions were brought:

[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.**

(Emphasis added.) Thus, the Charter provides that if a protest petition opposing a text change adopted by the Zoning Board is filed, the Zoning Board's decision "shall have no force or effect" and the matter shall be referred to the Board of Representatives to decide. In providing that the Zoning Board's decision "shall have no force or effect" once a protest petition is filed, the Charter effectively gives the Board of Representatives a clean slate. It is then for the Board of Representatives to "approve or reject" the "proposed amendment" to the Zoning Regulations; thus, the issue before the Board of Representatives is whether the text change itself should be approved or rejected, and not merely whether the Zoning Board made a mistake or overlooked something in reaching its decision.

The Charter provides that in reviewing the text change, "the Board of Representatives shall be guided by the same standards as are prescribed for the Zoning Board" in section C6-40-1. That section of the Charter ("Powers and Duties of Zoning Board"), in turn, provides the general grant of authority to the Zoning Board to decide matters before it:

The Zoning Board is authorized to regulate the height, number of stories and size of buildings and other structures; the percentage of

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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.

Thus, according to the Connecticut Supreme Court, “the charter provides that the board of representatives shall be guided by the same standards as those prescribed for the zoning board, but we have held that those standards are typical legislative standards; viz., promotion of health and the general welfare, provision for adequate light and air, prevention of overcrowding, and avoidance of undue population concentration.” *Stamford Ridgeway Assocs. v. Bd. of Representatives of City of Stamford*, 214 Conn. 407, 432 (1990) (quotation omitted). In addition, under the Charter, the Zoning Board (and thus this Committee and the Board of Representatives) are bound by the directive that the “Zoning Regulations 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.” Charter § C6-40-7.

Simply put, the Charter provides that, on a protest petition challenging a text change, the Board of Representatives (and by extension, its Land Use Committee) sit

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in the shoes of the Zoning Board, and apply the same standards as the Zoning Board would in deciding whether to adopt the text change in the first place. To state it differently, the Board of Representatives is placed in the position of the Zoning Board hearing an application for a text change in the first instance and deciding whether to adopt it, except that here the “application” the Board of Representatives must approve or reject is the text change adopted by the Zoning Board.

Case law interpreting the Charter and similar provisions in other municipalities confirms the plain language of the Charter in this respect. In *Zenga v. Zebrowski*, 170 Conn. 55 (1975), the Supreme Court interpreted a similar statutory provision in the Town of Plainville providing for town council review of decisions of the town’s zoning authority. The Court held that “[i]n approving or rejecting the action of the planning and zoning commission, **the town council acts as a zoning authority and exercises its own independent judgment and discretion, and is not cabined to a judicial-type review of the commission’s work.**” *Id.* at 60 (emphasis added). The *Zenga* decision was cited with approval by the Supreme Court in *Stamford Ridgeway* in interpreting the Stamford Charter. 214 Conn. at 421. In *Stamford Ridgeway*, the Supreme Court interpreted the Charter to provide that, when you review a decision of the Zoning Board, as in approving or rejecting the Text Change here, you are acting in a legislative capacity, i.e., in your capacity as legislators. You are not acting as judges or as administrators. The Supreme Court held that “[t]he question before the board of representatives is **whether to approve or to reject the amendment. [The] board [of representatives],** in reviewing the action of the zoning board, **is called upon to perform a legislative function.**” 214 Conn. at 421-22 (quoting *Burke v. Board of Representatives*, 148 Conn. 33, 39 (1961)) (emphasis added).

The Zoning Board, too, was acting in a legislative capacity when it heard the Text Change application, and you are sitting in their shoes, with the same kind of broad discretion that the Zoning Board had. “When acting on an application for an amendment to a zoning regulation, [a zoning board] is acting in its legislative capacity. **When acting in its legislative capacity, a commission has broad discretion and is entitled to take into consideration facts learned through personal knowledge or observation in order to develop responsible planning for the present and future development of the community.**” *Landmark Dev. Grp., LLC v. Zoning Comm’n of Town of E. Lyme*, No. CV990552626S, 2001 WL 577065, at \*3 (Conn. Super. Ct. May 8, 2001) (citing *Samperi v. Planning and Zoning*

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*Commission*, 40 Conn. App. 840, 848 (1996) and *Kaufman v. Zoning Commission*, 232 Conn. 122, 150 (1995)) (emphasis added).

You may well ask: Why did the Charter set up the Board of Representatives to sit as a “super-Zoning Board” in matters of significant enough importance to the community to trigger a protest petition? The answer is simple: the drafters of the Charter wanted such important decisions altering zoning for the entire community to be determined by the representatives elected by the entire community – by the Board of Representatives, and not by the Zoning Board. The principle is that where the welfare of the entire community is at stake, as is the case when a citywide zone change is under consideration, and a large number of landowners, all of whom are taxpayers, have initiated a review by petition, a legislative decision ought to be made on a community-wide basis by the community’s elected representatives, the Board of Representatives. In that decision, you should not take a back seat to anyone. As far as the Charter is concerned, you alone and no other public officials have the expertise on the central issue at stake. The standards you use in arriving at a decision are the same as govern the Zoning Board, but the final authority is vested in you.

Sincerely,  
Wofsey, Rosen, Kweskin & Kuriansky, LLP

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