COHEN and WOLF P.C. ATTORNEYS AT LAW

M E M O R A N D U M

TO: **The Board of Representatives of the City of Stamford**

FROM: **Patricia Sullivan, Esq.**
Special Counsel to the Board of Representatives

RE: **High Ridge Real Estate Owner, LLC v Board of Representatives of the City of Stamford/Granted Petition for Certification**

DATE: **September 29, 2020**

Earlier this year I met with the Board of Representatives regarding the Trial Court decision in *High Ridge Real Estate Owner, LLC v. Board of Representatives of the City of Stamford.* That decision favored the developer. As I explained to the Board at that time, to challenge the Trial Court decision required permission from the Appellate Court. I needed to find out from the Appellate Court whether the Court is interested in the mistakes the Trial Court made. To do that required the filing of a Petition for Certification. The Board agreed to fund the filing of the Petition. The Petition was filed and the Court granted it. The Appellate Court is interested in hearing the matter.

Basis for Appeal

In the Petition for Certification, I asked the Appellate Court to focus on two issues:

1. Whether the Board of Representatives has the jurisdiction to assess the validity of the Petition filed with the Board.
2. Whether the Court, in narrowly defining the word “landowner,” disenfranchised joint owners of property and owners of condominiums.

In support of the first issue, I argued that the Trial Court’s decision denying the Board of Representatives jurisdiction is contrary to the general law in the State of Connecticut and that the Trial Court was internally inconsistent in its decision.

In support of the second issue, I argued that the Trial Court, decided an issue of great public importance, narrowly defining the term “landowner. This decision disenfranchises a large swath of the landowning public and raises issue of fundamental fairness.
The Appellate Court granted the Petition for Certification on both issues, which is an indication that both issues are of interest to the Appellate Court.

The Petition for Certification is attached for those who want more in depth information.

Process of Appeal/Time Line

Here is the timeline for the Appeal.

October 13, 2020: File Appeal Form.

October 23, 2020: File Preliminary papers: Preliminary Statement of Issues, Certificate of Transcript, Pre-argument Conference Statement and Docketing Statement.

Once the transcript of the Trial Court proceedings is received, I have 45 days to file a Brief on behalf of the Board of Representatives. High Ridge has 30 days from the filing of the Board's brief to file its brief. The Board has 20 days from the filing of High Ridge's brief to file a Reply. A Pre-argument Conference is generally scheduled to see whether the matter can be resolved short of deciding the Appeal.

Once the briefs are filed, the Appellate Court schedules the case for oral argument. This is generally some months after the final brief is filed. Cases are now being scheduled, in person before the Appellate Court. There is no specific time limit within which the Appellate Court must render a decision, but it generally takes some months. Once a decision is rendered, the losing side may file a Petition for Certification to the Supreme Court.

Estimated Cost

Research re Substantive Issues	5
Review Transcripts	4
Prepare Record	6
Prepare and File Appellant's Brief	35
Review Appellee's Brief	5
Research re Issues Presented in Appellee's Brief	6
Prepare Reply Brief	14
Research re Changes and Updates as to Law	5
Prepare for Argument	5
Argument before Appellate Court	6
Estimate Total time required for above	91 Hours

Estimated Cost
$425 hourly rate times 91 hours equals $38,675
Less 20% discount $30,940

Estimated Cost **$30,940**

Summary
The Appellate Court grants Certification when something in the Petition is of concern. The Petition for Certification raises two fundamental and straightforward issues, jurisdiction and fundamental fairness. Pursuit of these issues is not frivolous.

D.N. HHD-CV18-6102462-S HIGH RIDGE REAL ESTATE OWNER, LLC	: :	APPELLATE COURT
V.	:	STATE OF CONNECTICUT
BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD	:	JULY 1, 2020

PETITION FOR CERTIFICATION

Pursuant to Practice Book Section 81-1 *et seq.*, Defendant Board of Representatives of the City of Stamford ("Board of Reps") seeks review of the February 19, 2020 decision of the Trial Court (Berger, J.).

I. STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

A. Did the Trial Court err in finding that the Board of Reps did not have the jurisdiction to assess the validity of the Petition?

B. Did the Trial Court err in narrowly defining the word "landowner," thereby disenfranchising joint owners of property and owners of condominiums, when the word was not defined in the Stamford Charter and both the common meaning of the word and reasonable arguments made in the record support a broad definition?

II. STATEMENT OF THE BASES FOR CERTIFICATION

A. As the Trial Court admits, it is the general rule that an administrative agency may and must determine whether it has jurisdiction, Mem. of Dec. at 9, citing Cannata v. Department of Environmental Protection, 215 Conn. 616, 623, 577 A 2d. 1017 (1990). The Trial Court declares both, that the question of who had authority to determine the validity of the petition – does not have a clear answer, while at the same time declaring that the Board of Reps did not have that power. Mem. of Dec. at 9-10, n 10.

B. The Trial Court has decided a question of great public importance by narrowly defining the term "landowner" to exclude landowners who own condominiums or are joint owners of real property, disenfranchising a large swath of the landowning public and raising issues of fundamental fairness.

III. SUMMARY OF THE CASE

Most of the facts relevant to the threshold jurisdiction issue pending are not in dispute and are substantially set forth in the parties' March 22, 2019 Stipulations of Fact (the "Stip").[1]

On February 3, 2017, Plaintiff submitted Application #217-01 to the Zoning Board (the "Application"). The Application sought text changes to Article II, Section 3 and Article III, Section 9 of the City of Stamford Zoning Regulations. Stip., para. 1. Plaintiff later submitted several modifications to the Application (the "Modified Application"). Stip., paras. 2-6. The Zoning Board approved the Modified Application on May 22, 2018. Stip., para. 9.

Pursuant to questions raised by Ralph Blessing, City of Stamford Land Use Bureau Chief, and Valerie Rosensen ("Rosensen"), the Board of Reps' Legislative Officer, James Minor ("Minor"), Special Counsel to the City of Stamford's Law Department, opined : 1) if an individual owns property jointly, all joint owners must sign the Petition in order for any

[1] On June 1 and 4, 2018, Hank Cuthbertson, President of the Sterling Lake Homeowners Association, filed petitions containing 696 signatures of Stamford citizens opposing the Zoning Board's approval of the Modified Application (the "Petition"). The Petition was filed pursuant to Section C6-40-9 of the Charter. ROR A11 at 6.; Stip., paras. 11 and 13. When, as here, the zoning amendments at issue apply to two or more zones in the City, Section C6-40-9 requires that such a Petition contain "the signatures of at least three hundred landowners. . . and such signers may be landowners anywhere in the City." ROR A2 at 21; Stip., para 12. On June 6, 2018, the Zoning Board referred the Petition to the Board of Representatives. Stip., para. 14.

owner to be counted as a landowner; and 2) only the condominium association can sign as a landowner, not individual unit owners. ROR A7 at 2. Applying Minor's opinion, Rosensen then counted only 240 signatures as valid. ROR A8 at 4.

On July 10, 2018, the Board of Reps' Land Use Committee (the "Committee") held a hearing to consider the validity of the Petition and voted to recommend that the Board of Reps accept the Petition. Stip., paras 16-18. On July 16, 2018, the Board of Reps voted to accept the Petition. Stip., para 18.

After a public hearing, the Committee voted to recommend rejection of the Zoning Board's approval of the Modified Application. On August 6, 2018, the Board of Reps adopted the Committee's recommendation and voted unanimously to reject the Zoning Board's approval. Stip., paras. 19 and 20.

The preliminary issue this Court must resolve requires construction of language in the Charter. "The interpretation of a charter is a question of law, and the rules of statutory interpretation generally apply." AEL Realty Holdings, Inc. v. Board of Representatives, 82 Conn. App. 613, 617 (2004) (citation and internal quotation marks omitted). "We are mindful that in interpreting the provision of a charter, explicit words govern. The language employed must be given its plain and obvious meaning, and, if the language is not ambiguous a court cannot arbitrarily add to or subtract from the words employed." Id. at 618 (citation and internal quotation marks omitted).

"Common sense is to be employed in the construction of a charter. . . A city charter also must be construed, if possible, so as reasonably to promote its ultimate purpose. . . . The unreasonableness of the result obtained by the acceptance of one possible alternative interpretation of an act is a reason for rejecting that interpretation in favor of another which

would provide a result that is . . . reasonable." Stamford Ridgeway Associates v. Board of Representatives, 214 Conn. 407, 429 (1990) (citations and internal quotation marks omitted). "This court traditionally eschews construction of statutory language which leads to absurd consequences and bizarre results." Id. at 427 (citations and internal quotation marks omitted).

IV. ARGUMENT

A. The Board of Representatives Necessarily Possessed the Authority to Determine Its Own Jurisdiction Because the Charter Authorized Defendant to Review the Zoning Board's Decision.

The Trial Court writes: "[w]hile this court would ordinarily agree with the board's argument that it has the authority to determine its jurisdiction, the charter provisions are essentially the same in *Benenson* and in the present case. Once the petition is filed with the zoning board, the only charge for the board was to determine the substantive issue, i.e., the proposed amendment….Thus, the board had no authority to determine the validity of the petition and its action was improper" Mem. of Dec. at 9-10. At the same time, in footnote 10 of its decision, the Trial Court writes, "[o]f course, this leaves the question of who had authority to determine the validity of the petition-a question which does not appear to have a clear answer." Mem. of Dec. at n 10.

The Trial Court misconstrues the Court's holding in Benenson v. Board of Representatives, 223 Conn. 777 (1992). Unlike the instant case, there was no question regarding the validity of the petition in Benenson. Rather, the plaintiffs argued that the questions before the Board of Representatives had been improperly framed because "the votes should have been on the petition objecting to the proposed amendment, and not on the zoning amendment itself." Id. at 782. Responding to that argument, the Court held

that the "board of representatives shall *approve or reject such proposed amendment. . . .* The charter does not provide for the approval or rejection of the petition itself." Id. at 783 (internal quotation marks omitted; emphasis in original). Thus, the Court was simply confirming that, from a procedural standpoint, the Board of Reps' vote on the merits of a zoning amendment is approval or rejection of the amendment, not approval or rejection of the petition. This is because "[t]he petition was merely the vehicle that brought the issue before the board." Id.

It is clear the Charter, like a statute, need not explicitly provide that a City board has authority to determine its own jurisdiction when the Charter has authorized the board to act in a particular situation. "Our Supreme Court has reiterated that [w]here there is in place a mechanism for adequate judicial review . . . it is the general rule that an administrative agency may and must determine whether it has jurisdiction in a particular situation. When a particular statute authorizes an administrative agency to act in a particular situation it necessarily confers upon such agency authority to determine whether the situation is such as to authorize the agency to act – that is, to determine the coverage of the statute. . ." Johnson v. Department of Public Health, 48 Conn. App. 102, 110 (1998). Because Section C6-40-9 of the Charter specifically authorized the Board of Reps to approve or reject the zoning amendments at issue in the instant case when the Zoning Board referred the Petition, the Charter necessarily conferred upon the Board of Reps the authority to determine if the Petition was valid, thereby providing the jurisdiction necessary for the Board of Reps to fulfill its obligation as the City's legislative body.

Even assuming the Trial Court's interpretation of Benenson were correct and that the Board of Reps incorrectly "approved" the Petition as a preliminary step, that would not

negate the Board's ultimate decision. This is because the Charter mandates that once the Zoning Board refers a petition, "[t]he Board of Representatives *shall* approve or reject any such proposed amendment. . ." ROR A2 at 21 (emphasis added). Accordingly, the Court's determination that the Charter did not give the Board of Reps implicit authority to determine its own jurisdiction, compels the conclusion that the Board had no choice but to decide the question of whether the Zoning Board's decision should stand. The Board of Reps' decision on the Petition would be superfluous and irrelevant.

B. The Trial Court should not have narrowly defined the term "landowner" excluding joint owners and condominium owners.

The Trial Court relies on Warren v. Borawski, 130 Conn. 676 (1944) and Woldan v. City of Stamford, 22 Conn. Supp. 164 (1960) to support the argument that the signatures of joint owners of property could not qualify as "landowners" without the signatures of their co-owners. These cases are inapposite.

In Warren, the Court construed language requiring a protest petition signed by "owners of 20 percent or more, either of the areas of the lots involved in the proposed action, or of areas immediately contiguous thereto and within 500 feet therefrom." Warren v. Borawski, 130 Conn. at 677 n. 1. The trial court found that owners of 20 percent of the affected territory had not signed because "the number of square feet represented by these owners was less than the 20 per cent required." Id. at 678. The Supreme Court agreed, holding that all owners of a given piece of property needed to sign for the protest petition to be valid. The Court reasoned, in part, that a co-tenant owns "an undivided interest in every foot [of the property], and no particular foot frontage may be set aside for him, because in every foot so set aside his cotenant would be an equal owner." Id. at 680 (internal quotation marks omitted). Consequently, the Court concluded that "within the

meaning of the ordinance in question those owning the entire interest in the property must join in order to make a valid protest." Id. at 681.

The court in Woldan construed similar language requiring a protest petition signed by "the owners of twenty per cent or more of the privately-owned land located within five hundred feet of the borders of such area." Woldan v. City of Stamford, 22 Conn. Supp. at 165 (internal quotation marks omitted). Relying on Warren, the court in Woldan also concluded that "[w]ithin the meaning of the ordinance involved in this case, those owning the entire interest in the property must join to make a valid protest." Id. at 166.

Significantly, the cases relied on did not address a signature requirement measured by the number of people located anywhere in the municipality; instead, these cases construed signature requirements tied to the percentage of property owned in a specified location. For the latter purpose, it is logical to require that all owners of a particular property sign. Otherwise, as reasoned by the Warren Court, the entire area of that property would not be counted, thereby failing to meet the full percentage requirement for a limited geographic area. That analysis does not apply to a signature requirement that is untethered to a percentage of property or land located in a particular area. The language applicable in the case at bar is plain and unambiguous, only requiring the signatures of "three hundred landowners . . . anywhere in the City." ROR A2 at 21.

This unambiguous language also leaves no room for an interpretation that effectively converts a landowner into a non-owner just because he or she happens to own property jointly with one or more other person[s]. The irrational nature of the tortured analysis can be illustrated best by the following example, which was presented below in response to the "Memoranda" prepared by staff:

> 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, the wife suddenly becomes a "landowner[;]" her husband is also a "landowner" [only] because his wife has previously signed, and both the husband's and wife's signature are [then] valid.

ROR A11 at 5 (emphasis in original; alterations added).

