



Board of Selectmen
James S. Marpe, First Selectman

September 19, 2019

Mr. Mark Mathias, Chairman
and
Members of the Westport Board of Education
110 Myrtle Avenue
Westport, CT 06880

Via email: mmathias@westportps.org

Re: Shipman & Goodwin, LLP

Dear Chairman Mathias and Members of the Westport Board of Education:

We are writing in our capacity as the Board of Selectmen to directly and candidly discuss the Board of Education's professional relationship with the law firm of Shipman & Goodwin, LLP (S&G).

For several decades, the Board of Education has been well represented by S&G. Attorney Tom Mooney, one of the principals in the firm, has a well-deserved reputation as an outstanding education lawyer. Despite this reputation, however, and throughout the years, there have been objections to S&G's representation of the Westport Board of Education along with its simultaneous representation of developers applying to construct affordable housing in Westport pursuant to C.G.S. §8-30g. Two attorneys from S&G have handled such applications – Christopher J. Smith (who recently left the firm) and Timothy S. Hollister. In particular, and relevant to this discussion, Attorney Hollister represents Summit Saugatuck, LLC, which has for a number of years been seeking to build a high-density housing project on Hiawatha Lane.

S&G has justified its dual representation by presenting to the Town a decision from the Connecticut Bar Association Grievance Committee stating that representation of a Board of Education and simultaneous representation of a land use developer before the Planning and Zoning Commission in the same town is not a violation of the lawyer's Code of Professional Responsibility. To date, we have elected not to speak out on this matter because it was deemed ethical by the Connecticut Bar Association.

Through the years, a number of public officials have continually expressed concerns that the dual representation created a conflict. These officials contend that Westport taxpayers are paying S&G thousands of dollars per year while simultaneously expending thousands of dollars defending lawsuits brought against the Planning and Zoning Commission by S&G's developer clients. To our knowledge, the Board of Education has not publicly discussed this dual representation, presumably content to continue to have S&G as its legal representative.

There have been two recent occurrences, however, both involving S&G Attorney Timothy Hollister, that have caused a shift in this Board's collective view on this arrangement. As a result of these incidents, we must now speak out publicly to the Board of Education and vehemently express our disappointment.

The original incident that precipitated this discussion was an article in the *Connecticut Mirror* and *Pro Publica*, appearing online in late May, 2019. The article, "Separated by Design: How Some of America's Richest Towns Fight Affordable Housing," was re-published by a number of local and national news organizations, thrusting Westport into the narrative. Aside from being biased and factually incomplete in many respects, the article attributed a quote to Attorney Hollister as follows:

Does anybody say we need to keep blacks and Hispanics out of Westport? No, but they talk about property values, safety and preserving open space – all the things that a town can do to prevent development that would bring up a more economically and racially diverse housing population.

This statement from Attorney Hollister, a high-level principal of S&G, asserts that Westport officials have racist motives when they deny applications. It is inflammatory and insulting to the residents of Westport.

Although Attorney Hollister wrote a letter addressed to the First Selectman on July 9, 2019 (attached) expressing "regret...that the article presented a generic observation drawn from more than 30 years of practice in dozens of towns in the manner that it did," in reality it is clear that Westport was singled out in his quote. Notwithstanding any bar association decision or Attorney Hollister's attempt at an apology, he, his law firm, or any law firm for that matter, must be held to certain standards of propriety and decency. In our opinion, Attorney Hollister's statement fell well below any such standard.

The second incident occurred on June 4, 2019, when Attorney Hollister, along with Attorney Mark Branse, who represents Garden Homes Management Corporation, a developer with an 8-30g application at 122 Wilton Road in Westport, filed for a declaratory ruling from the State of Connecticut Department of Housing (DOH) challenging the DOH's grant of an affordable housing moratorium to Westport. In plain terms, Attorney Hollister was seeking to have the Town of Westport's moratorium overturned. Fortunately, the DOH ruled against that challenge. Please note that Attorney Hollister's client, Summit Saugatuck, LLC, is not affected in any way by the moratorium. That application, filed before the moratorium took effect, is "grandfathered" and continues to be heard before the Planning & Zoning Commission.

