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May 16, 2024

Via Email ([tnelson@cranstonri.gov](mailto:tnelson@cranstonri.gov))

Hon. Members of the Ordinance Committee,  
Cranston City Council  
c/o Tracy A. Nelson, City Clerk  
City of Cranston  
869 Park Avenue  
Cranston, RI 02910

**Re: 4-24-01, Proposed Ordinance in Amendment of Chapter 17 of the Code of the City of Cranston, 2005, Entitled “Zoning” (Change of Zone – 0 Sage Drive); Petition filed by Property Owner John Casale III – Objection of Janice Cataldo et al.**

Honorable Members of the Ordinance Committee:

We represent Janice Cataldo and several other residents of the City, the names and addresses of whom are attached hereto as **Exhibit 1**, with regard to the proposed zoning ordinance amendment referenced above (the “Proposed Ordinance”). Please accept this correspondence as a summary of our clients’ legal and substantive objections to the Proposed Ordinance, which is scheduled for hearing before the Ordinance Committee this evening.

I. **The City Council is not required to adopt the Proposed Ordinance because of the pending litigation.**

We have reviewed the docket for the pending litigation styled PC-2021-07668, *John Casale III v. City of Cranston et al.* (the “Pending Litigation”). The consent order entered by the Superior Court on April 14, 2024 (the “Consent Order”), a copy of which is attached hereto as **Exhibit 2**, does not compel the City to approve the Proposed Ordinance. Rather, the Consent Order simply requires the City to “review the [Proposed Ordinance] in its ordinary course pursuant to applicable State law and City ordinances.” Consent Order at Par. 4. The Consent Order expressly states that it shall not “otherwise compel the [City] to approve a petition submitted by the Plaintiff [the Proposed Ordinance].” Consent Order at Par. 3. The Consent Order therefore imposes nothing on the City beyond what it is already required to do, which is hold a hearing on the Proposed Ordinance. Pursuant to the Consent Order, the Pending Litigation “shall be dismissed with prejudice” after

the City “act[s] upon” the Proposed Ordinance. Consent Order at Par. 6. Based upon the plain language of this Consent Order, dismissal of the Pending Litigation is required even if the Council acts upon the Proposed Ordinance by voting not to enact it.

## **II. Rhode Island law does not compel the City Council to approve the Proposed Ordinance.**

Even assuming that the Proposed Ordinance aligns with the City’s currently expired Comprehensive Plan, Rhode Island law does not compel the City Council to adopt the Proposed Ordinance. Stated differently, where a city or town council is reviewing a rezoning petition that is proposed by an individual applicant or landowner, the members of the municipal legislative body can make a policy decision that aligns with the current interests of their constituents rather than a comprehensive plan that may not align with current concerns.

The City’s current Comprehensive Plan was approved by the City on August 25, 2010 – almost 14 years ago. State approval for the Comprehensive Plan expired in 2017. The City is currently in the process of amending the Comprehensive Plan. Current state law governing adoption and amendment of municipal comprehensive plans mandates a “minimum twenty-year (20) planning timeframe in considering forecasts, goals, and policies.” R.I. Gen. Laws § 45-22.2-6(a). This requirement was not added to the Comprehensive Planning and Land Use Act until 2011, after the City adopted its current Comprehensive Plan. P.L. 2011, ch. 313, § 1. Therefore, this outdated Comprehensive Plan, which doesn’t align with current planning practices mandated by state law, is not an appropriate document for guiding the review of proposed amendments to the Zoning Ordinance, including the Proposed Ordinance.

It is true that state law directs municipalities to enact zoning maps and comprehensive plans that are consistent with each other. See R.I. Gen. Laws § 45-22.2-6(b)(11). However, the Rhode Island Supreme Court has long held that these state law provisions are “directory and not mandatory.” West v. McDonald, 18 A.3d 526, 534 (R.I. 2011). The Court recognized that this is an area where “an exercise of discretion is normally intended” so that the Council may achieve “a unified system of land use regulation.” Id. at 535. Therefore, despite this state law, this Council still has considerable discretion to decide when and how, or even whether, to make the City’s Zoning Ordinance consistent with the City’s Comprehensive Plan. Nothing in the recent changes to the State’s land use laws supersedes the Court’s controlling ruling in McDonald.

Further, of course, there are two ways to achieve consistency between the Zoning Ordinance and the Comprehensive Plan. The Zoning Ordinance could be amended, as the petitioner proposes, to be consistent with an expired Comprehensive Plan that doesn’t comply with current state law planning requirements. Or, alternatively, the Comprehensive Plan can be updated and amended to be made consistent with the current Zoning Ordinance and map – a Zoning Ordinance and map that has been governing land use decisions to date and which constituents and neighbors have come to rely upon. We would respectfully submit that the latter alternative is the better alternative, especially considering that the City is currently in the process of updating the Comprehensive Plan.

Therefore, even assuming that the Proposed Ordinance aligns with the current expired Comprehensive Plan, the City Council can choose to reject the Proposed Ordinance because (1) the current Comprehensive Plan is outdated; (2) the City is in the process of amending its Comprehensive Plan; and (3) the current Comprehensive Plan does not take into account current realities of municipal and school services, among many other aspects that the Council should consider.

**III. The petitioner has no colorable legal challenge if the Council rejects the Proposed Ordinance and the Council should not enact this Proposed Ordinance based the petitioner's threat of legal action.**

Rhode Island law provides no right of appeal where a city or town council declines to adopt a proposed amendment to a zoning ordinance. The Zoning Enabling Act (the "Enabling Act"), codified at Title 45, Chapter 24 of the Rhode Island General Laws, contains several provisions relating to appeals. None of the Enabling Act's provisions relating to appeals provide a right of appeal in such a circumstance. Section 45-24-69 deals only with appeals of zoning board decisions. Section 45-24-71 only allows appeals from unlawfully *enacted* zoning amendments, not from legislative decisions that reject proposed amendments.