Had the drafters of the Charter desired this result, they could have included language in Section C6-40-9 making clear that each joint owner of property needs to sign in order to constitute one valid protest. Alternatively, the drafters could have expressly distinguished between single and joint landowners by providing that a landowner's signature would only count as a fraction of one signature if the owner's property is jointly owned. The drafters did not seek either of these alternatives and the Court cannot now add language to the Charter to accommodate a desired result, because "[i]t is not the function of courts to read into clearly expressed legislation provisions which do not find expression in its words." Stamford Ridgeway Associates v. Board of Representatives, 214 Conn. 407, 430 (1990) (citations and internal quotation marks omitted; alteration added).

Additionally, the interpretation the Trial Court advances would defeat "the ultimate charter purpose giving the right to landowners to protest proposed zone changes," by effectively disenfranchising 110 landowners who want to petition their government about an issue which is obviously very important to them. Id. And, again, in the instant case, the Charter provides that these landowners are not even limited by their proximity to the zones which the amendments affect. Instead, they can be landowners who are located "anywhere in the City." This was clearly a provision meant to be broad based. "A

[charter] must not be construed in a manner that would permit its purpose to be defeated." Id. at 426 (citation and internal quotation marks omitted; alteration added).

The Trial Court maintains that the signatures of condominium owners should not have been counted because they possess a fractional ownership interest in the common elements of the condominium. This analysis is unpersuasive as well.

First, there is no dispute that a condominium unit owner is a "landowner" by virtue of his or her ownership interest in the common elements of the condominium. Candlewood Landing Condominium Association, Inc. v. Town of New Milford, 44 Conn. App. 107 (1997). Indeed, several Connecticut courts have held that a condominium unit owner is a "person owning land" within the meaning of General Statutes Section 8-8(a)(1), thereby giving that condominium owner standing to pursue a zoning appeal. See, e.g. Saviano v. Norwalk Zoning Commission, 2011 WL 1366880, *1 (Conn. Super.); Caporizo v. Zoning Board of Appeals, 1997 WL 344740, *3 (Conn. Super.); Slade v. Zoning Board of Appeals, 1995 WL 681661, *4 (Conn. Super.). As the Charter clearly gives all Stamford "landowners" the right to protest a zone change affecting two or more zones within the City, and all condominium unit owners clearly fall within that category, Defendant properly counted the signatures of all condominium unit owners on the Petition.

Second, the cases relied on by the Trial Court are readily distinguishable. In Gentry v. City of Norwalk, 196 Conn. 596 (1985), the Court held that each condominium owner was entitled to a fractional vote for the purpose of voting on the creation of a historical district, because the applicable statute stated "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. . ." Id. at 604 (internal quotation marks omitted; alteration in original). Accordingly, the

drafters of the historic district statute did what the drafters of the Charter chose *not* to do – expressly provide that the votes of condominium unit owners count as only a fraction of one vote. The Court in Gentry also reasoned "that the historic district statute in Chapter 97a of the General Statutes focuses not on people but on buildings, structures, places or surroundings that are of historical significance and architectural merit. . . The statute can fairly be denominated as site oriented. . ." Id. at 607 (internal quotation marks omitted). Conversely, the applicable petition requirement in Section C6-40-9 focuses on the number of people, specifically "three hundred landowners . . . anywhere in the City."

Finally, the concern with disenfranchising landowners that was expressed above is even more acute when one considers the ramifications if signatures of *all* condominium unit owners are disregarded. According to the City Assessor's Office, there were over 11,500 condominium units in Stamford as of 2018. ROR A14 at 6. Under the Trial Court's decision, none of these unit owners would be entitled to petition under Section C6-40-9 of the Charter. A result that surely was not envisioned or intended by those who drafted the Charter.

C. The Number of Valid Signatures on the Petition Far Exceeds 300 Landowners.

The Trial Court concludes, "[w]ith only 240 valid signatures, the protest petition was invalid…" Mem. of Dec. at 13. However, when the signatures of 164 condominium unit owners and 110 joint owners are added to the 240 signatures the trial court declares to be valid, the total number of valid signatures equals 514, which far exceeds the 300 landowner signature requirement contained in Section C6-40-9.

For all of these reasons, the Board of Representatives respectfully submits that this Petition for Certification should be granted.

THE DEFENDANT
BOARD OF REPRESENTATIVES
OF THE CITY OF STAMFORD

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Juris No. 10032

CERTIFICATION

I hereby certify that: a copy of the foregoing has been delivered to each other counsel of record by e-mail on the date hereof; I have included counsel's names, mailing addresses, e-mail addresses, and telephone numbers below; the foregoing has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and the foregoing complies with all applicable rules of appellate procedure.

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/s/ Patricia C. Sullivan
Patricia C. Sullivan

APPENDIX

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RETURN DATE: SEPTEMBER 18, 2018

DOCKET NO.	:	SUPERIOR COURT
HIGH RIDGE REAL ESTATE OWNER, LLC	:	J.D. OF STAMFORD/NORWALK
v.	:	AT STAMFORD
BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD	:	August 17, 2018

APPEAL - COMPLAINT

TO THE SUPERIOR COURT for the Judicial District of Stamford/Norwalk at Stamford, on September 18, 2018, comes Plaintiff, HIGH RIDGE REAL ESTATE OWNER, LLC (hereinafter referred to as "Plaintiff" or "High Ridge"), aggrieved by and appealing from the decision of Defendant, BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD (hereinafter referred to as "Defendant," "Board" or "Board of Representatives") denying proposed amendments to the Stamford Zoning Regulations ("Zoning Regulations") previously approved by the Zoning Board of the City of Stamford ("Zoning Board") under Zoning Board Application #217-01. Plaintiff respectfully states as follows:

Parties

1. Plaintiff is the owner of the property known as the High Ridge Office Park located at 0 Turn of River Road, Stamford, Connecticut (hereinafter referred to as "Property" or "Office Park"). Plaintiff acquired said Property on or about May 5, 2014.

2. Defendant Board of Representatives is vested with the legislative power in the City of Stamford ("Stamford" or the "City"). The Board of Representatives consists of forty (40) members, two of which are elected from each of twenty (20) voting districts in the City.

General Background

3. The Zoning Board is empowered to regulate zoning in Stamford, including the consideration and adoption of amendments to the Stamford Zoning Map and Zoning Regulations. The Zoning Board consists of five (5) members appointed by the Mayor of Stamford and approved by the Board of Representatives.

4. The Office Park is north of the "Bulls Head" area in Stamford, just south of the Merritt Parkway. The Property is comprised of two (2) legal parcels and consists of a total of approximately 38.8 acres. It is located within the C-D Designed Commercial District and is currently improved with multiple office buildings originally built in the 1970s, as well as surface parking lots, landscaping, and infrastructure improvements.

5. All zones in the C-D Designed Commercial District permit principal as-of-right uses for offices, research and development, and child day care centers; special exception uses for residences, including single family, two family, and multifamily dwellings; and other accessory uses that are customary and incidental to the permitted principal uses.

6. Building No. 3 on the Property is an office building that is currently vacant and has been vacant since in or around the Summer of 2015, when the most recent tenant, Frontier Communications, vacated. Building No. 3 is functionally obsolete and would require substantial capital expenditures and structural changes to remain viable as an office building. As a result, Plaintiff has been unable to re-let Building No. 3. Renovations and improvements to Building No. 3 are economically unfeasible as these costs could not be recovered from subsequent continued leasing as an office building, given market rents for such space. Offices, research and development, and child day care centers are currently the only permitted principal uses as-of-right on the Property within the C-D Designed Commercial District.

7. Every ten (10) years, the Planning Board of the City of Stamford ("Planning Board") adopts a Master Plan to provide a set of goals, policies, and implementation strategies for the City for the subsequent ten (10) years. In December 2014, the Planning Board adopted the latest and currently operative Master Plan ("Master Plan").

8. In particular, in the Master Plan, the underlying category for all commercially-developed C-D zoned properties was changed from "Commercial—Campus Office" to "Mixed Use—Campus."

9. In addition, the Master Plan sets forth goals and policies including but not limited to attracting new and diverse companies and businesses, concentrating office uses and retail development in the "Downtown" area of Stamford, and encouraging modernization of office uses allowing adaptive reuse and redevelopment of underutilized office space in suburban office parks for mixed-use development while discouraging expansion of office development outside of the Downtown area. The Master Plan also included implementation strategies for these goals and policies including but not limited to, specifically, the provision that the City should "[a]mend zoning to allow for redevelopment of office parks outside Downtown for mixed-use."

10. In effect, the Master Plan acknowledges the challenges faced by suburban office parks in today's market and encourages repurposing, redevelopment, and revitalization of suburban office parks in C-D zones, as well as creative solutions for accomplishing these goals and policies, including text amendments to the Zoning Regulations, while discouraging office use including office parks outside of the Downtown area.

11. Consequently, Plaintiff sought to repurpose Building No. 3 for non-office uses.

Plaintiff Applies for An Amendment to the Zoning Regulations

12. Plaintiff was presented with an opportunity by Life Time Fitness ("Life Time") to construct on the Property a membership-based family health and fitness facility.

13. In order to construct a Life Time facility on the Property in the C-D Designed Commercial District, Plaintiff required a text change to the Zoning Regulations to allow a use that could accommodate Life Time. Therefore, Plaintiff sought a text change to the Zoning Regulations to define the pre-existing yet undefined use of "Gymnasium or Physical Culture Establishment" and permit this use in the C-D Designed Commercial District.

14. On February 3, 2017, Plaintiff, in accordance with Section C6-40-8 of the Stamford Charter, submitted to the Zoning Board Application #217-01 for a text change to Article II, Section 3 (to define "Gymnasium or Physical Culture Establishment"), and Article III, Section 9 (to permit this use in the C-D Designed Commercial District), of the Zoning Regulations, along with the proposed text change language, associated photographs, and conceptual drawings and plans.

15. Following meetings with neighbors and Land Use Bureau staff, and after commissioning several studies and reports in response to neighbor concerns (including traffic, noise, lighting and environmental studies), on July 19, 2017, Plaintiff submitted to the Zoning Board a modified Application #217-01 for a text change with revised language and associated conceptual drawings and plans.

16. On August 8, 2017, Plaintiff and its representatives made an initial presentation to the Planning Board regarding Application #217-01.

17. Following the presentation to the Planning Board, Plaintiff and its representatives analyzed the issues raised by the Planning Board over a six (6) month period and submitted a third modification of Application #217-01 on January 31, 2018.

18. Following additional feedback from the Land Use Bureau staff, Plaintiff and its representatives submitted a fourth modification of Application #217-01 on February 14, 2018.

19. On February 20, 2018, Plaintiff returned to the Planning Board to present the revised text change language and related conceptual site plan. Notably, the Planning Board found the proposed "Gymnasium or Physical Culture Establishment" use was "appropriate in all C-D zoned parcels and consistent with Master Plan Category #8." However, the Planning Board remained concerned about site plan related issues and recommended denial of the application.

20. In response to the Planning Board's remaining concerns, Plaintiff submitted a fifth modification of Application #217-01 on March 8, 2018, incorporating specific performance guidelines related to lighting, screening, noise and site plan design; maintaining a 100 foot setback from all residential districts; removing language related to parking structures; and enhancing design standards.

The Zoning Board Approves the Proposed Amendment

21. On March 26, 2018, the Zoning Board held a public hearing with respect to Plaintiff's Application #217-01, which continued on April 2, 2018, and closed on April 16, 2018.

22. On May 21, 2018, the Zoning Board deliberated on Application #217-01 making additional changes to the proposed text change.

23. Notably, the text change language as modified and approved by the Zoning Board called for, as would be part of any special exception application, compliance with the standards and conditions under Section 19.3 of the Zoning Regulations. In addition, and unlike other

special exception applications for property not in the C-D Designed Commercial District, the text change language called for the reduction of legally non-conforming non-porous surface area, reductions in floor area, maintenance of a 50–100-foot landscape buffer between a building or outdoor use and any boundary with a residential district, no net increase in parking, no illuminated signs facing a residential district, design guidelines for historically and culturally significant buildings, and specific findings related to lighting, screening, noise and site plan design (following independent third party review) to ensure the protection of the residential neighbors. None of these requirements apply to uses permitted as-of-right in the C-D Designed Commercial District.

24. On May 22, 2018, the Zoning Board unanimously approved Application #217-01 as modified, with an effective date of June 6, 2018, for a text change to Zoning Regulations that included, among other things:

a. Article II, Section 3, to include a definition for "Gymnasium or Physical Culture Establishment"; and

b. Article III, Section 9, to include:

i. Definitions for "new development," "adaptive reuse," and "redevelopment" in the C-D Designed Commercial District;

ii. Allowance of a "Gymnasium or Physical Culture Establishment" in the C-D Designed Commercial District only following special exception approval of the Zoning Board; and

iii. Additional standards for special exception uses specifically in the C-D Designed Commercial District requiring certain findings related to lighting, screening, noise, and site plan design, with

provision for independent consultants to be paid for by an applicant.

25. Notice of the Zoning Board's approval was published in "The Stamford Advocate" on May 25, 2018.

A Legally Insufficient Petition is Filed with the Zoning Board

26. Following the Zoning Board's unanimous approval of the Application, on June 1, 2018, Hank Cuthbertson ("Mr. Cuthbertson"), President of the Sterling Lake Homeowners Association, attempted to file a purported protest petition to the text change with the Zoning Board for referral to the Board of Representatives, pursuant to Section C6-40-9 of the Stamford Charter. The purported protest petition included signatures of alleged "landowners" in Stamford.

27. Pursuant to Section C6-40-9, "the signatures of at least three hundred landowners shall be required" for a valid petition.

28. On that same date, Land Use Bureau staff advised representatives for Mr. Cuthbertson, that more signatures may be required for a valid protest petition pursuant to Section C6-40-9 of the Stamford Charter.

29. On June 4, 2018, the deadline date to file a protest petition to Application #217-01, Mr. Cuthbertson filed supplemental signatures to the purported protest petition (hereinafter, signers shall be referred to as the "Petitioners").

30. On or about June 6, 2018, the Zoning Board referred the purported protest petition to the Board of Representatives pursuant to Section C6-40-9 of the City's Charter. The Zoning Board explained that it would send its findings and recommendations for approving Application #217-01 forthwith to the Board of Representatives. On or about June 8, 2018, the Zoning Board transmitted its complete file regarding its approval of Application #217-01 to the Board.

31. On or about June 13, 2018, the Zoning Board sent a letter to the Board of Representatives explaining how it came to the conclusion that the proposed amendment was appropriate under the applicable zoning standards set forth in Section C6-40-1 of the City's Charter, as well as how the Zoning Board's approval of the text change met the goals of the City's Master Plan (the "Zoning Board Findings Letter"). The Zoning Board also asked that the Board of Representatives reject the purported protest petition.

