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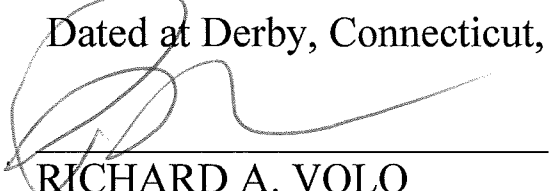
TO THE JUDICIAL MARSHAL FOR THE JUDICIAL
DISTRICT OF ANSONIA-MILFORD, OR HIS DEPUTY,
WITHIN SAID JUDICIAL DISTRICT, GREETING:

BY AUTHORITY OF THE STATE OF CONNECTICUT, you
are hereby commanded to summon the PLANNING and ZONING
COMMISSION of the City of Derby, Connecticut, to appear
before the SUPERIOR COURT within and for the Judicial District
of Ansonia-Milford, at Milford, 14 West River Street, Milford,
Connecticut, on November 14, 2017, said appearance to be made
by the PLANNING and ZONING COMMISSION of the City of
Derby, or its attorney, by entering a written statement of
appearance with the Clerk of the Court on or before the second day
following the aforesaid return date, then and there to answer unto
the following complaint and appeal of: Marlene Ann Dziekan, 14
Krakow Street, Derby, Connecticut; Michael R. Burke, 102
Marshall Lane, Derby, Connecticut; by leaving with or at the usual
place of abode of the Chairman of the PLANNING and ZONING
COMMISSION of the City of Derby, Connecticut, Theodore
Estwan, 43 Franklin Avenue, Derby, CT and also with the Town
Clerk Marc Garofalo of the City of Derby, Connecticut, at 1
Elizabeth Street, Derby, CT (Town Hall) a true and attested copy
of the complaint and appeal and of this citation and summons at
least twelve days before the return day in the manner provided by
law for the service of civil process..

I hereby certify that I have personal knowledge of the financial
responsibility of the plaintiffs and deem it sufficient to pay the
costs of this action.

Hereof fail not, but of this writ with your doings thereon, make
due service and return.

Dated at Derby, Connecticut, this 15th day of October, 2017.



RICHARD A. VOLO
COMMISSIONER OF THE
SUPERIOR COURT

RETURN DATE-11/14/2017

SUPERIOR COURT

MARLENE ANN DZIEKAN
MICHAEL R. BURKE

JUDICIAL DISTRICT OF

VS.

AT MILFORD

PLANNING AND ZONING
COMMISSION OF THE
CITY OF DERBY, CONNECTICUT

OCTOBER 15, 2017

TO THE SUPERIOR COURT WITHIN AND FOR THE
JUDICIAL DISTRICT OF ANSONIA-MILFORD, AT
MILFORD, TO BE HELD ON NOVEMBER 14, 2017, COME:

MARLENE ANN DZIEKAN and
MICHAEL R. BURKE

appealing from the approval of a text change to Sections 195-7,
195-11(D), 195-54(A) and 195-25E of the City of Derby
Connecticut Zoning Regulations and the plaintiffs complain and
say:

1. The plaintiff Michael R. Burke resides at 102 Marshall Lane,
Derby, CT.
2. The plaintiff Marlene Ann Dziekan resides at 14 Krakow Street,
Derby, CT.
3. The Defendant Planning and Zoning Commission of the City of
Derby, Connecticut, hereinafter referred to as the Defendant, is the
agency empowered under the General Statutes of the State of
Connecticut, to perform the function of a Zoning Commission
pursuant to Chapter 124 of the General Statutes.

4. Pursuant to the provisions of Section 8-3 of the General Statutes, the Defendant is empowered to implement a text change to a preexisting zoning regulation, provided the following conditions are met:

(A) – A public hearing is held by a majority of the members of the Defendant Commission;

(B) -The public hearing is held in accordance with the procedures set forth in Section 8-7d of the General Statutes;

(C) -The proposed text change of the subject regulation is approved by a majority vote of all of the members of the commission;

(D) –In reaching its decision, the commission must take into account the Plan of Conservation and Development, prepared pursuant to Section 8-23 of the General Statutes and must state on the record its findings on consistency of the proposed text change with such plan;

(E) -It states on the record the reason why such text change is made.