After the Department of Housing ruled in the Town's favor on the challenge to the moratorium, Attorneys Hollister and Branse filed a lawsuit in Superior Court dated August 28, 2019, challenging that ruling. S&G, which has been paid hundreds of thousands of taxpayer dollars every year for at least 30 years as they represented the Board of Education, is now representing clients who are suing to negate the Town's four-year moratorium. Attorney Hollister may of course represent his clients as he deems fit, but S&G cannot have it both ways. It cannot collect significant fees from Westport taxpayers while contesting this important moratorium process. Westport's Planning and Zoning Commission, P&Z Staff, and other town

officials have worked diligently over the last several years to achieve this moratorium which will benefit the residents of Westport.

Of note, this most recent lawsuit was discovered by chance on September 10, 2019 by a member of our Town attorney team who was monitoring the Judicial Website. Attorney Hollister did not name Westport as a party in this lawsuit, even though it was the Town's moratorium at stake. Further, S&G did not deem it appropriate to send a courtesy copy of the lawsuit to Town officials. With a 30-year reputation on the line, as well as full knowledge that there were legitimate concerns about the legal arrangements, common courtesy and decorum was lacking in their decision to not inform Westport officials of this lawsuit. Our Town attorneys have been instructed to file a Motion to Intervene in this lawsuit so that Westport can participate directly. As a result, additional taxpayer funds will now be expended in that effort.

After the initial incidents referenced above, but prior to the discovery of the newly filed appeal, the First Selectman heard directly from Attorney Tom Mooney. Attorney Mooney had been advised that the Town was quite troubled by Attorney Hollister's actions. To his credit, Attorney Mooney requested a meeting. In fact, there were two meetings, the second one occurring on August 7, 2019. Interim Superintendent David Abbey, BOE Chair Mark Mathias and BOE CFO Elio Longo were included in those meetings, along with Town Attorney Ira Bloom. At both meetings, all of these issues were discussed, including S&G's initial moratorium challenge. Attorney Mooney seemed quite concerned and said he would discuss this matter with his partners and offer a solution.

On August 22, 2019, Attorney Mooney sent a letter, properly addressed to his client, Mark Mathias, Chairman of the Board of Education. Unfortunately, Attorney Mooney's letter fell short of the Town's expectations.

S&G's proposal included the following:

- S&G will continue to represent Summit Saugatuck in the ongoing P&Z application;
- S&G will likely file an appeal in court on any denial by the P&Z of Summit Saugatuck's application;
- S&G is reserving the right to represent new clients before Westport's land-use boards; and
- If any new client's applications are denied, S&G is reserving the right to appeal those denials in court, although they will ask for the Town's permission to do so.

The letter that Attorney Mooney wrote to Chairman Mathias was dated August 22. His firm's newest lawsuit challenging the moratorium was dated August 28, so quite possibly when this letter was being formulated, he was aware that the lawsuit was being prepared. Yet, not a word was said, and not a courtesy was extended to let us know of the firm's actions, despite the decades-long relationship S&G has had with the Board of Education. In our opinion, Attorney Mooney's response is inadequate, and these small steps do not acknowledge the concerns that many of our elected officials have about S&G's actions.

S&G was given an opportunity to address serious problems in its relationship with the Board of Education and by extension, the Town of Westport. Instead, they have chosen to continue to represent a land use client in a pending application, a potential appeal, and an unrelated legal challenge to Westport's affordable housing moratorium. While S&G has every right to represent their clients diligently, the Town has every right to state that their simultaneous representation of the Board of Education is no longer acceptable.

As a result of these events, the Board of Selectman is calling upon the Board of Education to discharge Shipman & Goodwin and seek new counsel. The Board of Selectmen realizes that this is a very significant request, but, as explained in detail above, the behavior of this law firm is, in our opinion, no longer acceptable or in the best interests of Westport's taxpayers.

In conclusion, at its Special Meeting of September 16, 2019, by unanimous vote, the Board of Selectmen approved the following:

RESOLVED, that the Board of Selectmen send a formal request to the Board of Education to place a discussion item on an upcoming agenda related to the association with, and the ongoing representation by, the law firm of Shipman & Goodwin, LLP; and

FURTHER RESOLVED, that the recommendation to the Board of Education shall be to relieve Shipman & Goodwin, LLP of its duties and that the Board of Education issue an RFP for legal services.

Thank you for your consideration.

Sincerely,



James S. Marpe
First Selectman

/s/ Jennifer Tooker

Per: Jennifer Tooker
Selectwoman

/s/ Melissa Kane

Per: Melissa Kane
Selectwoman

attachment

cc: Dr. David Abbey, Interim Superintendent, Westport Public Schools