32. In the first instance, however, the Board of Representatives never had jurisdiction to consider the purported protest petition. The purported protest petition was invalid, and improperly before the Board, because it did not contain the signature of the requisite number of "landowners" in Stamford as required by Section C6-40-9 of the Stamford Charter. In particular, the purported protest petition did not contain the signature of three hundred (300) "landowners" in Stamford as defined by Connecticut law. This legal definition is further consistent with the definition of "landowner" set forth in the Board of Representatives' own Procedures and Practices.

33. Specifically, Section J of the Board's Procedures and Practices, states that "if there are multiple owners of a single property, each owner must sign the petition . . . ."[1]

34. The purported protest petition was reviewed by the Legislative Officer for the Board of Representatives, with the benefit of legal advice from James Minor ("Attorney Minor"), Special Corporation Counsel in the City of Stamford Law Department.

[1] The Board's Procedures and Practices are located in the left hand column of the homepage on the Board of Representatives website available at http://www.boardofreps.org/ and are listed as a link under "Overview of Board Practices and Procedures" (last checked August 14, 2018).

35. Attorney Minor, pursuant to a Memorandum dated June 27, 2018 (the "Minor Memo"), and in accordance with Connecticut law, advised both the Board's Legislative Officer, and Ralph Blessing, the Land Use Bureau Chief, that if a landowner owned property jointly with any other person (such as a spouse), then the signatures of all persons owning said property were required to count as a single landowner for purposes of a protest petition under Section C6-40-9 of the Stamford Charter.

36. Attorney Minor further advised that as to the owners of condominium units, only the condominium association can sign as a "landowner," as a condominium unit owner does not own the land on which the condominium resides. A condominium unit owner instead owns a fractional interest in the building and land. Thus, collectively, all condominium unit owners count as one "landowner."

37. Upon review of Attorney Minor's advice, and after analysis of the signatures on the purported protest petition and research of Stamford's property records, the Board's Legislative Officer concluded that the purported protest petition was not validly filed because it was not signed by 300 "landowners" as required by Section C6-40-9 of the Stamford Charter. The Legislative Officer set forth her analysis and results in a Memorandum dated June 28, 2018.

The Board Ignores the Advice of Counsel and its Legislative Officer and Rejects the Amendment

38. On July 10, 2018, the Land Use-Urban Redevelopment Committee for the Board of Representatives ("Land Use Committee") held a hearing to consider the validity of the purported protest petition and heard arguments from counsel for the Plaintiff and counsel for the Petitioners.

39. With many Petitioners in attendance, the Land Use Committee, in complete disregard of legal advice from Special Counsel, the conclusions of the Board's Legislative

Officer, and against all applicable legal authority, as well as the Board of Representatives' own Procedures and Practices, voted unanimously to recommend acceptance of the invalid protest petition. In voting to "accept" the purported protest petition, the Land Use Committee completely disregarded the well-established definition of a "landowner" under Connecticut law and the Legislative Officer's conclusion that insufficient landowners had signed the petition.

40. On July 16, 2018, at a regularly scheduled meeting of the full Board of Representatives, the Board of Representatives voted, upon recommendation of the Land Use Committee, to accept the invalid protest petition. There is no provision in the Stamford Charter that permits the Board of Representatives or any of its sub-committees, including the Land Use Committee, to approve a petition under Section C6-40-9 of the Stamford Charter. Upon receipt of a valid petition, the Board "shall approve or reject any such proposed amendment." Both the Board and the Land Use Committee imputed their own definition of "landowner" in purportedly "accepting" the petition, which definition is contrary to Connecticut law, as was articulated to the Board in the Minor Memo and further set forth in Section J of the Board's own Practices and Procedures. These actions of the Board and the Land Use Committee are beyond the scope of their authority as set forth in the Stamford Charter.

41. On July 18, 2018, the Land Use Committee held a public hearing with respect to Application #217-01, which closed on July 19, 2018. Numerous members of the public, including various Petitioners, spoke against Application #217-01 based on concerns and issues unrelated to the zoning standards and procedures that should be considered in reviewing an approved Zoning Regulation text change.

42. Comments from members of the Land Use Committee and/or members of the Board of Representatives throughout the entirety of the purported protest petition referral process

exhibited clear and continual support for the Petitioners that demonstrated their predetermination on the matter, as the Land Use Committee and the Board of Representatives ignored the advice of legal counsel, the Zoning Board Findings Letter, conclusions from their own Legislative Officer, the Board of Representatives' own Practices and Procedures, and the standards prescribed for a Zoning Board that the Board of Representatives are required to follow pursuant to Section C6-40-9 of the Stamford Charter.

43. When presented with a valid protest petition to an amendment previously approved by the Zoning Board, Section C6-40-9 of the Stamford Charter states that the "Board of Representatives shall be guided by the same standards as are prescribed for the Zoning Board under C6-40-1 of this Charter." Section C6-40-1 provides in pertinent part:

> 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.

44. On August 1, 2018, the Land Use Committee voted unanimously to recommend rejection of the Zoning Board's approval of Application #217-01. In doing so, the Land Use Committee failed to apply the zoning standards set forth in Section C6-40-1 of the Stamford Charter or make appropriate findings.

45. On August 6, 2018, at a regularly scheduled meeting of the full Board of Representatives, the Board of Representatives voted unanimously (with absences and one (1) abstention) to reject the Zoning Board's approval of Application #217-01.

46. Similar to the Land Use Committee, the Board of Representatives failed to follow the standards prescribed for a Zoning Board, as required by Section C6-40-1 of the Stamford Charter, or make appropriate findings in accordance with said Section, and upon information and belief, instead voted based upon political or other arbitrary or improper reasons or motivations. The Board of Representatives failed to issue a formal written decision regarding why it did not find the amendment in accordance with Section C6-40-1 of the Stamford Charter or the City's Master Plan.

47. Notice of the Board of Representatives' approval was published in "The Stamford Advocate" on August 9, 2018.

48. The Plaintiff, the owner of the subject Property, has been aggrieved by the Board of Representatives' purported "acceptance" of an invalid protest petition and by the Board's rejection of the Zoning Board's approval of Application #217-01, which affects the subject Property.

49. In "accepting" the invalid protest petition and rejecting the Zoning Board's approval of Application #217-01, the Board of Representatives acted illegally, arbitrarily and in an abuse of its discretion, and/or its decision is otherwise invalid, in that:

a. The Board of Representatives erred by "accepting" the invalid protest petition, which the Board otherwise did not have jurisdiction to consider, because it was not signed by the requisite number of "landowners" in the City pursuant to Section C6-40-9 of the Stamford Charter;

b. Beyond the jurisdictional issue, the Board erred in rejecting the Zoning Board's approval of Application #217-01 because it failed to follow and apply the zoning standards set forth in Section C6-40-1 of the Stamford Charter, as the Board is required to do by Section C6-40-9 of the Stamford Charter;

c. The Board of Representatives failed to consider or discuss the Zoning Board's written findings, recommendations and reasons as required by Section C6-40-9 of the Stamford Charter, failed to consider whether the amendment met the goals of the City's Master Plan, and further failed to articulate collective reasons for their decision supported by the record;

d. The Board's actions were arbitrary and completely ignored the advice of counsel, the recommendations of the Zoning Board, the reports of the Board's Legislative Officer and applicable law;

e. Upon information and belief, members of the Board of Representatives engaged in improper conduct in that their decision was not based upon the standards promulgated in Section C6-40-1 of the Stamford Charter but on political or other arbitrary or improper reasons or motivations that were predetermined;

f. The Board of Representatives failed to comport with the requirements of the Stamford Charter; and

g. The Board of Representatives erred in other respects that will be further specified when the record of its proceedings is filed.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff appeals from the decision of the Defendant, Board of Representatives of the City of Stamford, denying proposed amendments to the Zoning Regulations previously approved by the Zoning Board under Zoning Board Application #217-01, and seeks the following relief:

1. An Order and Judgment finding that the Board of Representatives did not have jurisdiction over the subject purported petition, as insufficient landowners signed the purported petition under Section C6-40-9 of the Stamford Charter, and thereby upholding the Zoning Board's approval of Application #217-01 and sustaining this Land Use Appeal;
2. An Order and Judgment overruling the Board of Representatives' decision to reject Zoning Board's approval of Application #217-01, and sustaining this Land Use Appeal;
3. The costs incurred in this proceeding as may be provided by law; and
4. Such other and further relief as this Court may deem just and proper.

THE PLAINTIFF,
HIGH RIDGE REAL ESTATE OWNER, LLC

BY CUMMINGS & LOCKWOOD LLC
ITS ATTORNEYS

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PLEASE ENTER THE APPEARANCE OF:

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For the Plaintiff

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D.N. HHD-LND-CV-18-6102462-S	:	SUPERIOR COURT
HIGH RIDGE REAL ESTATE OWNER, LLC	:	J.D. OF HARTFORD
v.	:	LAND USE DOCKET
BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD	:	May 10, 2019

PRELIMINARY BRIEF OF HIGH RIDGE REAL ESTATE OWNER, LLC[1]

The Plaintiff, High Ridge Real Estate Owner, LLC ("Plaintiff" or "HRREO"), by and through its undersigned counsel, hereby submits its Preliminary Brief concerning the issue of whether the Defendant, the Board of Representatives of the City of Stamford ("Defendant" or "Board" or "Board of Representatives") had jurisdiction to review the decision of the City of Stamford Zoning Board ("Zoning Board") regarding Application #217-01, as subsequently amended ("Application"), seeking certain amendments set forth herein to Stamford's Zoning Regulations ("Zoning Regulations").

I. Preliminary Statement

This is an appeal from the Board of Representatives' rejection of the Zoning Board's approval of certain zoning amendments sought by HRREO. The amendments would have laid the groundwork for the revitalization of one of the growing number of functionally obsolete suburban office parks located in the City of Stamford ("City" or "Stamford"). This politically-motivated decision of the Board directly contradicts the City's goals as set forth in its currently-operative December 2014 Master Plan ("Master Plan"). In its Master Plan, the City has made it an imperative to amend its Zoning Regulations in order to allow for the redevelopment of office

[1] As agreed by the parties and approved by the Court, this Preliminary Brief is intended to address the issue of whether the Board of Representatives had jurisdiction to review the decision of the Zoning Board. The Plaintiff reserves the right to assert all other arguments raised in this appeal, if and when appropriate.

parks located outside of the downtown area. The Zoning Board clearly recognized this - and after ensuring certain performance guidelines pertaining to the property were in place - it ***unanimously approved*** the proposed text changes.

However, under City's Charter (the "Charter"), Stamford landowners can petition the City's governing political body, the Board, to review the decisions of the Zoning Board. The City's Charter sets forth certain threshold requirements for petition signatures that are required in order to make a Zoning Board's decision subject to Board review. If the petition lacks the requisite number of signatures, the decision cannot be reviewed by the Board.

As detailed herein, the subject petition here lacked the minimum requisite number of signatures required for Board review. However, this did not stop the Board from wrongfully conducting proceedings to "verify" the petition, and thereafter from purporting to assert jurisdiction over the decision. After manufacturing an illegitimate basis to review the decision, the Board then rejected the Zoning Board's prior approval of the text amendments. In doing so, the Board ignored the legal advice of its own attorney, which is why corporation counsel is not representing the Board in this case. The Board further ignored the advice of its own legislative officer who, after a substantial property ownership analysis, concluded that there were insufficient signatures on the petition.

The Board's motives aside, the parties have agreed that this Preliminary Brief will address whether the Board has jurisdiction to review the decision of the Zoning Board. It did not. First, the Connecticut Supreme Court has made clear that the Board is not permitted to vote to "accept" or "reject" a protest petition under Stamford's Charter, which is precisely what the Board did here. *See Benenson v. Bd. of Representatives of City of Stamford*, 223 Conn. 777, 783, 612 A.2d 50 (1992) (holding that the Charter only permits the Board to approve or reject the

proposed amendment, not the petition itself). The Board was not permitted to conduct proceedings to determine the "validity" of the petition in an effort to wrongfully manufacture a basis to review the zoning amendments. As the Board lacked authority to "approve" the petition in the first instance, it goes without saying that it never had jurisdiction to review the decision of the Zoning Board.

Second, assuming *arguendo* that the Board somehow had the right to "approve" the petition, there were not sufficient signatures on the protest petition to trigger the Board's review of the Zoning Board's decision. The lack of signatures is due to the apparent misapplication of Connecticut law to two different types of property ownership.

First, multiple landowners who were co-owners of property failed to have all property owners sign the petition. The signature by one co-tenant alone -- without the other owner(s) -- appears to have been improperly afforded a full vote by the Board. *See Warren v. Borawski*, 130 Conn. 676, 681, 37 A.2d 364 (1944) (holding that all co-owners of property must sign in order to have a valid protest petition).

Second, the signatures of each condominium unit owner appear to have been counted as if each unit owner was a separate landowner. This is improper under Connecticut law, as condominium unit owners own their individual units and an undivided fractional interest in the common elements, including the land. *See Gentry v. City of Norwalk*, 196 Conn. 596, 604, 494 A.2d 1206 (1985) (holding that each condominium unit owner was entitled to a fractional vote of their interest, which worked out to 1/67 of a vote).

When these errors are corrected for, there are insufficient petition signatures. As a result, the Board never had jurisdiction to review the decision of the Zoning Board. The Court should overrule the Board's rejection of the Zoning Board's decision and sustain this appeal.

II. Factual Background

A. Background of the Subject Property and Stamford's Master Plan.

HRREO is the owner of the property known as the High Ridge Office Park located at 0 Turn of River Road, Stamford, Connecticut (hereinafter referred to as "Property" or "Office Park"). *See* Dkt. No. 107, Return of Record 1 ("ROR1") B1 at PDF[2] 343. The Property is located in Stamford's C-D Designed Commercial District. *Id.* at PDF 344. The principal as-of-right property uses in the C-D zones are very restrictive, and limit uses to offices, research and development facilities and child day care centers. *See* Zoning Regulations § 9-44.[3] There are also special exception uses in the zone for residences, including single-family, two-family, and multi-family dwellings; and other accessory uses that are customary and incidental to the permitted principal uses. *See id.*

Stamford's currently-operative Master Plan seeks to revitalize the suburban office parks located in the C-D zoned areas. ROR1 B1 at PDF 345-46. Since purchasing the Property in 2014, HRREO has looked for opportunities to re-purpose it for a non-office use. *Id.* at PDF 344. HRREO was presented with an opportunity by Life Time Fitness ("Life Time") to construct a membership-based family health and fitness facility in Building 3 on the Property. *Id.* Given the zoning restrictions in the C-D zones, HRREO required a text change to the Zoning Regulations to allow a use that could accommodate the Life Time facility. *Id.* at PDF 345.