5. On July 31, 2017, the Defendant filed an application with itself for a text change to Sections 195-7, 195-11(D) and 195-54(A) of the City of Derby Zoning Regulations. The application did not refer to Section 195-25E of the regulations, however. Nevertheless, Defendant did approve a text change amendment to Section 195-25E.

6. Public hearings were held on the above application on August 13, 2017, September 19, 2017 and October 3, 2017 (note that the

Defendant incorrectly referred to the dates on at least one occasion for the first two public hearings).

7. At a public hearing held on October 3, 2017, the Defendant approved its own application for a zone text change as aforesaid.

8. Pursuant to the provisions of Section 8-8(a)(1) of the General Statutes, the Plaintiffs are statutorily aggrieved by the action of the Defendant in approving the aforesaid text change in that they own land within one hundred feet of any portion of land affected by the decision of the Defendant.

9. In approving its own requested regulation text change, the Defendant acted illegally, arbitrarily and in abuse of the discretion vested in it by law as an administrative agency in that:

(A) - It failed to take into consideration the Plan of Conservation and Development adopted by the City of Derby;

(B) - It failed to state on the record its reasons why such change was made other than to make it clear that an application for a special exception for use of premises at 101 Marshal Lane, formerly used as a nursing home, was being filed if the change was approved, said applicant being represented by Attorney Dominick Thomas of Derby, Connecticut who at the October 3, 2017 public hearing, volunteered information not about his client's forthcoming application for a residential educational dormitory but only about an application for "apartments". He also commented regarding the VISA status of students expected to populate the proposed dormitory if the change was approved, notwithstanding that no application had yet been filed for anyone for use of the Marshal Lane premises and the only application before the Defendant was the Defendant's request for a zone text change;

(C)-In indicating a unanimous vote of the Defendant approving the zone text change, the chairman Estwan referred to the following documentation as providing evidence that the change was consistent with the Plan of Conservation and Development identified in Section 195-2 of the zoning regulations:

(1) - The application for the cited zone text change. The application, prepared by the engineering firm of Milone and MacBroom of Cheshire, Connecticut. Estwan did not, however reveal to the plaintiffs nor to the general public what the services by Milone and MacBroom cost the City of Derby and that if the real party in interest, the client of Attorney Dominic Thomas, had submitted the application, this cost could have been prevented completely. At the time of the October 3, 2017 public hearing, Attorney Thomas did disclose that the property was under a contract for purchase, presumably conditioned on approval of the subject zone text changes by the Defendant. Although there were eight other parcels in the R-3 zone which would be affected by the zone text change, none of these parcels were the subject of any pending sale, thereby making it clear that only Attorney Thomas' client would benefit immediately from the change. Given the foregoing, it made no sense whatsoever that the Defendant caused the City of Derby to pay for engineering services for preparation of the application for zone text change. Moreover, the filing fee was also waived thereby causing the City of Derby to lose funds which would have benefited the taxpayers; accordingly, Estwan's conclusion that services provided by Milone and MacBroom in preparing the zone text application and the application itself supported the purpose of the Plan of Conservation and Development is baseless;

(2) Statement of Anthony Simonetti. Anthony Simonetti, who identified himself as the owner of the property under contract for sale to an unidentified third party which was conditioned on approval of the subject zone text change, admitted he got the

property taxes reduced and for reason this caused the City to lose a lot of “commercial business” and thus the zone text change would help with the loss of taxes. He did not admit the reduction went from over \$60,000.00 to \$22,000.00 and only benefited him personally. He further stated that “there is nothing going to the City from this property and that “they” (he meant him personally) were looking for something that will fit in that property and that “[t]his is something that will work for the City.” At no time did he disclose, upon information and belief, that he would receive substantial monies as consideration for the sale, none of which would benefit the City of Derby. Therefore, in considering Simonetti’s comments made as aforesaid at the public hearing as supportive of the proposed zone text change’s impact on the City’s Plan of Conservation and Development, the Defendant exposed its complete lack of concern for the City of Derby residents and plaintiffs herein as well, and its overwhelming unilateral support for not only Anthony Simonetti’s proposed sale to a third party and the profit he, not the City of Derby, would recognize from such sale, but also its total neglect of the Plan of Conservation and Development made in favor of the benefit to be yielded to a Town of Shelton resident, an interest which flies in the face of the purpose of the zoning regulations;

(3) Statement of David Kopjanski. Chairman Estwan’s comments that the draft revisions to the regulations which were the subject of the text change proposed by former Building Inspector David Kopjanski also were considered as evidence in support of the zone text change is bewildering in that Defendant completely ignored the well thought out draft revisions by Kopjanski and only voted on the language prepared by Milone and MacBroom at an undisclosed cost to City of Derby residents. Kopjanski did not submit a bill to City of Derby residents for his draft revisions.

