

**Appendix F-10**  
**Carolyn Zenk, Esq. Letter**

October 23, 2016

RECEIVED

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Southampton Town Supervisor Jay Schneiderman & Southampton Town Board  
Members: Julie Lofstad, John Bouvier, Christine Scalera, & Stan Glinka  
Southampton Town Hall  
116 Hampton Road  
Southampton, New York 11968

OFFICE OF THE TOWN CLERK  
SOUTHAMPTON TOWN

October 23<sup>rd</sup>, 2016/ Re: Hills at Southampton PDD hearings

**HEARING PROCEDURE VIOLATES CITIZEN'S CONSTITUTIONAL RIGHTS  
TO DUE PROCESS & EQUAL PROTECTION UNDER THE CONSTITUTION**

Dear Supervisor Schneiderman & Members of the Southampton Town Board:

**CLEAN-Citizens for Clean Drinking Water, Clean Air, & Clean Bays-** informed the Town Board last April 2015, that the Town's hearing procedure **violates both the New York & United State's Constitutions**. Specifically, it violates the **Due Process clause & the Equal Protection clause** of both Constitutions. **Exhibit A.**

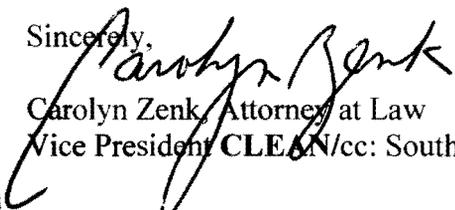
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Sec. 6.11

**PLEASE BE ADVISED, THIS IS CLEAN's SECOND WARNING.** The issue was so important that we wrote to your Town Attorney Tiffany S. Scarlato last year on April 13<sup>th</sup>, 2015 to bring the matter to her attention. **Exhibit B.**

**THE TOWN BOARD'S CURRENT HEARING PROCEDURE IS ILLEGAL BECAUSE IT RADICALLY DISCRIMINATES AGAINST CITIZENS IN FAVOR OF DEVELOPERS.** Currently, developers, *their* attorneys, and *their* experts receive **unlimited time** to present *their* case to the Town Board & the public. No clock is set for these entities. I have witnessed them make their case for an hour & one half or more. In sharp & *unfair* contrast, the heads of environmental & civic groups, *their* attorneys, and *their* experts receive **only three brief minutes** to make their case. The Town Clerk strictly enforces the three minute limit against Southampton's citizens, using a timepiece.

**SUGGESTED PROCEDURE.** The following procedure would satisfy Constitutional requirements & basic fairness. Time would remain comparable b/c developers would be subject to the rules. The following entities would receive **fifteen minutes**, due to their expertise: *all* attorneys, *all* experts, & *all* heads of civic & environmental groups, who often represent dozens of citizens. Citizens would receive **three minutes to five minutes.**

Sincerely,

  
Carolyn Zenk, Attorney at Law

Vice President CLEAN/cc: Southampton Press & Town Attorney



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Southampton Town Supervisor  
Southampton Town Board  
Southampton Town Hall  
116 Hampton Road  
Southampton, New York 11968

April 12th, 2015: "The Hills @ Southampton"  
**Re: VIOLATIONS OF CONSTITUTIONAL RIGHTS OF CLEAN'S MEMBERS:  
RIGHT TO DUE PROCESS & RIGHT TO EQUAL PROTECTION OF LAW**

Dear Supervisor and Members of the Southampton Town Board:

**SUMMARY OF POSITION**

**CURRENT TOWN BOARD HEARING PROCEDURE, WHICH GIVES DEVELOPERS, THEIR LAWYERS, & THEIR EXPERTS *UNLIMITED TIME*, & CIVIC LEADERS, THEIR LAWYERS, & EXPERTS ONLY *THREE MINUTES* IS UNCONSTITUTIONAL BECAUSE IT VIOLATES CONSTITUTIONAL DUE PROCESS & EQUAL PROTECTION RIGHTS OF MEMBERS OF THE PUBLIC.**

**PLEASE BE ADVISED** that you must remedy current Town Board hearing procedure because it violates the constitutional rights of environmental groups, civic groups, and citizens by *grossly* favoring developers and applicants. The latter group is given *unlimited time* at public hearings to speak and make their case, while the former group is restricted to *three minutes*. This procedure fails to afford similar classes of citizens due process and *a meaningful opportunity to be heard* by treating them *radically* differently, rather than *equally* under New York and federal law without a *rational* basis.