B. HRREO Files an Application with the Zoning Board.

On February 3, 2017, HRREO, in accordance with Section C6-40-8 of the Charter, submitted an Application to the Zoning Board for a text change to Article II, Section 3 (to define

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[2] "PDF" represents the page of document cited as contained in the Adobe PDFs filed on the docket. Dkt. Nos. 107 and 108. The PDF pagination begins again at "1" in the PDF filed at Dkt. No. 108.

[3] Available online at: https://www.stamfordct.gov/sites/stamfordct/files/uploads/zoning_regulations_2018_1.pdf.

"Gymnasium or Physical Culture Establishment"), and Article III, Section 9 (to permit this use in the C-D Designed Commercial District), of the Zoning Regulations, along with the proposed text change language, associated photographs, and conceptual drawings and plans. Dkt. No. 106, Stipulations of Fact ("Stip.") at ¶ 1. Thereafter, on July 19, 2017, HRREO submitted to the Zoning Board a modified Application for a text change with revised language and associated conceptual drawings and plans. *Id.* at ¶ 2. On August 8, 2017, HRREO and its representatives made an initial presentation to the Stamford Planning Board ("Planning Board") regarding the Application. *Id.* at ¶ 3. HRREO and its representatives thereafter submitted a fourth modification of the Application on February 14, 2018. *Id.* at ¶ 4.

On February 20, 2018, Plaintiff returned to the Planning Board to present the revised text change language and related conceptual site plan. *Id.* at ¶ 5. The Planning Board found the proposed "Gymnasium or Physical Culture Establishment" use was "appropriate in all C-D zoned parcels and consistent with Master Plan Category #8." *Id.* However, the Planning Board remained concerned about site plan related issues and recommended denial of the application. *Id.* In response to the Planning Board's remaining concerns, Plaintiff submitted a fifth modification of the Application on March 8, 2018. *Id.* at ¶ 6.

On March 26, 2018, the Zoning Board held a public hearing with respect to Plaintiff's Application, which continued on April 2, 2018, and closed on April 16, 2018. *Id.* at ¶ 7. On May 21, 2018, the Zoning Board deliberated on the Application making additional changes to the proposed text change. *Id.* at ¶ 8. On May 22, 2018, the Zoning Board unanimously approved the Application as modified, with an effective date of June 6, 2018, for a text change to Zoning Regulations that included, among other things:

a. Article II, Section 3, to include a definition for "Gymnasium or Physical Culture Establishment"; and

b. Article III, Section 9, to include:

   i. Definitions for "new development," "adaptive reuse," and "redevelopment" in the C-D Designed Commercial District;

   ii. Allowance of a "Gymnasium or Physical Culture Establishment" in the C-D Designed Commercial District only following special exception approval of the Zoning Board; and

   iii. Additional standards for special exception uses specifically in the C-D Designed Commercial District requiring certain findings related to lighting, screening, noise, and site plan design, with provision for independent consultants to be paid for by an applicant. *Id.* at ¶ 9.

Notice of the Zoning Board's approval was published in "The Stamford Advocate" on May 25, 2018. *Id.* at ¶ 10.

C. An Invalid Protest Position is Submitted.

Stamford is a special act city, and the City's Charter contains a provision which allows the City's legislative body, the Board of Representatives, to review the decisions of the Zoning Board. *See* ROR1 A2 at 33. Pursuant to Section C6-40-9 of the City's Charter, when "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." *Id.*; Stip. at ¶ 12. When a text change affects two or more zones in the City -- such as with the text change obtained by HRREO -- "the signatures of at least three hundred landowners" are required on the Petition. *Id.* Assuming the minimum landowner signature threshold has been satisfied, the Board is required to "approve or reject any such proposed amendment at or before its second regularly scheduled meeting following such referral." ROR1 A2 at 33.

Following the Zoning Board's unanimous approval of the Application, on June 1, 2018, Hank Cuthbertson ("Mr. Cuthbertson"), President of the Sterling Lake Homeowners Association, filed a petition (the "Petition") with the Zoning Board for referral to the Board of Representatives. Stip. at ¶ 11; Dkt. No. 108, Return of Record 2 ("ROR2") C13 at PDF 1. On June 4, 2018, Mr. Cuthbertson filed supplemental signatures to include as part of the Petition (hereinafter, the signers shall be referred to as the "Petitioners"), and thereafter on June 6, 2018, the Zoning Board referred the Petition to the Board of Representatives. Stip. at ¶ 13; ROR2 C14 at PDF 187. In its correspondence to the Board, Ralph Blessing ("Mr. Blessing"), the City's Land Use Bureau Chief, stated that "signatures of at least 300 landowners . . . are required [on the Petition]" and that "Board of Representative staff will verify if the legal thresholds for filing this [P]etition have been met." ROR2 C14 at PDF 187.

On or about June 8, 2018, the Zoning Board transmitted its complete file regarding its approval of the Application to the Board. Stip. at ¶ 15; ROR2 C15 at PDF 189. The Zoning Board further submitted a 7-page letter dated June 13, 2018 summarizing the reasons as to "how it came to the conclusion that the proposed text amendment is appropriate and how it meets the goals of the City's Master Plan as well as sound planning principles." ROR2 C16 at PDF 191.

D. The Board is Advised that it Lacks Jurisdiction to Consider the Zoning Board's Decision But Ignores the Advice of its Counsel and Does So Anyway.

Thereafter, Mr. Blessing and Valerie Rosensen ("Ms. Rosensen"), the Legislative Officer for the Board, asked James Minor ("Attorney Minor"), Special Counsel to Stamford's Law Department, for legal advice concerning the Petition. ROR1 A7 at PDF 228. In response, Attorney Minor prepared a legal memorandum dated June 27, 2018 concerning multiple issues that had been raised regarding the requirements for a valid petition (the "Minor Memo"). *Id.* In the Minor Memo, Attorney Minor confirmed that the signatures of 300 landowners were required on the Petition because the amendment would apply to two or more zones in the City. *Id.* at PDF 229.

Attorney Minor was further asked to provide legal advice concerning who is a "landowner" under Charter § C6-40-9. *Id.* at PDF 229-233. The two specific inquiries focused on (i) jointly-owned property and (ii) owners of condominium units. *Id.* With respect to property owned by joint tenants or tenants-in-common, Attorney Minor concluded that, "[i]n sum, as held in two Connecticut decisions, and stated in three opinions [of the Stamford Law Department], and Fuller's zoning treatise, **all owners of a parcel of land must sign for that protest to be valid**." *Id.* at PDF 231 (emphasis in original). With respect to the owners of condominium units, Attorney Minor determined that "only the condominium association can sign as a 'landowner'" as the unit owner "does not own the land upon which the condominium is built" and instead owns a "fractional interest in the building and land." *Id.* at PDF 232.

Ms. Rosensen was thereafter tasked with reviewing the signatures on the Petition and applying the legal advice of Attorney Minor in order to determine whether 300 landowners signed the Petition. ROR1 A8 at PDF 236. Ms. Rosensen compared the 696 signatures on the purported Petition with the names and addresses of the landowners contained in the Stamford

Tax Assessor's database. *Id.* at PDF 237. Ms. Rosensen determined that the following signatures should not be counted towards the 300 signature threshold:

- 110 signers of jointly-owned real property, where the co-owner of said property failed to sign the petition;
- 164 signatures of condominium unit owners;
- 50 signers who were not listed as property owners in the Stamford Tax Assessor's online database;
- 3 signers who lived in a cooperative;
- 3 signatures which were duplicates for the same property;
- 2 duplicate signatures because the individuals signed for two addresses that were on the same tax lot;
- 2 signers who did not provide an address;
- 1 signature was listed next to an illegible address that could not be located in the Stamford Tax Assessor's online database; and
- 1 signer who listed a Greenwich address.

Id. at PDF 238-39. Ms. Rosensen further determined that of the remaining 360 signatures, 120 signers were the sole landowners of privately-owned land in Stamford, and 240 signers jointly-owned property. *Id.* The signatures of the joint-owners therefore constituted 120 landowners. *Id.* Ms. Rosensen concluded that the petition was signed by only 240 landowners, and that the petition did not meet the minimum signature requirement of Charter § C6-40-9 to trigger a review by the Board. *Id.* Ms. Rosensen set forth her findings in a Memorandum dated June 28, 2018 (the "Rosensen Memo"). *Id.*

Ms. Rosensen sent a copy of her memorandum to the Stamford Land Use/Urban Redevelopment Committee ("Land Use Committee"). *Id.* at PDF 236. The Land Use

Committee is a sub-committee of the Board, and comprised of nine Board members.[4] On July 10, 2018, the Land Use Committee held a hearing to consider the validity of the purported protest Petition and heard arguments from counsel for the Plaintiff and counsel for the Petitioners. Stip. at ¶ 17. The committee's co-chair stated that the first item on the agenda "is to verify or reject the [P]etition." ROR2 G1 at PDF 212:22-23. He went on to state that the Land Use Committee would then make a recommendation to the Board. *Id.* at PDF 212:25-213:2. The Board would then conduct a special meeting on July 16, 2018 "to officially vote if the [P]etition is accepted or rejected." *Id.* at PDF 213:4-5.

At the July 10th meeting of the Land Use Committee, Attorney Minor spoke on the record regarding the case law cited in the Minor Memo and the legal conclusions that he drew. *See id.* at PDF 218-230. Ms. Rosensen delivered the findings set forth in her memorandum that insufficient landowners had signed the Petition. *See id.* at PDF 214-218. Despite the legal advice of Attorney Minor and the ownership analysis of Ms. Rosensen, the Land Use Committee nonetheless voted 9-0-0 to "approve" the validity of the Petition. *See* ROR2 E1 at PDF 203. Thereafter, on July 16, 2018, at a special meeting of the full Board of Representatives, the Board voted unanimously 31-0 (with 8 absences and 1 vacancy) to "approve" and "accept" the Petition. *See* ROR2 H2 at 208; ROR2 I1 at PDF 357.

After the Board purported to assert jurisdiction over the Petition, the Land Use Committee held public hearings on July 18-19th to review the decision of the Zoning Board. *See* Stip. at ¶ 19. On August 1, 2018, the Land Use Committee voted unanimously (8-0) to recommend rejection of the Zoning Board's approval of the Application. *Id.* at ¶ 20. Thereafter,

[4] *See* Board of Representatives' Land Use/Urban Redevelopment Committee's website, http://www.boardofreps.org/land-use-urban-redevelopment-committee.aspx.

on August 6, 2018, the Board of Representatives voted unanimously (35-0-1) to reject the Zoning Board's approval of the Application. *Id.*

On August 17, 2018, HRREO commenced this appeal. HRREO subsequently applied to transfer the action to the Land Use Docket on October 25, 2018, and on October 29, 2018 said application was granted by the Court (Berger, J.). Dkt. No. 101.86; 102.

III. Legal Argument

A. The Board Lacked Authority to "Approve" the Petition.

The Connecticut Supreme Court has made clear that under the relevant provision of the Stamford Charter, the Board is not permitted to "approve" or "reject" the Petition, as the Board wrongfully did here. In *Benenson v. Bd. of Representatives of City of Stamford*, 223 Conn. 777, 612 A.2d 50 (1992), the Connecticut Supreme Court held that in reviewing a zoning amendment under the predecessor to § C6-40-9,[5] the Stamford Board of Representatives was not entitled to "approve" or "reject" a protest petition because it was not provided for in the Charter. *Id.* at 783 ("The charter does not provide for the approval or rejection of the 'petition' itself."). Instead, the Board's authority - assuming that a petition was properly before the Board - was only to "*approve or reject such proposed amendment* . . . ." *Id.* (Emphasis in original). Mr. Blessing explained as much in his correspondence to the Board, stating that "Board of Representative staff will verify if the legal thresholds for filing the this [P]etition have been met." ROR2 C14 at PDF 187. Once the Board's staff concluded that there were insufficient signatures, the inquiry should have ended.

The Board, however, ignored Mr. Blessing, its attorney and its legislative officer and thereafter wrongfully conducted proceedings to "verify" the Petition. On July 10, 2018, the

[5] This provision was then Charter § C-552.2

Land Use Committee improperly voted to "accept" the Petition. The Board then voted on July 16, 2018 to unanimously "accept" the Petition. As the Supreme Court said in *Berenson*, the Charter does not empower the Board to "accept" or "reject" a protest petition. *See id.* ("The plain language of [the Charter] leaves no room for any other construction."). The Board's actions were improper and designed to manufacture a basis to review and reject the zoning amendments. The Charter does not give the Board authority to conduct proceedings to "approve" or "reject" the Petition. After being informed of the law by its attorney, and that application of the same meant that there were insufficient signatories to the Petition, the decision of the Zoning Board should have stood. The Board lacked the power to purportedly vote to "approve" the Petition. It follows that the Board therefore lacked jurisdiction to consider the decision by the Zoning Board.

B. In the Event that the Court Concludes that the Board Had the Authority to Vote to "Approve" the Petition, the Parties Agree that 300 Signatures Were Required.

Charter Section C6-40-9 requires 300 signatures if a proposed amendment "applies to two or more zones, or the entire City." Here, the proposed text change, included the definition of a gym, which is allowed in seven city zones. *See* ROR1 A7 at PDF 229. Accordingly, the signatures of 300 "landowners anywhere in the City" were required to trigger a Board review of the Zoning Board's decision. Counsel for the Board has stipulated and agreed that this is the correct threshold number of required signatures. *See* Stip. at ¶ 12.

C. The Purported Petition Did Not Include Signatures of all Persons Owning Land as Joint Tenants or Tenants-in-Common.

Under Connecticut law, a protest petition is not validly signed unless it is signed by all joint tenants or tenants-in-common who own the land. *See Warren v. Borawski*, 130 Conn. 676, 681, 37 A.2d 364 (1944) ("[T]he cases are nearly unanimous in holding that a cotenant is not an

'owner' [and] those owning the entire interest in the property must join in order to make a valid protest."); *see also* Fuller, 9 *Conn. Prac., Land Use Law & Prac.* § 4:2 (4th ed. 2017) ("Where there is more than one owner of a lot, such as a husband and wife jointly owning a lot, those owning the entire interest in the property must jointly object . . . ."). In *Woldan v. City of Stamford*, 22 Conn. Supp. 164, 164 A.2d 306 (1960), the Court interpreted the predecessor section to Charter Section C6-40-9. At issue in *Woldan* was whether a protest petition challenging a zoning decision contained sufficient signatures by the "owners of ... land" in Stamford to be referred to the Board of Representatives. *See* 22 Conn. Supp. at 165. Similar to the present case, although the Board was advised that the petition contained insufficient signatures, it nonetheless accepted the petition and rejected the zoning change. *See id.* On appeal, the Court applied the governing law of the *Warren* decision, and ruled that "those owning the entire interest in the property must join to make a valid protest" and therefore "the matter was not properly before the board of representatives." *Id.* at 167. Other Connecticut trial courts have similarly ruled that protest petitions must be signed by all property owners. *See, e.g., Colby Assocs. v. E. Haven Planning & Zoning Comm'n*, 1993 WL 224989, at *2 (Conn. Super. Ct. June 17, 1993) ("where the protest petition is signed by only one cotenant, those properties jointly owned are excluded when determining the validity of the protest petition.").

