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To: Board of Representatives

From: Kathryn Emmett
Director of Legal Affairs & Corporation Counsel
and
Cynthia Anger
Assistant Corporation Counsel

Date: February 26, 2019

Re: Master Plan Amendment Petition to Board of Representatives Procedure
(Master Plan Amendment Applications #432 and 433)

This memorandum provides information relevant to the procedure that the Board of Representatives should follow in reviewing the above-referenced Master Plan amendment petition pursuant to the City of Stamford Charter, section C6-30-7.¹ The following is based on a review of the record, Charter, caselaw and previous Corporation Counsel legal opinions and memoranda.

I. Background

On January 2, 2019, the Planning Board approved Master Plan amendment applications #432 and 433 and caused notices of its decisions to be published in the Stamford Advocate on January 9.² Application #432 was filed by The Strand/BRC Group, commonly referred to as BLT.

¹ The question of whether the Board of Representatives has jurisdiction to hear the petition has been previously addressed. See legal opinion dated February 11, 2019, LU30.025 & LU30.026 - Petition for Appeal of Amendments to the Master Plan for B&S Carting Site (Planning Board Master Plan Applications MP-432 & MP-433) pursuant to Charter section C6-30-7. This memorandum relates to the role of the Board in hearing and deciding the petition, only.

² The petition before the Board of Representatives is entitled: "Re: Appeal notice to the Board of Representatives: Recent BLT proposal and the Planning Board decision on January 2, 2019 for zoning map and text change Amendments to accommodate changes in the 2015 Master Plan for high rise 'density' along Pacific, Atlantic, Woodland, & and Walter Wheeler Drive (Map

Application #433 was filed by the Planning Board to implement some of the land use recommendations of the South End Neighborhood Study. The Planning Board's application proposed changing the Master Plan categories for properties adjoining but not owned by BLT. The Planning Board heard the applications simultaneously but rendered separate approvals.

On January 18, the Planning Board received a single petition challenging both approvals and on the same day referred the petition to the Board of Representatives. The Board of Representatives Land Use-Urban Redevelopment Committee will hear the petition at its February 27 meeting. The meeting agenda lists the applications separately.

II. Applicable Law

"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 v. Board of Representatives, 82 Conn. App. 613, 616-17 (2004).

Charter section C6-30-7 sets forth the relevant procedures in the present matter. It provides that opponents of a proposed amendment to the City's Master Plan may file a petition with the Planning Board which:

shall be referred by the Planning Board to the Board of Representatives,...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 Planning Board* in Section C6-30-3 of this Charter.

Amendment Zoning applications #432, #433)". Despite references to zoning map and regulation changes, it is clear from the language in the body of the petition that the petitioners are seeking review of the Planning Board's decisions regarding proposed amendments to the Master Plan because applications #432 and #433 seek changes to the Master Plan. The City has proceeded on this basis as the legal notices of the hearing before the Board of Representatives and the meeting agenda at which the petition will be heard refer to amendments to the Master Plan under both applications pursuant to Charter section C6-30-7.

(Emphasis supplied.) Section C6-30-7 expressly limits the authority of the Board of Representatives when reviewing an amendment approved by the Planning Board to either accepting or rejecting the proposed amendment. *AEL Realty Holdings v. Board of Representatives* at 618.

The Charter provisions governing master plan amendment petitions mirror those governing zoning map and regulation petitions. See *e.g.* sections C6-40-5 (Referral to Board of Representatives by Opponents of Proposed Amendment to Zoning Map), C6-40-9 (Referral to Board of Representatives by Opponents or Proponents of Amendments to the Zoning Regulations), and C6-40-18 (Vote Required by Board of Representatives). The Board of Representatives has had occasion to consider, and our courts have reviewed zoning petition challenges under the City's Charter. Cases in which zoning petitions are in issue are instructive because the Charter language concerning the Board of Representatives' role in zoning and planning board petitions is virtually identical.

In *Burke v. Board of Representatives of the City of Stamford*, 148 Conn. 33 (1961), the Plaintiffs appealed a decision of the Board of Representatives approving a zoning map change based on a change to the Master Plan. In dismissing the appeal, the Court discussed the role of the Board of Representatives when it considers a zoning petition. The Court noted that "the question before the board of representatives is whether to approve or to reject the amendment." (Emphasis supplied.) *Id.* at 39. It also noted that the "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.*" (Emphasis supplied.) *Id.* at 39. The Charter does not require the Board of Representatives to conduct a new hearing and the Court declined to read into the Charter provisions for notice and a full hearing which are not expressed. *Id.* at 43. "If the legislature had intended that the board of representatives should conduct a hearing *de novo* instead of a simple review of the action of the zoning board, the legislature could have so stated. But it has not expressed such an intent." *Id.* at 39-40. See also *Benenson v. Stamford Board of Representatives*, 223 Conn 777 (1992) (legislative intent expressed in Stamford charter is that board of representatives considering amendment to the zoning map reviews the legislative action of the zoning board on that board's written findings, recommendations and reasons.)