The Town Board hearing procedure violates the United States Constitution's Bill of Right's 5<sup>th</sup> amendment & 14<sup>th</sup> amendment. It violates the New York State Constitution Article I, Section 6 (Right to Due Process of law) & New York State Constitution, Article I, Section 11 (Right to Equal Protection of the law)

**REMEDIES. DUE PROCESS VIOLATIONS** can be remedied by giving environmental and civic group leaders, their lawyers, and their experts a meaningful opportunity to be heard for **fifteen minutes** apiece.

**EQUAL PROTECTION** violations can be cured by restricting developers' lawyers and experts to **fifteen minutes** apiece, thus treating similar classes of speakers in an *equal* fashion. By solving the Constitutional problem by treating these groups equally, and similarly restricting everyone's' speaking time, hearing length will not increase nor burden government officials. Citizen time remains at **three minutes**. *Overall hearing time should decrease.*



- EXHIBIT A -

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## **INTRODUCTION**

I am the Vice President and Attorney for CLEAN-*Citizens for Clean Drinking Water, Clean Air, and Clean Bays*. Our membership exceeds one hundred and fifty members.

### **CLEAN MEMBERS' LIVES & PROPERTY ARE AT STAKE: DUE PROCESS & EQUAL PROTECTION CLAUSES WERE INTENDED TO PROTECT THEM.**

CLEAN members' lives, health, and property are at stake because many live directly adjacent to the proposed golf course, which would use carcinogens, probable carcinogens, and toxic pesticides immediately adjacent to their real property, their children's school, and their down-town area.

Some of CLEAN's members obtain their drinking water from public supply wells on Spinney Road, which would be contaminated with nitrates and pesticides.

Furthermore, CLEAN's members enjoy clean seafood from Shinnecock Bay, along with recreational opportunities, including fishing, boating, and swimming. Our members' lives and property stand to be directly impacted by "The Hills" development. Therefore, our members are entitled to Constitutional protections for their life and property afforded Americans and New Yorkers.

### **CURRENT TOWN HEARING PROCEDURES ARE UNCONSTITUTIONAL**

My efforts to defend my clients' lives, health, and property have been crippled by the current hearing procedure of the Town Board. This problem must be remedied for upcoming SCOPING and SEQRA/PDD change of zone hearings.

Under current procedure, applicants & their experts, including lawyers and scientific consultants, are given *unlimited* time to present their case, the law, and "scientific" data to the Board at hearings. In sharp contrast, my clients and I have been held to a strict *three minute* standard. This does not afford my clients, myself as counsel, and our experts, a *meaningful opportunity* to make our case before the Board. Nor does it treat similar classes of citizens in an *equal* fashion. This violates our Constitutional rights.

### **PROPOSED REMEDY/EQUAL TIME (15 MINUTES) FOR EQUAL CLASSES**

I understand that the Board wishes to expedite its hearing process, so that hearings are not too long. However, developers, their lawyers, and their experts should not be given an unfair advantage during hearings, which are often televised and affect public opinion. I attended a Town Board meeting recently for the PDD for the Tuckahoe Shopping Center. The public was kept waiting while the developer and his experts and

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representatives took over an *hour and a half* to make their case. Once the developers were through, the Town Clerk broke out the stop watch for civic leaders and the public who got only *three minutes* each to address the Board.

This procedure is unfair and un-Constitutional. Under the Equal Protection Clause, similar classes of citizens, must be treated *equally* under the law.

### **EQUAL SPEAKING TIME OF FIFTEEN MINUTES PROPOSED FOR ENVIRONMENTAL & CIVIC LEADERS, & LEGAL & SCIENTIFIC EXPERTS.**

I recommend the following solution, which, would give similarly-situated speakers enough time to make their case (*Due Process*), treat similar speakers equally under the law (*Equal Protection*), and better meet the Town Board's objective to keep hearings shorter. (*Rational basis for limiting time*). This approach would give the Town Board & the public the advantage of the special expertise offered by the leaders of environmental & civic groups, their attorneys, & scientific experts. The *public* interest would be furthered because, unlike applicants, evidence offered by these groups is less likely to be biased because they have no pecuniary interest in development.