Similarly here, the application of the *Warren* and *Woldan* decisions requires that the Court disregard 110 signatures on the purported protest Petition. *See* ROR1 A8 at PDF 238. Ms. Rosensen's analysis shows that these 110 individuals jointly-owned property, however, not all owners of the property signed the petition. *Id.* As a result, their signatures do not count towards the minimum number of signatures required. The Board's own Procedures and Practices Manual is consistent with Connecticut law, and instructs that when counting votes under Section C6-40-

9, "if there are multiple owners of a single property, each owner must sign the petition." ROR2 I2 at PDF 385. Therefore, it was improper for the Board to consider these 110 signatures in determining whether the minimum number of signatures had been obtained.

D. The Votes of the Condominium Unit Owners Were Improperly Counted.

Charter § C6-40-9 requires the signatures of 300 separate "landowners" to trigger the Board's review. The purported protest petition contained 164 signatures which listed individual units in a condominium as their addresses. ROR1 A8 at PDF 238. However, a condominium unit owner does not own the entirety of the land on which the condominium is built. A condominium unit owner instead owns his or her individual unit, as well as a fractional interest in the common elements, including the land. *See Candlewood Landing Condo. Ass'n, Inc. v. Town of New Milford*, 44 Conn. App. 107, 109, 686 A.2d 1007 (1997); *see also* Conn. Gen. Stat. § 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."); Conn. Gen. Stat. § 47-226(a) (Requiring that the condominium "declaration shall allocate to each unit: (1) In a condominium, a fraction or percentage of undivided interests in the common elements . . . ."). A condominium unit owner's interest in the common areas is shared and by law limited. For instance, if a homeowner wanted to build a swing set on his or her property, they could unilaterally do so -- because they own the entirety of the land. However, a condominium owner would have no such right, as their interests in the common elements are shared with the other unit owners. Accordingly, the votes of a condominium unit owner must be counted in accordance with their proportionate ownership interest in land, just as the votes of co-tenants and joint-tenants are treated.

The Supreme Court of Connecticut dealt with a similar situation in *Gentry v. City of Norwalk*, 196 Conn. 596, 494 A.2d 1206 (1985). In *Gentry*, three landowners in a proposed historical district brought an action to determine the validity of the votes cast by 67 condominium unit owners. 196 Conn. at 597-98. The trial court held that each unit owner was entitled to one full vote, and therefore the necessary 75 percent approval needed for the establishment of the historic district was met. *Id.* at 599-600. On appeal, the Connecticut Supreme Court reversed and held that "each condominium owner is entitled to a fractional vote" of their interest, which was 1/67 of a vote. *Id.* at 604. The Supreme Court carefully analyzed the statutes contained in the Connecticut Condominium Act in determining the nature of the condominium unit owner's interests. The Court determined that each unit owner had "an undivided interest in the common elements"[6] which was "freehold in nature." *Id.* at 613. However, "each such unit owner owns less than all the freehold . . . ." *Id.* As a result, each "unit owner is therefore **entitled to a vote proportionate to his freehold interest in the 'land'** there, and that in this case is 1/67 of a vote." *Id.* (emphasis added).

The Appellate Division of the Superior Court of New Jersey came to the same conclusion in the protest petition case of *Jennings v. Borough of Highlands*, 418 N.J. Super. 405 (2011). In *Jennings*, a protest petition challenging a zoning amendment was filed in order to trigger a requirement that the amendment pass by a super-majority vote. *Jennings*, 418 N.J. Super. at 412. At issue was whether the condominium unit owners who had signed the petition qualified as "owners of lots or land." *Id.* at 419. The Court explained that condominium owners had "hybrid real property interests" consisting of title to a condominium unit and shared title to the common

[6] The "common elements" are defined to be "all portions of the common interest community other than the units." Conn. Gen. Stat. § 47-202(6).

elements (building exteriors, land, parking areas). *Id.* at 420. Similar to Connecticut law, the unit owners are "assigned proportionate undivided interests" in the common elements. *Id.* The unit owners "do not have individual autonomy" or "dominion and control" over these areas -- their ownership interest is common and shared. *Id.* Therefore, the Court concluded that, "[b]ecause individual condominium owners do not own their common elements outright, their individual signatures cannot vitalize a valid protest." *Id.* at 423.

The same result should ensue here. The 164 signatures of condominium unit owners were disproportionately counted as 164 separate and distinct landowners. Connecticut law defines a unit owner's ownership interest as being only a "fraction" or "percentage" of the common elements, including the land. *See* Conn. Gen. Stat. § 47-226(a). Similar to a joint-owner, who can only pledge his or her one-half interest, a condominium unit owner can only petition his or her fractional interest. As *Gentry* instructs, these unit owners' votes must be treated as being "proportionate to [their] freehold interest in the land." That was not done here, as the politically-motivated Board ignored the law in order to manufacture purported jurisdiction.

E. The Board Never Had Jurisdiction to Review the Zoning Amendments.

As Ms. Rosensen properly determined after applying the advice of Attorney Minor, the Petition did not contain the requisite minimum number of signatures. When the signatures of the condominium unit owners (164); the owners of jointly-held property where all owners did not sign (110); of those individuals not listed as owners in Stamford's property records (50); duplicate signatures (5); the signatures of cooperative unit owners (3);[7] and the signatures of those people that did not provide an address or provided illegible addresses or an address in

[7] Under Connecticut law, the real property of a cooperative is owned by the association. *See* Conn. Gen. Stat. § 47-202(12).

Greenwich (5) are disregarded, the Record shows that only 240 landowners signed the Petition. ROR1 A8 at PDF 238-39. Therefore, the Board never had jurisdiction to review the Zoning Board's approval of HRREO's Application, and its rejection of said Application was improper and ineffective.

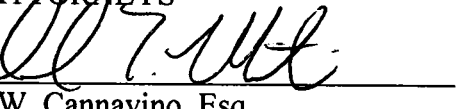
IV. Conclusion

WHEREFORE, for the reasons set forth herein, the Court should sustain this appeal and uphold the Zoning Board's decision approving the Application by Ordering that the Board of Representatives lacked jurisdiction to consider said decision.

Respectfully submitted,

THE PLAINTIFF,
HIGH RIDGE REAL ESTATE OWNER, LLC

BY CUMMINGS & LOCKWOOD LLC
ITS ATTORNEYS

By 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered electronically on May 10, 2019, to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were electronically served.

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D.N. HHD-LND-CV18-6102462-S	:	SUPERIOR COURT
HIGH RIDGE REAL ESTATE OWNER, LLC	:	J.D. OF HARTFORD
V.	:	AT HARTFORD
BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD	: :	JUNE 28, 2019

DEFENDANT'S PRELIMINARY BRIEF

I. INTRODUCTION

Defendant Board of Representatives of the City of Stamford (the "Board of Representatives") hereby responds to Plaintiff's May 10, 2019 Preliminary Brief ("Plaintiff's First Brief"). This Court should reject Plaintiff's arguments and conclude that the Board of Representatives had jurisdiction to review the decision of the City of Stamford Zoning Board (the "Zoning Board") that is the subject of this administrative appeal for the following reasons: 1) The Board of Representatives necessarily was authorized to assess the validity of the petition at issue because the City of Stamford Charter (the "Charter") mandated that the Board of Representatives review the Zoning Board's approval of zoning amendments; 2) the language of the Charter unambiguously allowed each joint owner of property signing the petition to be counted as a landowner, whether or not any co-owner also signed the petition; and 3) the language of the Charter unambiguously allowed each individual condominium owner signing the petition to be counted as a landowner.

II. RELEVANT FACTS

Most of the facts relevant to the threshold jurisdiction issue pending before the Court are not in dispute and are substantially set forth in the parties' March 22, 2019 Stipulations of Fact (the "Stip").[1]

On February 3, 2017, Plaintiff submitted Application #217-01 to the Zoning Board (the "Application"). The Application sought text changes to Article II, Section 3 and Article III, Section 9 of the City of Stamford Zoning Regulations. Stip., para. 1. Plaintiff later submitted several modifications to the Application (the "Modified Application"). Stip., paras. 2-6. The Zoning Board approved the Modified Application on May 22, 2018. Stip., para. 9.

On June 1 and 4, 2018, Hank Cuthbertson, President of the Sterling Lake Homeowners Association, filed petitions containing 696 signatures of Stamford citizens opposing the Zoning Board's approval of the Modified Application (the "Petition"). The Petition was filed pursuant to Section C6-40-9 of the Charter. ROR A11 at 6.; Stip., paras. 11 and 13. When, as here, the zoning amendments at issue apply to two or more zones in the City, Section C6-40-9 requires that such a Petition contain "the signatures of at least three hundred landowners . . . and such signers may be landowners anywhere in the City."

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[1] Plaintiff's First Brief contains numerous irrelevant facts. For example, the merits of the amendments approved by the Zoning Board and Defendant's motives are irrelevant to the jurisdiction issue. See Plaintiff's First Brief at 1-2 and 16.

ROR A2 at 21; Stip., para. 12. On June 6, 2018, the Zoning Board referred the Petition to the Board of Representatives. Stip., para. 14.

Pursuant to questions raised by Ralph Blessing, City of Stamford Land Use Bureau Chief, and Valerie Rosensen ("Rosensen"), the Board of Representative's Legislative Officer, James Minor ("Minor"), Special Counsel to the City of Stamford's Law Department, opined that: 1) if an individual owns property jointly, all joint owners must sign the Petition in order for any owner to be counted as a landowner; and 2) only the condominium association can sign as a landowner, not individual unit owners. ROR A7 at 2. Applying Minor's opinion, Rosensen then counted only 240 signatures as valid. ROR A8 at 4.

On July 10, 2018, the Board of Representative's Land Use Committee (the "Committee") held a hearing to consider the validity of the Petition and voted to recommend that the Board of Representatives accept the Petition. Stip., paras. 16-18. On July 16, 2018, the Board of Representatives voted to accept the Petition. Stip., para. 18.

After a public hearing was held, the Committee voted to recommend rejection of the Zoning Board's approval of the Modified Application. On August 6, 2018, the Board of Representatives adopted the Committee's recommendation and voted unanimously to reject the Zoning Board's approval. Stip., paras. 19 and 20.

III. STANDARD OF REVIEW

The preliminary issue this Court must resolve requires construction of language in the Charter. "The interpretation of a charter is a question of law, and the rules of statutory interpretation generally apply." AEL Realty Holdings, Inc. v. Board of Representatives, 82 Conn. App. 613, 617 (2004) (citation and internal quotation marks omitted). "We are mindful that in interpreting the provision of a charter, explicit words govern. The language employed must be given its plain and obvious meaning, and, if the language is not ambiguous a court cannot arbitrarily add to or subtract from the words employed." Id. at 618 (citation and internal quotation marks omitted).

"Common sense is to be employed in the construction of a charter. . . A city charter also must be construed, if possible, so as reasonably to promote its ultimate purpose. . . . The unreasonableness of the result obtained by the acceptance of one possible alternative interpretation of an act is a reason for rejecting that interpretation in favor of another which would provide a result that is . . . reasonable." Stamford Ridgeway Associates v. Board of Representatives, 214 Conn. 407, 429 (1990) (citations and internal quotation marks omitted). "This court traditionally eschews construction of statutory language which leads to absurd consequences and bizarre results." Id. at 427 (citations and internal quotation marks omitted).

IV. ARGUMENT

A. The Board of Representatives Necessarily Possessed the Authority to Determine Its Own Jurisdiction Because the Charter Authorized Defendant to Review the Zoning Board's Decision.

Plaintiff maintains that the Board of Representatives lacked jurisdiction to consider the Zoning Board's decision because the Board of Representatives lacked authority to approve the Petition. See Plaintiff's First Brief at 11-12. Plaintiff is wrong.

Relying on Benenson v. Board of Representatives, 223 Conn. 777 (1992), Plaintiff asserts that the Board of Representatives could neither approve nor reject a petition because the Charter does not provide authority for that action. However, Plaintiff misconstrues the Court's holding in Benenson. Unlike the instant case, there was no question regarding the validity of the petition in Benenson. Rather, the plaintiffs argued that the questions before the Board of Representatives had been improperly framed because "the votes should have been on the petition objecting to the proposed amendment, and not on the zoning amendment itself." Id. at 782. Responding to that argument, the Court held that the "board of representatives shall *approve or reject such proposed amendment*. . . . The charter does not provide for the approval or rejection of the petition itself." Id. at 783 (internal quotation marks omitted; emphasis in original). Thus, the Court was simply confirming that, from a procedural standpoint, the Board of Representative's vote on the merits of a zoning amendment is approval or rejection of the amendment, not approval or rejection of the

petition. This is because "[t]he petition was merely the vehicle that brought the issue before the board." Id.

It is clear that the Charter, like a statute, need not explicitly provide that a City board has authority to determine its own jurisdiction when the Charter has authorized the board to act in a particular situation. "Our Supreme court has reiterated that [w]here there is in place a mechanism for adequate judicial review . . . it is the general rule that an administrative agency may and must determine whether it has jurisdiction in a particular situation. When a particular statute authorizes an administrative agency to act in a particular situation it necessarily confers upon such agency authority to determine whether the situation is such as to authorize the agency to act – that is, to determine the coverage of the statute. . ." Johnson v. Department of Public Health, 48 Conn. App. 102, 110 (1998). Because Section C6-40-9 of the Charter specifically authorized the Board of Representatives to approve or reject the zoning amendments at issue in the instant case when the Zoning Board referred the Petition, the Charter necessarily conferred upon the Board of Representatives the authority to determine if the Petition was valid, thereby providing the jurisdiction necessary for the Board of Representatives to fulfill its obligation as the City's legislative body.

Citing no authority, Plaintiff also contends that the Board of Representatives was required to accept the opinion of its staff that the Petition was invalid. Plaintiff cites no authority for this contention because there is none. Neither the Charter nor any case mandates that the Board of Representatives adopt any staff opinion, including that of

Corporation Counsel. To the contrary, as set forth above, it was the Board of Representatives' right and responsibility to resolve the jurisdiction question. Notably, Section C6-40-9 contains no language indicating that any staff member should fill this role.

