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May 19, 2016

Theodore Hess-Mahan, Chair  
Zoning and Planning Committee  
City Council  
City of Newton  
Newton, Massachusetts 02459

Re: Petition No. 103-16 of the Zoning and Planning Committee's  
proposed zone change of 41, 45, 47 and 51 Glen Avenue from MRI  
to SR2

Dear Councilor Hess-Mahan:

I represent ECW Realty LLC, owner of 45 Glen Avenue. On behalf of my client, please accept this letter as formal notice of my client's **strong opposition** to Petition No. 103-16 of the Zoning and Planning Committee's proposed zone change of 41, 45, 47 and 51 Glen Avenue from MRI to SR2.

The reasons for opposing the Petition are numerous. The proposed zoning change is arbitrary and capricious; is an illegal reverse spot zoning of my client's property; is tantamount to an illegal taking of private property by the local government without just compensation; is an illegitimate exercise of the City's authority under M.G.L. Ch. 40A; and it is an abuse and misuse of the zoning powers of the local government in a private dispute.

My client is currently involved in litigation with the owners of 47 Glen Avenue. Through conversations with various City officials we learned that the owners of 47 Glen Avenue requested the zone change some months ago for the purpose of preventing my client from rightfully developing his property. It is, therefore, unequivocal and undeniable that the reason behind the Petition for the zone change was triggered by such request rather than to achieve municipal planning objectives or for any public benefit.

The proposed zone change is clearly arbitrary and capricious. The four properties subject to the zone change are situated in and are a part of a uniform and homogenous MR1 zone shared by hundreds of contiguous parcels (separated only by streets) of land west of Glen Avenue and south of the Green Line – see attached Newton Zoning Map from the City Assessor's website. The subject properties are of similar size and character with the surrounding MR1 zoned lots and are indistinguishable. It is clear that the properties were singled out and treated differently for an illegitimate purpose of preventing my client from rightfully using his land. Such illegitimate purpose behind the proposed zone change is a classic example of *illegal reverse spot zoning*. See *Nat'l Amusements, Inc. v. City of Boston*, 29 Mass. App. Ct. 305, 312 (1990) ("*zone changes which have no roots in planning objectives but which have no better purpose than to torpedo a specific development on a specific parcel are considered arbitrary and unreasonable*").

The illegitimate purpose behind the illegal reverse spot zoning is tantamount to an illegal taking of private property by the local government without just compensation. The zone change will substantially and adversely affect the value of my client's property by hundreds of thousands of dollars as my client will not be able to rightfully develop and use his property. The illegal taking would cause my client damages to which he would be entitled just award pursuant to M.G.L. ch. 79, Section 6.


My client was incredulous and appalled that discussions over this Petition have been ongoing for months and yet his Ward City Councilors failed to communicate with him, or his neighbors at 51 Glen Avenue who also strongly oppose this Petition. My client, a resident and taxpayer of the City of Newton, believes he is being unfairly treated and is deeply troubled by the selective actions, and unequal and discriminative treatment, by his public representatives. Moreover, my client questions why and how his Ward Councilors found it appropriate to permit a private dispute to rise to a public forum yielding a waste of public, tax-funded, city resources.

My client strongly believes the Petition is an abuse and misuse of the zoning powers by the local government because it is for an illegitimate purpose, which was derived from a private dispute. My client feels he is being bullied and that his government representatives have enabled it by the attempted illegal exercise of its zoning powers. My client strongly believes the Petition should have never been docketed for a public hearing, the Ward City Councilors should have communicated with him, and public resources and time should not be wasted in a private dispute.

*Letter of May 19, 2016, Page Three*

For reasons stated above, my client urges the City Council to deny the passage of this Petition. My client will exercise all legal remedies to protect his property should this Petition pass.