In *Zenga v. Zebrowski*, 170 Conn. 55 (1975), the Plainville planning and zoning commission referred a petition challenging its approval of a zone change to the Plainville town council. The town council held a full evidentiary public hearing and later rejected the proposed change. Affirming the trial court's dismissal of the Plaintiff's appeal, the Court noted that in approving or rejecting the action of the planning and zoning commission, the town council acts as a zoning authority and exercises independent judgment and discretion.

Viewed together, these decisions and the plain language of the Charter make it clear that the same standards of review apply to both zoning and planning board decisions referred to the Board of Representatives. In the instant matter, the Board should review the petition challenging the amendments to the Master Plan by considering the record before the Planning Board and applying the same standards as are prescribed for the Planning Board in section C6-30-3. The Board may accept additional evidence and should exercise independent judgment and discretion,

without deference to the Planning Board's decision. However, the Board is limited to either accepting or rejecting the Master Plan amendments.

III. Planning Board Standards

Charter section C6-30-1 sets forth the powers and duties of Planning Board. Those powers and duties include the responsibility to prepare, adopt and amend the Master Plan. Charter section C6-30-3 describes the Master Plan as the general land use plan for the physical development of the City and sets forth a wide array of standards.³

In their letter dated February 15, 2019, to Matthew Quinones, President, Board of Representatives, Ralph Blessing, Land Use Bureau Chief, and David W. Woods, Deputy Director of Planning, detail the history of the Master Plan amendment applications and the planning considerations supporting the Planning Board's decisions to change portions of a block bounded by Atlantic Street to the west, Woodland Avenue to the north, Pacific Street to the east and Walter Wheeler Drive to the south in the South End Neighborhood from Master Plan Categories 4 (Residential- Medium Density Multifamily) and 6 (Commercial-Neighborhood) to Category 5 (Residential-High Density Multifamily). Mr. Blessing and Dr. Woods explain the general and specific planning considerations that informed the Planning Board's decisions. In particular, they refer to the impact of the proposed amendments on city-wide and South End housing availability, mass transit use, and traffic. Reference is also made to the Master Plan's call for reinvestment in and relocation of industrial uses from the South End. In addition, they note that the original proposals were modified to reduce maximum permitted densities to address some of the concerns raised by the public. All of these considerations are relevant to the standards outlined in section C6-30-3.

³ Sec. C6-30-3. The Master Plan. The Master Plan shall be the general land use Plan for the physical development of the City. The Plan shall show the division of Stamford into land use categories such as, but not restricted to, the following: 1. Residential -single family plots one acre or more. 2. Residential-single family plots less than one acre. 3. Residential-multi-family-low density. 4. Residential-multi-family-medium density. 5. Commercial-local or neighborhood business. 6. Commercial-general business. 7. Industrial. The land use categories indicated on the Master Plan shall be defined by the Planning Board and made a part of such Plan. The Plan shall also show the Board's recommendation for the following: streets, sewers, bridges, parkways, and other public ways; airports, parks, playgrounds and other public grounds; the general location, relocation and improvement of schools and other public buildings; the general location and extent of public utilities and terminals, whether publicly or privately-owned, for water, light, power, transit, and other purposes; the extent and location of public housing and neighborhood development projects. Such other recommendations may be made by the said Board and included in the Plan as will, in its judgment, be beneficial to the City. Such Plan shall be based on studies of physical, social, economic, and governmental conditions and trends and shall be designed to promote with the greatest efficiency and economy, the coordinated development of the City and the general welfare, health and safety of its people.

IV. Conclusion

Based on the analysis set forth above, the governing principles guiding the Board of Representatives when hearing petitions from decisions of the Planning Board on proposed amendments to the Master Plan are:

- Accept or reject the amendments to the Master Plan without modification.
- Be guided by and apply the same standards as are prescribed for the Planning Board in Charter section C6-30-3.
- Review the Planning Board's actions based on its written findings, recommendations, and reasons. The Charter does not require an evidentiary public hearing.
- Employing the planning standards set forth in the Charter, exercise independent judgment and discretion without deference to the Planning Board's actions.

With respect to the current petition concerning applications #432 and 433, as a matter of expedience, and without revisiting the jurisdictional issues discussed in the February 11, 2019 legal opinion, the Board may simultaneously hear the two applications but must render individual decisions on each application.

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