Even assuming that Plaintiff's construction of Benenson were correct and that the Board of Representatives incorrectly "approved" the Petition as a preliminary step, that would not negate the Board's ultimate decision. This is because the Charter mandates that once the Zoning Board refers a petition, "[t]he Board of Representatives *shall* approve or reject any such proposed amendment. . ." ROR A2 at 21 (emphasis added). Accordingly, if the Court determines that the Charter did not give the Board of Representatives implicit authority to determine its own jurisdiction, then the language of the Charter compels the conclusion that the Board had no choice but to decide the question of whether the Zoning Board's decision should stand.

B. The Signatures of Joint Owners of Property Were Properly Counted as Signatures of "Landowners."

Plaintiff relies primarily on Warren v. Borawski, 130 Conn. 676 (1944) and Woldan v. City of Stamford, 22 Conn. Supp. 164 (1960) to support the argument that the signatures of joint owners of property could not qualify as "landowners" without the signatures of their co-owners. See Plaintiff's First Brief at 12-14. These cases are inapposite.

In Warren, the Court construed language requiring a protest petition signed by "owners of 20 percent or more, either of the areas of the lots involved in the proposed

action, or of areas immediately contiguous thereto and within 500 feet therefrom." Warren v. Borawski, 130 Conn. at 677 n. 1. The trial court found that owners of 20 percent of the affected territory had not signed because "the number of square feet represented by these owners was less than the 20 per cent required." Id. at 678. The Supreme Court agreed, holding that all owners of a given piece of property needed to sign for the protest petition to be valid. The Court reasoned, in part, that a co-tenant owns "an undivided interest in every foot [of the property], and no particular foot frontage may be set aside for him, because in every foot so set aside his cotenant would be an equal owner." Id. at 680 (internal quotation marks omitted). Consequently, the Court concluded that "within the meaning of the ordinance in question those owning the entire interest in the property must join in order to make a valid protest." Id. at 681.

The court in Woldan construed similar language requiring a protest petition signed by "the owners of twenty per cent or more of the privately-owned land located within five hundred feet of the borders of such area." Woldan v. City of Stamford, 22 Conn. Supp. at 165 (internal quotation marks omitted). Relying on Warren, the court in Woldan also concluded that "[w]ithin the meaning of the ordinance involved in this case, those owning the entire interest in the property must join to make a valid protest." Id. at 166.[2]

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[2] Plaintiff further cites Colby Associates v. East Haven Planning and Zoning Commission, 1993 WL 224989 (Conn. Super.). See Plaintiff's First Brief at 13. The court in Colby interpreted similar language in General Statutes Section 8-3(b) which authorizes a protest petition "signed by the owners of twenty percent or more of the area of the lots included in such proposed change or of the lots within five hundred feet in all directions of the property included in the proposed change. . ."

Significantly, the cases relied on by Plaintiff did not address a signature requirement measured by the number of people located anywhere in the municipality; instead, these cases construed signature requirements tied to the percentage of property owned in a specified location. For the latter purpose, it is logical to require that all owners of a particular property sign. Otherwise, as reasoned by the Warren Court, the entire area of that property would not be counted, thereby failing to meet the full percentage requirement for a limited geographic area. But, that analysis does not apply to a signature requirement that is untethered to a percentage of property or land located in a particular area. The language applicable in the case at bar is plain and unambiguous, only requiring the signatures of "three hundred landowners . . . anywhere in the City." ROR A2 at 21.

This unambiguous language also leaves no room for an interpretation that effectively converts a landowner into a non-owner just because he or she happens to own property jointly with one or more other person[s]. The irrational nature of Plaintiff's tortured analysis can be illustrated best by the following example, which was presented below in response to the "Memoranda" prepared by staff:

> 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, the wife suddenly becomes a "landowner[;]" her husband is also a "landowner" [only] because his wife has previously signed, and both the husband's and wife's signature are [then] valid.

ROR A11 at 5 (emphasis in original; alterations added).

Had the drafters of the Charter desired this result, they could have included language in Section C6-40-9 making clear that each joint owner of property needs to sign in order to constitute one valid protest. Alternatively, the drafters could have expressly distinguished between single landowners and joint landowners by providing that a landowner's signature would only count as a fraction of one signature if the owner's property is jointly owned. The drafters did not seek either of these alternatives and the Court cannot now add language to the Charter to accommodate Plaintiff's desired result, because "[i]t is not the function of courts to read into clearly expressed legislation provisions which do not find expression in its words." Stamford Ridgeway Associates v. Board of Representatives, 214 Conn. 407, 430 (1990) (citations and internal quotation marks omitted; alteration added).

Additionally, the interpretation Plaintiff advances would defeat "the ultimate charter purpose giving the right to landowners to protest proposed zone changes," by effectively disenfranchising 110 landowners who want to petition their government about an issue which is obviously very important to them. Id. And, again, in the instant case, the Charter provides that these landowners are not even limited by their proximity to the zones which the amendments affect. Instead, they can be landowners who are located "anywhere in the City." This was clearly a provision meant to be broad based. "A [charter] must not be construed in a manner that would permit its purpose to be defeated." Id. at 426 (citation and internal quotation marks omitted; alteration added).

Moreover, Plaintiff's reliance on language in the Board of Representatives' Procedures and Practices Manual is misplaced and actually supports the Board of Representatives' position. Plaintiff posits that the Manual "instructs that when counting votes under Section C6-40-9, 'if there are multiple owners of a single property, each owner must sign the petition.'" Plaintiff's First Brief at 13-14. However, Plaintiff fails to cite the entire provision in the Manual, which states, in pertinent part:

> If the appeal is by opponents of a decision amending the Zoning Regulations, the opponents must file a petition with the Zoning Board meeting the requirements set forth in [Section] C6-40-9 of the Charter. The petition must be signed by the lesser of 100 owners of the privately-owned land located within 500 feet of the borders of the area included in the proposed zoning amendment or of twenty percent (20%) of the owners of the privately-owned land located within 500 feet of the borders of the area included in the proposed zoning amendment (*if there are multiple owners of a single property, each owner must sign the petition*), and be filed with the Zoning Board within 10 days after the official publication of the Zoning Board's decision. (*There are other requirements if more than one area is affected by this decision*).

ROR I2 at 24-25 (emphasis added). Thus, according to the Board of Representatives' own written rules, the requirement that each owner sign does *not* apply to zoning amendments affecting two or more zones, which is precisely the situation in the case at bar.

C. The Signatures of All Condominium Owners Were Properly Counted.

Plaintiff maintains that the signatures of condominium owners should not have been counted because they possess a fractional ownership interest in the common elements of the condominium. See Plaintiff's First Brief at 14-16. Plaintiff's analysis of this issue is unpersuasive as well.

First, there is no dispute that a condominium unit owner is a "landowner" by virtue of his or her ownership interest in the common elements of the condominium. Plaintiff concedes this point in its brief. See Plaintiff's First Brief at 14, citing, *inter alia*, Candlewood Landing Condominium Association, Inc. v. Town of New Milford, 44 Conn. App. 107 (1997). Indeed, several Connecticut courts have held that a condominium unit owner is a "person owning land" within the meaning of General Statutes Section 8-8(a)(1), thereby giving that condominium owner standing to pursue a zoning appeal. See, e.g. Saviano v. Norwalk Zoning Commission, 2011 WL 1366880, *1 (Conn. Super.); Caporizo v. Zoning Board of Appeals, 1997 WL 344740, *3 (Conn. Super.); Slade v. Zoning Board of Appeals, 1995 WL 681661, *4 (Conn. Super.). As the Charter clearly gives all Stamford "landowners" the right to protest a zone change affecting two or more zones within the City, and all condominium unit owners clearly fall within that category, the Board of Representatives properly counted the signatures of all condominium unit owners on the Petition.

Second, the cases relied on by Plaintiff are readily distinguishable. In Gentry v. City of Norwalk, 196 Conn. 596 (1985), the Court held that each condominium owner was entitled to a fractional vote for the purpose of voting on the creation of a historical district, because the applicable statute stated "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. . ." Id. at 604 (internal quotation marks omitted; alteration in original). Accordingly, the drafters of

the historic district statute did what the drafters of the Charter chose *not* to do – expressly provide that the votes of condominium unit owners count as only a fraction of one vote. The Court in Gentry also reasoned "that the historic district statute in Chapter 97a of the General Statutes focuses not on people but on buildings, structures, places or surroundings that are of historical significance and architectural merit. . . The statute can fairly be denominated as site oriented. . ." Id. at 607 (internal quotation marks omitted). Conversely, the applicable petition requirement in Section C6-40-9 focuses on the number of people, specifically "three hundred landowners . . . anywhere in the City."

Plaintiff also relies on Jennings v. Borough of Highlands, 418 N.J. Super. 405 (App. Div. 2011). Similar to cases discussed in Section IV.B. herein, Jennings involved a petition threshold requiring "sign[atures] by the owners of 20% or more of the area either (1) of the lots or land included in such proposed [zone] change, or (2) of the lots or land extending 200 feet in all directions therefrom. . ." Id. at 419 (alterations added). Therefore, again, the signature requirement was measured by a specific area the owners accounted for rather than the number of landowners located anywhere in the municipality. As a result, Jennings is inapposite.

Finally, the concern with disenfranchising landowners that was expressed above is even more acute when one considers the ramifications of Plaintiff's position that the signatures of *all* condominium unit owners should have been disregarded. See Plaintiff's First Brief at 16-17. According to the City Assessor's Office, there were over 11,500

condominium units in Stamford as of 2018. ROR A14 at 6. Based on Plaintiff's argument, none of these unit owners would be entitled to petition under Section C6-40-9 of the Charter. Thus, an acceptance of Plaintiff's position would construe the Charter in such a way so as to achieve an absurd result – a result that surely was not envisioned or intended by those who drafted the Charter.

D. The Number of Valid Signatures on the Petition Far Exceeds 300 Landowners.

Plaintiff maintains "that only 240 landowners signed the Petition." Plaintiff's First Brief at 17. However, when the signatures of 164 condominium unit owners and 110 joint owners are added, the total number of valid signatures equals 514, which far exceeds the 300 landowner signature requirement contained in Section C6-40-9.

V. CONCLUSION

For the reasons set forth herein, the Board of Representatives respectfully submits that this Court should conclude that the Board of Representatives properly determined it had jurisdiction to review the Zoning Board's decision.

THE DEFENDANT
BOARD OF REPRESENTATIVES
OF THE CITY OF STAMFORD

By: _____

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CERTIFICATION

I hereby certify that a copy of the above was or will be delivered electronically or mailed by first-class mail, postage prepaid, on the date hereof, to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter, and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery:

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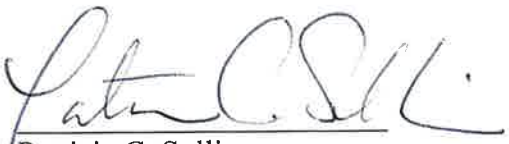

Patricia C. Sullivan

D.N. HHD-LND-CV-18-6102462-S	:	SUPERIOR COURT
HIGH RIDGE REAL ESTATE OWNER, LLC	:	J.D. OF HARTFORD
v.	:	LAND USE DOCKET
BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD	:	July 12, 2019

REPLY BRIEF OF HIGH RIDGE REAL ESTATE OWNER, LLC

The Plaintiff, High Ridge Real Estate Owner, LLC ("Plaintiff" or "HRREO"), by and through its undersigned counsel, hereby submits its Reply to the Preliminary Brief dated June 28, 2019 (the "Opp." or "Opposition") of the Defendant, the Board of Representatives of the City of Stamford ("Defendant" or "Board" or "Board of Representatives").

The Board has failed to provide this Court with any authority to support its position that property owners can petition more than their proportionate ownership interest. As set forth herein, this position is fatally flawed and contradicted by Connecticut law. This Reply makes the following three points in response to the Opposition: (1) the Charter[1] and the Connecticut Supreme Court's decision in *Benenson* limits the Board's authority to addressing the subject zoning amendment; (2) there is no difference between an "owner of land" and a "landowner"; and (3) like all other property owners, condominium unit owners' signatures must be treated proportionately with their ownership interests.

1. The Fundamental Inquiry in *Benenson* is Again at Issue Here.

Although the procedural posture of the case in *Benenson v. Board of Representatives of City of Stamford*, 223 Conn. 777, 612 A.2d 50 (1992) is certainly different than here (*see* Opp. at 5), the same critical question that was put to the Connecticut Supreme Court is now being asked

[1] All terms not defined herein shall have the meanings ascribed in Plaintiff's Preliminary Brief dated May 10, 2019. Dkt. No. 109.00.

again: does Section C6-40-9 allow the Board to vote to approve or reject a protest petition, or does the section limit the Board's authority to approving or rejecting a proposed text amendment? *See Benenson*, 223 Conn. at 782-83. The Supreme Court clearly answered the question, explaining that "the [C]harter does not provide for the approval or rejection of the 'petition' itself." *Id.* at 783. But this is precisely what the Board did here. After the Board was informed that the Petition ***lacked*** the requisite signatures, it conducted proceedings to "officially vote if the [P]etition is accepted or rejected." ROR2 G1 at PDF 213:4-5. The Land Use Committee thereafter voted 9-0-0 to "approve" the Petition and the Board then "approved" it as well. ROR2 E1 at PDF 203; ROR2 H2 at PDF 208; ROR2 I1 at PDF 357. The Board provided no written explanation for how it concluded the signature threshold was met. This "approval" procedure is clearly improper under *Benenson*.

The Board refuses to recognize the larger takeaway from *Benenson*, which is that the Board's authority is limited by the Charter. "[A]gents of a city, including its commissions, have no source of authority beyond the charter." *Perretta v. City of New Britain*, 185 Conn. 88, 92, 440 A.2d 823 (1981). The Board is "limited by the express language" set forth in the Charter. *See id. Benenson* instructs that the Charter does not provide a basis to approve or reject the Petition. Holding otherwise would lead to a slippery slope where any time the Board disagreed with the Zoning Board, it could conduct proceedings to "approve or reject" a petition without even providing its reasoning.[2] The Board's authority under the Charter is plainly limited to "approv[ing] or reject[ing] the amendment." *See Benenson*, 223 Conn. at 73. Here, the Board

[2] The danger of allowing the Board to conduct these proceedings to "approve" a petition is highlighted by another case pending before this Court, wherein the Board's Land Use Committee initially rejected a protest petition only to cave to political pressure and reverse its vote to then "approve" that very same petition. *See The Strand/BRC Group et al. v. Board of Representatives of the City of Stamford*, Docket No. HHD LND CV-19-6111731-S.

was informed it lacked jurisdiction to approve or reject the amendment.[3] It should not be permitted to act in derogation of the Charter simply to manufacture a purported jurisdictional basis to review a Zoning Board decision that it disagrees with.