(D) It distributed a map of other properties in the R-3 zone which would be affected by the zone text change if approved, as an

exhibit to its application, without having attached said map as an exhibit to its application; further, it failed to refer to said map in the public notice filed for the public hearings held on its application and also failed to file a copy of said map with the Town Clerk with its application;

(E) In submitting the application for the zone text change without identifying all properties which would be affected by said change if approved on the face of the application, it denied procedural due process to all property owners in fact living within one hundred feet of all of said properties which would be affected by any decision approving said application;

(F) In submitting the aforesaid application for a regulation text change on its own accord as applicant, without requiring any and all parties who required said text change in order to utilize property which they owned to submit said application, it deliberately ignored a conflict of interest created by their acting as applicant and decision-maker for said text change, especially when they were aware that the owner of property at 101 Marshall Lane required said text change and would directly benefit if said change was approved;

(G) Although Section 195-11D(10)(d) allows Defendant to approve alternatives to the landscaping requirements of Section 195-25E, which latter section references “adaptive reuse of existing buildings, facilities and parking areas,” neither the zone text change nor the regulations provide a definition for the term “adaptive reuse.” Accordingly, because the application prepared by Milone and MacBroom at the cost of City of Derby taxpayers does not include any amendment to Section 195-25E, Buffer Area Requirements, the defendant exceeded its authority in approving a change to Section 195-25E.

WHEREFORE THE PLAINTIFFS PRAY THAT:

1. The appeal be sustained and the decision of the Defendant declared to be null and void;

2. For such other and further relief as in law or equity may pertain.

THE PLAINTIFFS

BY: 

RICHARD A. VOLO
435 NEW HAVEN AVENUE 2ND FLR
DERBY, CT 06418
JURIS NO. 100316
203 734 9269 – P
203 735 9037- F
RICKVOLO@GMAIL.COM

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RETURN DATE-11/14/2017

SUPERIOR COURT

MARLENE ANN DZIEKAN
MICHAEL R. BURKE

JD OF ANSONIA-MILFORD

VS.

AT MILFORD

PLANNING AND ZONING
COMMISSION OF THE
CITY OF DERBY, CONNECTICUT

OCTOBER 15, 2017

BOND

KNOW ALL MEN BY THESE PRESENTS THAT WE,

MARLENE ANN DZIEKAN
MICHAEL R. BURKE

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as PRINCIPALS, and

RICHARD A. DZIEKAN

as SURETY, are held and stand firmly bound and obliged, jointly and severally, unto the PLANNING and ZONING COMMISSION of the City of Derby, Connecticut, in the sum of \$1,000.00 to be paid to the PLANNING and ZONING COMMISSION of the City of Derby, Connecticut, or its attorney, and we hereby bind ourselves, our heirs, executors, and administrators to such payment by these presents.

The condition of this obligation is such that whereas the above-bound principals have appealed from an order of the PLANNING and ZONING COMMISSION of the City of Derby, Connecticut, dated October 3, 2017, which order implemented a text change to Sections 195-7, 195-11(D), 195-54(A) and 195-25E of the City of

Derby Zoning Regulations dated October 15, 2017, to the Superior Court for the Judicial District of Ansonia-Milford, at Milford, Connecticut, on November 14, 2017;

NOW, THEREFORE, if the principals shall prosecute this appeal to conclusion, comply with the orders of the Court, and shall pay all costs if they fail to sustain such appeal, then this Bond shall be void, otherwise to remain in full force and effect.


Dated at Derby, Connecticut, this 16th day of October, 2017.

PRINCIPALS-


MARLENE ANN DZIEKAN


MICHAEL R. BURKE

SURETY-


RICHARD DZIEKAN

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