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HAND DELIVERY

Ed Mattison, Chair
CITY PLAN COMMISSION
CITY OF NEW HAVEN
165 Church Street
New Haven, Connecticut 06510

Re: Site Plan and Coastal Site Plan Review CPC 1445-03
Proposed Concrete Batch Plant, 50, 64 and Lot 21 Goodwin Street
File Number: S-188

Dear Chairman Mattison and Members of the City Plan Commission:

This office represents Mr. and Mrs. Richard Stetzer of 74 Goodwin Street in connection with the pending Applications of Henry Criscuolo for Site Plan and Coastal Site Plan Review for a proposed concrete batch plant on the edge of the Heavy Industrial (IH) zone in the Port District in New Haven (the "Subject Property"). Mr. and Mrs. Stetzer, whose property abuts the Subject Property, are parties to these proceedings as a result of their filing a verified Petition to Intervene pursuant to the provisions of Conn. Gen. Stat. §22a-19a alleging the reasonable likelihood of unreasonable pollution to natural resources in the state of Connecticut on matters within the Commission's jurisdiction. In their Petition to Intervene, the Stetzers provided web links to significant evidence relating to poor air quality in New Haven and their neighborhood, and the adverse impacts to human health from such conditions. This information is compelling and probative. Your jurisdiction extends to the nuisance and environmental factors implicated in these Applications through, *inter alia*, Section 48 governing Performance Standards in industrial zones.

Closer to home, in its own Data Book prepared in connection with the New Haven Comprehensive Plan of Development (2002), the City identifies that the state and New Haven specifically have unhealthful readings for ozone and that New Haven has unhealthful pollution from particulate matter, a pollutant associated with the proposed operation. "Particulates may aggravate respiratory function and affect children with asthma. Overall, New Haven County ranks among the worst 20% of all US counties for ozone and particulate levels." New Haven Data Book, Environmental Quality, p. 52. The significant truck traffic described in this request and the operational realities of the proposed use dictate against its appropriateness in this location as generators of pollution exacerbating existing adverse conditions. We are examining but have not completed our review of whether there is a civil rights claim to be made in connection with establishing this use in this location under the well known

circumstances of poor air quality in this neighborhood, the high incidence of asthma in New Haven, and the proximity of low income housing.

Upon this backdrop, approving a Site Plan for a Concrete Batch Plant where residential properties both adjoin the Subject Property and are located upwind and in close proximity to the proposed operation is counter-intuitive and violates the fundamental goal of land use regulation. The foundation of zoning and land use control recognizes regulation as a valid exercise of the police power in the interests of maintaining public health, safety, and public convenience. Baseline concerns like these have been recognized to support agency action when acting administratively as the Commission does in Site Plan and Coastal Site Plan review. In Jackson, Inc. v. Planning and Zoning Commission, 118 Conn. App. 202 (2009), cert. den. 294 Conn. 931 (2010), the Appellate Court upheld a planning commission's denial of a subdivision application based on a section of the underlying zoning regulations that identified the "unsuitability" of the land as a criterion in evaluating applications. The commission's reliance on a regulation entitled, "Character of the Land," was deemed sufficient to support denial of a subdivision where the record demonstrated that significant cuts and fills proposed in connection with the application fell within the ambit of the regulation. The regulations provided "Such land shall be set aside for uses as shall not involve such a danger." This outcome was directly related to the commission's protection of the public health, safety and general welfare.


There are additional substantive reasons to deny the request. The owner of the property has substituted himself as the applicant after the original proposed user has abandoned the request. This is effectively a request by the owner for the Commission to approve a phantom or future user, wholly inappropriate in the Heavy Industrial zone. This is because in the context of industrial uses, operation details are the essence of the thing to be decided and there is no operator before the Commission. You are being asked to sign a blank check. It is submitted that while the applicant may argue that a future user can seek amendment to the proposed site plan if their operation varies from the approved plan, the more likely scenario is that changes would simply occur. Given the abutting and adjacent residential uses, the Commission will have abrogated its responsibility under the Ordinance by approving something now that may only occur in the future.

Section 64(f)(5)(k) of the New Haven Zoning Ordinance requires that a Site Plan must include, *inter alia*, "existing and proposed sanitary and storm water drainage facilities with elevations." There are no sanitary facilities at the property and apparently none are intended. The Application indicates that the site will be served by a portable sanitary facility. It is inconceivable that a use, and a heavy industrial use at that, with four employees and 35 truckers a day without actual sanitary facilities may be found to be in furtherance of the public health, safety, and general welfare. It is submitted that it is not and the Commission should deny the Application for specific failure to comply with Section 64(f)(5)(k).

This Commission has the authority and, it is suggested, the obligation to deny the Applications. The departure of the Applicant/Operator serves as one of many reasons that the request should be denied at this time. The decision of the BZA that approved

the Special Exception necessary for this use to even come before the Commission is under judicial appeal, the pendency of which destabilizes and renders uncertain actual establishment of the use. The neighbors to these properties deserve protection from the intense use proposed at the site by, in the moment, an unknown operator. On their behalf, I urge the Commission to deny the Applications.

Very truly yours,


Marjorie Shansky

Cc: Mr. and Mrs. Richard Stetzer