Although the Board contends that it has the authority to determine its own jurisdiction (*see* Opp. at 6), that is not the case when the Charter reserves that authority for another person or entity. Here, Section C6-40-9 delegates that authority to the Zoning Board, not the Board of Representatives. The Charter provides that when the Zoning Board receives a petition with at least 300 landowners' signatures,[4] "the matter shall be referred by the Zoning Board to the Board of Representatives within twenty days . . . ." *See* Charter § C6-40-9. In the first instance though, the Zoning Board must determine if the signature threshold has been satisfied. If there are insufficient signatures, the petition cannot be referred to the Board. The Charter does not allow the Board to reach down and refer matters to itself. It cannot only act to approve or reject an amendment once the Zoning Board has made a proper referral.

2. <u>There is No Difference Between an Owner of Land and a Landowner.</u>

The Board attempts to distinguish the joint-ownership case law cited by HRREO by contending that those cases addressed the sentence in Charter Section C6-40-9[5] that applies to "owners . . . of land" versus the sentence which applies to "landowners". *See* Opp. at 8-10. The Board contends that when the "owners of land" sign a petition all co-tenants need to sign in order for it to be valid, but when a "landowner" signs a petition only one co-tenant needs to sign in

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[3] The Board's argument that an improper approval of the Petition would still "not negate the Board's ultimate decision" strains credulity. Opp. at 7. As the Board even concedes a page earlier in its brief, the Petition is the "vehicle" that brings the amendment before the Board and provides it with jurisdiction. It goes without saying that the "approval" of an invalid petition would not provide the Board with jurisdiction to review the amendment.

[4] This assumes a situation where an amendment applies to two or more zones.

[5] Or cases that addressed a similar provision, i.e., dealing with "owners of land", in another municipality's charter.

order for it to be valid. *See* Opp. at 9. But this attempted distinction falls flat ***as the Charter identifies "owners of land" as "landowners" in the very next sentence***:

> 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.

Charter § C6-40-9 (emphasis added).

The Charter clearly refers to those "owners of privately-owned land" as "landowners". In fact, it goes even further and "***requires***" that they be landowners. It makes no difference that the "owners of land" refers to a percentage of owners in the first instance, as in the next line it is clear that those owners must be "landowners".[6] The key tenent of *Warren v. Borawski*, 130 Conn. 676, 681, 37 A.2d 364 (1944), applies in both instances -- when a protest petition is involved, all co-owners must sign it. As *Warren* explains, the case law around the country is "nearly unanimous" in this regard. *Id.* The Board's attempted distinction is one without a difference. If the Court were to accept the Board's arbitrary distinction of terms, it would in fact yield the type of unreasonable results that our statutory rules of construction instruct the Court to avoid. *See* Opp. at 4.

The Board's muddied analysis to distinguish who constitutes a landowner based on zones is similarly unpersuasive. *See* Opp. at 10-11. It is illogical to suggest that when an amendment only affects one zone all co-tenants need to sign the petition, but if the amendment affects two or more zones then only one co-tenant's signature is necessary. Contrary to the Board's suggestion,

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[6] Indeed, in the 1954 version of this section, there was no "twenty percent" language and the provision simply provided: "The number of signatures required on any such written petition shall be one hundred if the proposed amendment applies to only one zone. All signers must be land owners in any areas so zoned, or in areas located within five hundred feet of any areas so zoned." *See* ROR1 A10 at PDF 303. Clearly the "one hundred" is referring to one hundred landowners, as set forth in the next sentence.

that is not what the Board's Procedures and Practices Manual dictates or suggests. *See* Opp. at 11. Co-tenant signatures must be treated the same regardless of how many zones an amendment affects.

3. Connecticut Law Requires that Condominium Unit Owners' Signatures be Treated Proportionate to their Ownership Interest.

The Board asks for special treatment of those signatures by condominium unit owners and argues that their signatures should be treated disproportionately to their fractional ownership interests. *See* Opp. at 12. The Board cites no authority for this proposition. That is because the Board's contention is not the law in Connecticut. Protest petition signatures are universally treated in accordance with one's ownership interest. A husband owning property with his wife can only pledge his one-half ownership interest. A condominium unit owner can only pledge his or her fractional interest. This is why the statute addressed in *Gentry v. City of Norwalk*, 196 Conn. 596, 604, 494 A.2d 1206 (1985) provides 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." The statute does not just restrict condominium unit owners to pledging their fractional ownership interest, ***it applies to all owners of freehold interests in land.*** This is consistent with the treatment of joint tenant signatures in the *Warren* and *Woldan* decisions. The Board has not offered any authority for the special treatment of the condominium unit owners' signatures.

The Board cites three Superior Court cases that have absolutely nothing to do with the treatment of a condominium unit owner's signature on a protest petition. *See* Opp. at 12 citing to *Saviano v. Norwalk Zoning Comm'n*, 2011 WL 1366880, at *1 (Conn. Super. Mar. 18, 2011); *Caporizo v. Zoning Bd. of Appeals of City of Stamford*, 1997 WL 344740, at *3 (Conn. Super. June 12, 1997); *Slade v. Zoning Bd. of Appeals of Town of Branford*, 1995 WL 681661, at *4 (Conn. Super. Nov. 6, 1995). These zoning appeals provide that a condominium unit owner is

statutorily aggrieved for the purposes of Conn. Gen. Stat. § 8-8(a)(1) by virtue of their fractional ownership interest in the common elements. These cases are completely irrelevant to the issue at hand.

Finally, this matter is not about "disenfranchising" anyone. *See* Opp. at 13. It is about how real property owners' signatures are treated for the purposes of a protest petition. A married couple could choose to buy a home and put it in the name of one spouse, but most do not. This affects each spouse's ownership interest, as well as the rights and restrictions on what each can do with the property without the other's consent. The Board refuses to acknowledge these limitations on property ownership. It has failed to provide this Court with any authority to allow it to deviate from the consistent and well-settled case law that instructs that protest petition signatures are treated proportionate to one's ownership interest. As a result, the Court should sustain this appeal and rule that the Board lacked jurisdiction to consider the Zoning Board's approval of the Application.

Respectfully submitted,

THE PLAINTIFF,
HIGH RIDGE REAL ESTATE OWNER, LLC

BY CUMMINGS & LOCKWOOD LLC
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered electronically on July 12, 2019, to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were electronically served.

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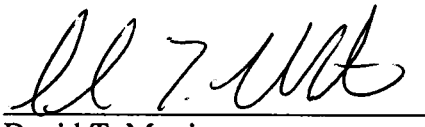

David T. Martin

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DOCKET NO. LND CV-18-6102462-S	:	SUPERIOR COURT
HIGH RIDGE REAL ESTATE OWNER, LLC	:	LAND USE LITIGATION DOCKET
V.	:	
BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD	:	AT HARTFORD FEBRUARY 19, 2020

MEMORANDUM OF DECISION

I

The plaintiff, High Ridge Real Estate Owner, LLC, appeals a decision made by the board of representatives of the city of Stamford (board), after the filing of a protest petition under § C6-40-9 of the Stamford Charter (charter), rejecting a decision by the zoning board of the city of Stamford (zoning board) which approved a text amendment defining "Gymnasium and Physical Culture Establishment" and allowing this use in the C-D designed commercial district (zone). The plaintiff is the owner of the High Ridge Office Park, which is located south of the Merritt Parkway, at 0 Turn of River Road in Stamford. The subject property is comprised of 38.8 acres on two parcels of property containing a number of office buildings and parking areas.[1] (Return of Record [ROR], Item B1.) The plaintiff seeks to redevelop one of its buildings as a gym.

[1] The plaintiff alleges that it sought the zone change because building 3, which was constructed in the 1970s and has been vacant since 2015, is functionally obsolete for the current zoned uses, i.e., it would require substantial capital investment and structural changes for it to continue to be used as an office building, but that capital improvement would not be economically feasible.

13.00

On February 6, 2017, the plaintiff filed the application for the text amendments. (ROR, Item B1.) After a public hearing, the zoning board unanimously approved the text amendments on May 22, 2018, to allow the gym use in the zone by special permit. Stipulation (Stip.),[2] ¶ 9.

Section C6-40-9 of the charter authorizes an appeal of a zoning decision to the board through a process known as a protest petition.[3] On June 1, 2018, a protest petition was filed and was referred to the board. Stip., ¶¶ 11, 14. The land use committee of the board (committee) voted unanimously to recommend that the board accept the petition on or around July 10, 2018. Stip., ¶¶ 16-17. After a public hearing, the board unanimously rejected the decision of the zoning board on August 6, 2018. Stip., ¶¶ 19-20. Notice of the decision was allegedly published in the Stamford Advocate on August 9, 2018.

This appeal was commenced on August 17, 2018. By agreement of the parties, the court presently addresses only the threshold issue of whether the board lacked the jurisdiction to review the zoning board's decision based upon the alleged invalidity of the protest petition. The plaintiff argues that the board did not have the authority under the charter to accept or reject the petition. It further asserts that the petition was invalid because it did not have the requisite 300 signatures. Specifically, the plaintiff argues that certain joint owners and condominium owners were inappropriately included in the board's determination that the petition had 300 signatures. The

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[2] Counsel filed two stipulations (pleadings ## 106.00 and 112.00). All references to the stipulation in this memorandum of decision are to the original stipulation (pleading # 106.00), filed on March 22, 2019.

[3] Return of record item A10 provides the text changes of the protest petition provision in Stamford dating back to 1953.

board counters that it was authorized to determine the validity of the petition and that the joint owners and condominium owners were properly counted toward the 300 signatures.

A stipulation of facts and the return of record was filed on March 22, 2019. The plaintiff filed its brief on May 10, 2019, and the board filed its brief on June 28, 2019.[4] The court began to hear oral argument on August 7, 2019,[5] and a supplemental stipulation of facts was filed on November 1, 2019. On November 4, 2019, the court heard the remainder of oral argument.

II

"It is well established that a city's charter is the fountainhead of municipal powers. . . . The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised. . . . It follows that agents of a city, including its commissions, have no source of authority beyond the charter. [T]heir powers are measured and limited by the express language in which authority is given or by the implication necessary to enable them to perform some duty cast upon them by express language. . . . The interpretation of a charter is a question of law, and the rules of statutory interpretation generally apply." (Citation omitted; internal quotation marks omitted.) *AEL Realty Holdings, Inc.* v. *Board of Representatives*, 82 Conn. App. 613, 616-17, 847 A.2d 998 (2004).

"In arriving at the intention of the framers of the charter the whole and every part of the

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[4] Both sides reserved their rights to file supplemental briefs on the other issues of this appeal.

[5] The court had posed the question of whether the petition contained the 300 signatures without counting the disputed signatures which led counsel to do more research and to file the supplemental stipulation (pleading # 112.00).

instrument or enactment must be taken and compared together. In other words, effect should be given, if possible, to every section, paragraph, sentence, clause and word in the instrument and related laws. The real intention when once accurately and indubitably ascertained, will prevail over the literal sense of the terms. When the words used are explicit, they are to govern, of course. If not, then recourse is had to the context, the occasion and necessity of the provision, the mischief felt, and the remedy in view." (Internal quotation marks omitted.) *Smith* v. *Zoning Board of Appeals*, 227 Conn. 71, 87, 629 A.2d 1089 (1993), cert. denied, 510 U.S. 1164, 114 S. Ct. 1190, 127 L. Ed. 2d 540 (1994).

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case . . . . [General Statutes] § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Lyme Land Conservation Trust, Inc.* v. *Platner*, 334 Conn. 279, 288, 221 A.3d 788 (2019).

"When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common-law principles governing the same general subject matter . . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal

quotation marks omitted.) *Marchesi* v. *Board of Selectmen*, 328 Conn. 615, 628, 181 A.3d 531 (2018). "Finally, common sense must be used in statutory interpretation, and courts will assume that the legislature intended to accomplish a reasonable and rational result." (Internal quotation marks omitted.) *Cannata* v. *Dept. of Environmental Protection*, 239 Conn. 124, 141, 680 A.2d 1329 (1996); see also *Stamford Ridgeway Associates* v. *Board of Representatives*, 214 Conn. 407, 429, 572 A.2d 951 (1990) ("[c]ommon sense is to be employed in the construction of a charter").

III

The parties stipulate that the relevant section of the charter is § C6-40-9, which, in part, provides that when a petition is filed with the zoning board "the matter shall be referred by the [zoning board] to the [board] . . . ."[6] Stip., ¶ 12. They further stipulate that "[w]hen a text

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[6] Charter § C6-40-9 fully provides: "Referral to Board of Representatives by Opponents or Proponents of Amendments to the Zoning Regulations, Other Than the Zoning Map, After the Effective Date of the Master Plan.

"After the effective date of the Master Plan, if 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-owed land within five hundred feet of the area so zoned, whichever is least, if the proposed amendment applied to only one zone. All signers must be landowners in any areas so

amendment affects two or more zones in the [c]ity–such as with the text change obtained by [p]laintiff–'the signatures of at least three hundred landowners' are required." Stip., ¶ 12.

After the zoning board referred the petition to the board; stip., ¶ 14; James Minor, special counsel to the law department, prepared a memorandum for Ralph Blessing, the land use bureau chief, and Valerie Rosensen, the legislative officer for the board. (ROR, Item A7.) In Minor's memorandum, dated June 27, 2018, he cited to Connecticut case law and advised that all joint owners of property and condominium owners, i.e., all owners of each fractional share must sign the petition in order to be counted. (ROR, Item A7.)

Rosensen then wrote a memorandum to the committee, copied to the board, discussing her review of the signatures. (ROR, Item A8.) "[F]ollowing the guidance of the law department," she stated that most of the 696 signatures were insufficient and that only 240 signatures could be counted.[7] (ROR, Item A8.) The Sterling Lake Homeowners Association and

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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." (ROR, Item A2.)

[7] Specifically, she found: "The breakdown of the 696 entries is as follows:

"- 164 signers were determined not to be landowners because the listed addresses were individual units in a condominium (See Exhibit B)

"- 110 signers were determined not to be landowners because the listed addresses are jointly owned and all the owners of the property failed to sign the petition (See Exhibit C)

"- 50 signers were determined not to be landowners because the signer was not listed as an owner of the listed address based on the Assessor's Database (See Exhibit D)

"- 3 signers were determined not to be landowners because the listed addresses were units in a cooperative (See Exhibit D)

"- 3 signatures were determined not to be valid as duplicate signatures for the same property (See Exhibit D)

the Riverturn Condominium Association, Inc., submitted memoranda opposing Minor's and Rosensen's memoranda. (ROR, Item A11; Item A14.)