The Rhode Island Supreme Court has recognized that the Enabling Act does not provide a right of appeal from a city or town council's decision to reject a proposed amendment to a zoning ordinance and, further, that the Court has no independent equitable authority to force a municipal council to enact an ordinance when it chooses not to do so. See P.J.C. Realty, Inc. v. Barry, 811 A.2d 1202, 1207 (R.I. 2002) (holding that there is no right to appeal a council's decision not to enact a zoning ordinance amendment and that the Court cannot issue an injunction or writ of mandamus requiring the ordinance to be enacted). The Court in P.J.C. Realty reached this decision by following precedent that recognized "the havoc that would follow" if "an action could lie against any legislative body that failed to enact proposed legislation." See Consol. Realty Corp. v. Town Council of Town of N. Providence, 513 A.2d 1, 4 (R.I. 1986).

In the Pending Litigation, Mr. Casale has asked the Superior Court to issue a writ of mandamus, which is essentially asking the Court for an order forcing the City Council to approve the rezoning petition. However, our Supreme Court foreclosed exactly this type of action based upon "the havoc that would follow" if a litigious party could seek to force democratically elected legislators to enact laws and ordinances based upon their private interests, rather than the based upon the concerns of their constituents and the interests of the public. If this Honorable Council were to enact the Proposed Ordinance under threat of this baseless litigation from the petitioner, it would invite the same havoc that our Supreme Court sought to foreclose in the cases cited above. If this Council were to accede to the petitioner's demands based upon this litigation, it would be an invitation to other litigious actors to file suit to try to force the Council to enact their preferred piece of legislation. Respectfully, this Honorable Council should only enact ordinances based upon its

sound judgment of public policy and the interests of their constituents – and not based upon empty threats from demanding litigants.

**IV. The Proposed Ordinance is not in the best interest of neighboring residents.**

As you are aware, the Proposed Ordinance is the latest iteration of a rezoning proposal that the City Council has previously denied in 2021. In this Honorable Council's sound judgment, the version of the Proposed Ordinance proposed in 2021 would negatively affect neighboring residents and property owners by eroding the rural quality and critical resources of the surrounding area and further straining municipal services. The current version of the Proposed Ordinance presents the same proposal and would have the same negative effects. The only change between the 2021 proposal and the current Proposed Ordinance is the litigation brought by the petitioner in the interim, which, as outlined above, is a reason to deny this Ordinance, not a reason to grant it. Our clients and other concerned residents will elaborate on the detrimental effects that the Proposed Ordinance would bring to the residents of Alpine Estates and the surrounding area, as they did last week before the City Plan Commission and as they did in 2021.

Municipal legislative bodies are elected representatives of the people charged with acting in the best interests of their constituents. They are politically accountable to the people who elected them. If, after hearing the testimony from residents who oppose the Proposed Ordinance, the Council feels that rezoning the subject property is not in the best interest of their constituents, the Council can confidently choose to place the interests of their constituents over the interests of the petitioner and reject the Proposed Ordinance.

**V. The petitioner is required to bring its subdivision application to the City Plan Commission for approval before coming to this Honorable Council to request the Proposed Ordinance to be enacted.**

A fatal flaw with the Proposed Ordinance is that it is an application for a zoning ordinance amendment based upon plans for a subdivision, but was not accompanied by an application for subdivision approval from the City Plan Commission (CPC). Last week, during the petitioner's presentation before the CPC for a recommendation on the Proposed Ordinance, the applicant repeatedly assured the CPC that the proposed subdivision would be presented to the CPC for subdivision approval at a later date. However, § 45-23-61(b) of the Development Review Act, which regulates subdivision review and approval, and supersedes all municipal ordinances and regulations, states as follows:

(b) *City or town council.* Where an applicant requires both planning board approval and council approval for a zoning ordinance or zoning map change, the applicant shall first obtain an advisory recommendation on the zoning change from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional zoning change from the council, and then return to the planning board for subsequent required approval(s).

The petitioner has acknowledged that they will be proposing an eight-lot subdivision based upon this Proposed Ordinance. It is also acknowledged by all involved that the subdivision requires a zoning ordinance amendment. Therefore, there is no question that under the precedence of approvals statute, the petitioner is obligated to submit an application for subdivision approval – not on his timetable, but contemporaneously with the Proposed Ordinance application. The idea behind the precedence of approvals statute is that the legislative body – in this case, the City Council – needs to be fully informed about the subdivision proposal for which the proposed zoning ordinance amendment is paving the way. This is exactly how it is supposed to work. The way the petitioner intends to proceed here is putting the cart before the horse, in violation of state law.

## **VI. Conclusion**

As this correspondence has demonstrated, the City Council is in no way obligated to approve the Proposed Ordinance. Because the Proposed Ordinance is not in the best interest of the residents of the City, we urge the Ordinance Committee to reject it. Moreover, the Proposed Ordinance is not properly before the Ordinance Committee or the City Council, because the promised subdivision application should have been presented to the CPC for conditional approval first, not after the City Council reviews the Proposed Ordinance.

Thank you for your consideration. We look forward to discussing this matter with you at the hearing.

Sincerely,

**URSILLO, TEITZ & RITCH, LTD.**

/s/ Peter F. Skwirz, Esq.

/s/ Amy H. Goins, Esq.

Enclosures

cc: Janice Cataldo  
Elizabeth M. Noonan, Esq.  
Stephen H. Marsella, Esq., Assistant City Solicitor  
Stephen J. Angell, Esq., Legal Counsel for City Council  
Jason M. Pezzullo, AICP, Planning Director

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