Sincerely,



Laurance S.L. Lee

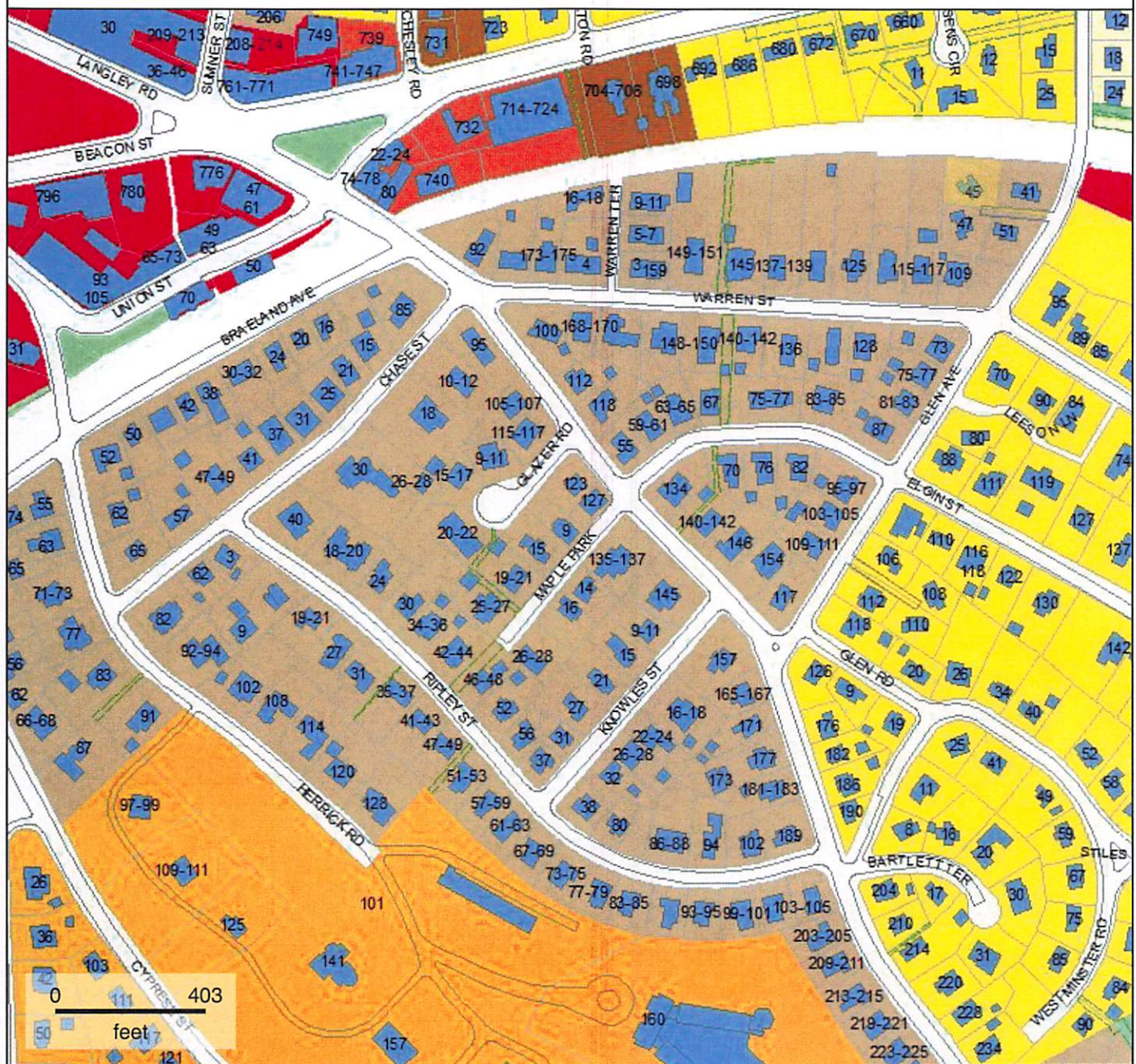
Enclosure

cc: Councilor Scott Lennon, President, City Council  
Councilor Victoria L. Danberg  
Councilor Richard Blazar  
Councilor Gregory R. Schwartz  
Ouida Young, Esq., Newton Law Department  
Marie Lawlor, Esq., Newton Law Department  
ECW Realty LLC



5/18/2016

## City of Newton



Property ID: 61039 0002  
 Address: 45 GLEN AVE  
 Owner: ECW REALTY LLC



MAP FOR REFERENCE ONLY  
 NOT A LEGAL DOCUMENT

Because of different update schedules, current property assessments may not reflect recent changes to property boundaries. Check with the Assessors' Office to confirm boundaries uses at the time of assessment.