On July 10, 2018, the committee held a hearing on the validity of the petition and voted unanimously to recommend that the board accept the petition. Stip., ¶¶ 16-17. The board voted to accept the petition on July 16, 2018. Stip., ¶ 18. On July 18, 2018, and July 19, 2018, the committee held a public hearing on the matter and, on August 1, 2018, it unanimously voted to recommend that the board reject the zoning board's findings. Stip., ¶¶ 19-20. On August 6, 2018, the board rejected the zoning board's conclusions. Stip. ¶ 20.

The plaintiff first argues that the board did not have the authority under the charter to accept or reject the petition and the board counters that it was authorized to determine the validity of the petition. This is not the first time that this issue has arisen in Stamford. In *Benenson* v. *Board of Representatives*, 223 Conn. 777, 780-81, 612 A.2d 50 (1992), landowners challenged a text amendment by way of protest petitions. As to the question of whether the board had

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"- 2 signatures were determined not to be valid as duplicates because the individuals signed for two addresses that are on the same tax lot (See Exhibit D)

"- 2 signatures were determined not to be valid because the signer did not provide an address (See Exhibit D)

"- 1 signature was determined not to be valid because the address was illegible and could not be determined from looking up the name in the Assessor's Database (See Exhibit D)

"- 1 signature was determined not to be valid because the address was in Greenwich (See Exhibit D).

"Of the remaining 360 signatures:

"- 120 signers were determined to be the sole landowners of 120 parcels of privately owned land in the City (See Exhibit E)

"- 240 signers were determined to be the joint landowners of 120 parcels of land in the City of Stamford, constituting 120 landowners (See Exhibit E)." (ROR, Item A8, pp. 3-4.)

authority to accept or reject the petitions, the court held: "The question before the board was not the petition, which indicated the property owners' objection to the zone change, but whether the zone change should be approved. The petition was merely the vehicle that brought the issue before the board. This is made clear in § C-552.2, which provides that after the petition is referred to the board, the board of representatives *shall approve or reject such proposed amendment*. . . . The charter does not provide for the approval or rejection of the 'petition' itself. The manifest legislative intent expressed in the Stamford charter is that the board of representatives, in considering an amendment to the zoning map, shall review the legislative action of the zoning board on that board's written findings, recommendations and reasons. *The question before the board of representatives is whether to approve or to reject the amendment.*" (Emphasis in original; internal quotation marks omitted.) Id., 783. At that time, § C-552.2, in relevant part, provided: "After the effective date of the master plan, if the owners of twenty per cent or more of the privately-owned land in the area included in any proposed amendment to the zoning map, or if the owners of twenty per cent 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 550 of this act." Id., 780 n.3.

In the present case, § C6-40-9, in relevant part, provides: "After the effective date of the Master Plan, if 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."[8] (Emphasis added.) (ROR, Item A2.)

While this court would ordinarily agree with the board's argument that it has authority to determine its jurisdiction,[9] the charter provisions are essentially the same in *Benenson* and in the present case. Once the petition was filed with the zoning board, the only charge for the board

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[8] Section C6-40-1 of the charter is a general description of the powers of the board consistent with, and almost a mirror image of, General Statutes § 8-2. (ROR, Item A2.) It does not address the issues herein.

[9] See *Cannata* v. *Department of Environmental Protection*, 215 Conn. 616, 623, 577 A.2d 1017 (1990) ("[I]t is [the] general rule that an administrative agency may and must determine whether it has jurisdiction in a particular situation. When a particular statute authorizes an administrative agency to act in a particular situation it necessarily confers upon such agency authority to determine whether the situation is such as to authorize the agency to act–that is, to determine the coverage of the statute." [Internal quotation marks omitted.]).

was to determine the substantive issue, i.e., the proposed amendment. See *Benenson* v. *Board of Representatives*, supra, 223 Conn. 783. Thus, the board had no authority to determine the validity of the petition and its action was improper.[10]

Even if the board was authorized to determine the validity of the petition's signatures, the plaintiff argues that the petition was invalid because it did not have the requisite 300 signatures. Specifically, the plaintiff asserts that some joint owners and condominium owners could not be counted toward the 300 signatures. The board argues that the joint owners and condominium owners were properly counted toward the 300 signatures.

The charter uses the word "landowners" in describing those who can petition, but does not define the word. (ROR, Item A2.) The petitioners maintained that all owners should be considered "landowners" without regard to their interest in the properties. (ROR, Item A11; Item A14.) Much of the July 10, 2018 hearing before the committee was devoted to the meaning of "landowner" in § C6-40-9. (ROR, Item G1.) Throughout the hearing, various members posed questions revealing the absolute uncertainty of the term. (ROR, Item G1.) Both proponents of the expansive definition–that it includes anyone who owns an interest–and proponents of the narrower definition–in compliance with Connecticut case law–made reasonable arguments.

Minor addressed the questions related to joint owners and tenants in common and stated

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[10] Of course, this leaves the question of who had authority to determine the validity of the petition–a question which does not appear to have a clear answer. It is somewhat disconcerting that in the intervening years since *Benenson*, the power to review petitions–whether by the zoning board or by the board–seems to have not been addressed by a change to the charter. A section fully addressing such a challenge may be appropriate.

that Connecticut law requires that "all owners of a parcel of land must sign for a protest to be valid." (ROR, Item A7, p. 4; Item G1.) Using Minor's memorandum, Rosensen determined that there were only 240 signatures that could be counted toward the 300 landowners. (ROR, Item A8, p. 4.) She also noted in her memorandum in footnote 3 that "[i]n no instance did every unit owner in a condominium sign." (ROR, Item A8, p. 3.)

The court is bound by precedent as to joint tenancies and as to condominium owners in the context of protest petitions. In *Warren* v. *Borawski*, 130 Conn. 676, 681, 37 A.2d 364 (1944), the court observed that "the cases are nearly unanimous in holding that a cotenant is not an 'owner'. . . and . . . those owning the entire interest in the property must join in order to make a valid protest." "[The] failure of . . . one of the tenants in common of the . . . property to sign the protest left that property completely unrepresented upon the protest." *Kirkham* v. *Finnemore*, 16 Conn. Supp. 38, 41 (1948). In *Woldan* v. *Stamford*, 22 Conn. Supp. 164, 166-67, 164 A.2d 306 (1960), the court applied *Warren* and held that "those owning the entire interest in the property must join to make a valid protest" and that the subsequent rejection of a zoning change was improper as "the matter was not properly before the board of representatives." Our Supreme Court has also noted that "[i]t is . . . clear from *Woldan* v. *City of Stamford*, 22 Conn. Supp. 164 . . . that all of the property owners of a specific piece of property must sign the petition for their land to be counted." *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 414 n.5; see also R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th ed. 2015) § 4:2 , p. 62 ("[w]here there is more than one owner of a lot, such as a husband and wife jointly owning a lot, those owning the entire interest in the property must jointly

object"). This same reasoning applies to condominium owners. See *Gentry* v. *Norwalk*, 196 Conn. 596, 613, 494 A.2d 1206 (1985) (concluding that each condominium unit owner is entitled to vote proportionate to his interest in land[11]); *Candlewood Landing Condominium Assn., Inc.* v. *New Milford*, 44 Conn. App. 107, 109, 686 A.2d 1007 (1997) (construing certain sections of Common Interest Ownership Act, General Statutes §§ 47-200 through 47-295, in tax context); see also General Statutes § 47-202 (10) ("'[c]ondominium' 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. . . ."); General Statutes § 47-226 (a) (1) (condominium "declaration shall allocate to each unit . . . [i]n a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association").

In the present case, petition signers who held their property in a joint tenancy or as fractional owners of a condominium should not have been counted toward the required 300 signatures because all of the owners of the property had not signed the petition. (ROR, Item A8.) As to condominium owners specifically, "[i]n no instance did every unit owner in a condominium

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[11] In *Gentry*, the court was specifically construing language in General Statutes § 7-147b (g) which provided 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." Id., 610. The court warned that "[t]he interaction of the historic district and the condominium statutes in this appeal . . . will not constrain us in deciding how condominium interests may be characterized in other contexts." Id., 613.

sign." (ROR, Item A8, p. 3.) With only 240 valid signatures, the protest petition[12] was invalid

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[12] General Statutes § 8-3 (b), which provides for protest petitions against text amendments, was promulgated in 1925. *Muller* v. *Town Plan & Zoning Commission*, 145 Conn. 325, 329, 142 A.2d 524 (1958). They have been held to be a lawful reservation of power. *City of Eastlake* v. *Forest City Enterprises, Inc.*, 426 U.S. 668, 672-73, 96 S. Ct. 2358, 49 L. Ed. 2d 132 (1976) ("In establishing legislative bodies, the people can reserve to themselves power to deal directly with matters which might otherwise be assigned to the legislature. . . . The reservation of such power is the basis for the town meeting, a tradition which continues to this day in some States as both a practical and symbolic part of our democratic processes. The referendum, similarly, is a means for direct political participation, allowing the people the final decision, amounting to a veto power, over enactments of representative bodies. The practice is designed to 'give citizens a voice on questions of public policy.'" [Citation omitted; footnotes omitted.]). Nevertheless, litigation involving the protest petition provision in Stamford has long been an issue. For example, in *Burke* v. *Board of Representatives*, 148 Conn. 33, 43-44, 166 A.2d 849 (1961), the court concluded, "Once a zoning commission has adopted zoning regulations, however, the municipality is powerless to amend them. . . . The legislative intent expressed in the Stamford charter modifies this principle by enabling the board of representatives to approve or reject any amendment by the zoning board to the zoning map or regulations, if proper and timely objection is made. This is not an altogether novel procedure, *although it is, perhaps, not a workable or again desirable one*." (Citations omitted; emphasis added.)

Additionally, "[z]oning is not to be based upon a plebiscite of the neighbors. Their wishes are to be considered but the final ruling is to be governed by the basic consideration of the benefit or harm involved to the community at large." *Arkenberg* v. *City of Topeka*, 197 Kan. 731, 421 P.2d 213, 219 (1966). "In exercising their zoning powers, the local authorities must act for the benefit of the community as a whole following a calm and deliberate consideration of the alternatives, and not because of the whims of either an articulate minority or even majority of the community." *Udell* v. *Haas*, 21 N.Y.2d 463, 469, 235 N.E.2d 897, 288 N.Y.S.2d 888 (1968); see also *Marusic Liquors, Inc.* v. *Daley*, 55 F.3d 258, 262 (7th Cir. 1995) ("[b]ecause no single person's vote affects the outcome of a plebiscite, the voters do not invest heavily in information; rational ignorance is the order of the day, and direct elections accordingly are more prone to decision by passion or prejudice–as Socrates learned"). Beyond this, the protest petition has been used historically to discriminate on the basis of race. See *Housing Authority of Town of Branford* v. *Planning & Zoning Commission*, Superior Court, land use litigation docket at Hartford, Docket No. LND CV-18-6091466-S (October 24, 2018, *Berger, J.T.R.*) (67 Conn. L. Rptr. 348, 350 n.10) ("Citing to Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (2017), the plaintiffs challenge the very concept of the protest petition because they have been used historically to discriminate on the basis of race. They also assert that a more stringent requirement on a commission should be imposed where the petitioners are not required to give stated reasons for their position. . . . In the extreme, conceivably just one

and the board did not have jurisdiction to reject the decision of the zoning board approving the text amendments.

Accordingly, the court sustains the plaintiff's appeal.

Berger, J.T.R.

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person who owns all the lots within 500 feet could create an anomalous situation, i.e., one person would be able to impose a supermajority under § 8-3 (b). The plaintiffs point out that protest petitions can cause 'extreme results.' The exclusionary implications of permitting a small group of local owners to block a zoning amendment are obvious. . . . These concerns are valid." [Citation omitted.]); see also *Step By Step, Inc.* v. *City of Ogdensburg*, 176 F. Supp. 3d 112, 131 (N.D.N.Y. 2016) ("[a] decision made in the context of strong, discriminatory opposition becomes tainted with discriminatory intent even if the decision makers personally have no strong views on the matter" [internal quotation marks omitted]); *United States* v. *Borough of Audubon, New Jersey*, 797 F. Supp. 353, 361 (D.N.J. 1991) ("[d]iscriminatory intent may be established where animus towards a protected group is a significant factor in the community opposition to which the commissioners are responding"), aff'd, 968 F.2d 14 (3d Cir. 1992).

Finally, the protest petition allows the complicated zoning process to be overseen and, thus, administered by those in a more political forum instead of a zoning commission that presumably has some expertise in the subject. Hence, the protest petition process may well be subject to "the whims of either an articulate minority or even majority of the community." See *Udell* v. *Haas*, supra, 21 N.Y.2d 469. This concern is underscored by the historic use of the petition process in this country and by the changing role of a zoning commission in the land use process. Commissions are no longer just concerned with the creation of zoning districts and bulk regulations; now they deal with such varied fields as affordable housing, sea level rise and climate change or federal laws on the siting of religious places of worship and complex issues of floating and overlay type zones. These issues did not exist when the petition process was created in the 1920s. In sum, the intended democratic protest methodology created so long ago, and reflected in § 8-3 (b), often causes dubious results in land use. See, e.g., *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 440.

D.N. HHD-LND-CV18-6102462-S	:	SUPERIOR COURT
HIGH RIDGE REAL ESTATE OWNER, LLC	:	J.D. OF HARTFORD
V.	:	AT HARTFORD
BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD	: :	FEBRUARY 27, 2020

MOTION FOR EXTENSION OF TIME

Defendant hereby seeks a twenty (20) day extension of time to file a petition for certification to the Appellate Court. Plaintiff has no objection to this motion.

I. BRIEF HISTORY

This is an administrative appeal in which Plaintiff challenged the adequacy of a protest petition filed pursuant to the City of Stamford's Charter. On February 19, 2020, the Superior Court (Berger, J.) sustained the Plaintiff's appeal. A petition for certification would be due on March 10, 2020.

II. SPECIFIC FACTS

Defendant Board of Representatives of the City of Stamford will be meeting on March 9, 2020, at which time it will address whether it wishes to pursue an appeal. Counsel cannot begin working on a petition for certification unless and until Defendant so authorizes. Therefore, because a petition for certification would be due only one day after the Defendant Board meets, Defendant respectfully requests

2/28/2020
Granted to March 30, 2020.

Asst. Clerk-Appellate

Notice sent: 2/28/2020

193918

LIST OF PARTIES TO APPEAL

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