### **DEVELOPER'S EXPERTS-15 MINUTE LIMIT PROPOSED**

Proposed time limits for developers, their attorney, and their scientific experts would be as follows:

- Applicants: **Three minutes maximum**, like any member of the public.
- Applicant's attorney: **Fifteen minute maximum** to make necessary legal points.
- Applicant's experts: **Fifteen minute maximum** to make necessary scientific points. **Rationale basis:** Experts need time to present more complex data.

### **ENVIRONMENTAL AND CIVIC GROUPS AND THEIR EXPERTS-15 MIN.**

Proposed time limits for leaders of environmental and civic organizations, their attorney, and their experts, would be as follows:

- Environmental & civic group leaders: **Fifteen minute maximum.**
- Environmental or civic group attorney: **Fifteen minute maximum** to make necessary legal points. **Rationale:** See above.
- Environmental and/or civic group experts: **Fifteen minute maximum** to make necessary scientific points. **Rationale basis:** Community leaders usually represent numerous citizens, & have more detailed information, & expertise, helpful to the board and public. Attorneys and scientific experts need more time to present complex legal points or scientific data, just like developers.

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**CONCLUSION: NEW PROCEDURE PROTECTS DUE PROCESS AND EQUAL PROTECTION RIGHTS AND HAS A RATIONAL BASIS, UNLIKE CURRENT PROCEDURE, AND WILL RESULT IN SHORTER HEARINGS OVERALL.**

Current Town Board hearing procedure is *grossly* unfair to environmental and civic groups, their lawyers, their experts, and the citizens they represent. It *dramatically* favors developers, *their* attorneys, and *their* experts. These two groups are similarly-situated. Therefore, under Constitutional Law, each must have a *meaningful opportunity to be heard* and be *treated equally under law*.

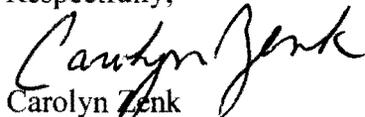
If the Town Board wishes to treat citizens differently under the law, the disparate treatment must rest upon a "rational basis." There is *no rational basis* for treating lawyers who represent developers differently than lawyers who represent citizens or civic groups. There is *no rational basis* for allowing the developers' experts *unlimited time* and the experts offered by environmental groups *only three minutes*.

The proposed procedure rests upon a solid rational basis. It would afford enough time (Due Process) for community leaders and experts to present complex legal concepts, science, & evidence. Furthermore, similarly-situated classes of citizens would be treated equally under the law. (Equal Protection) It would better serve the *public* interest by allowing the leaders of not-for-profit organizations, who can represent thousands of citizens, an opportunity to present complex positions for their members.

This new proposed procedure, unlike the current procedure, would meet the Town Board's legitimate goal of limiting *overall hearing time* while protecting Constitutional rights. **Indeed, the overall hearing time should decrease because applicants and their representatives will be equally limited in their time and will not go on for over an hour before the public even gets a chance to speak.**

***Remedy these Constitutional violations immediately.*** Please advise me in writing whether my clients will be afforded due process and equal protection under the United States and New York State Constitutions at the upcoming hearings for "The Hills at Southampton."

Respectfully,



Carolyn Zenk  
Attorney at Law

Vice President CLEAN

*Citizens for Clean Drinking Water, Clean Air, and Clean Bays.*

*Cc: Town Attorney and Planning Board and Press*

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## APPENDIX A/LEGAL REQUIREMENTS AND PRECEDENT

**UNITED STATES CONSTITUTIONAL REQUIREMENTS.** The United States Constitution protects the life, liberty, and property of its citizens.

The **Fifth Amendment** of the Constitution provides: “[N]or shall any person be deprived of life, liberty, or property without due process of law.”

The **Fourteen Amendment** guarantees that, “[N]or shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”

**NEW YORK CONSTITUTIONAL REQUIREMENTS.** The New York State Constitution echoes these protections, and offers the same, if not more protection.

**Article I, Section Six** states, “No person shall be deprived of life, liberty or property, without due process of law.”

**Article I, Section Eleven** states, “No person shall be denied the equal protection of the laws of this state or any subdivision thereof.”

### DUE PROCESS RIGHTS IN THE COURTS

I have included quotes from several New York courts regarding how the courts are interpreting the right to due process and the right to equal protection below.

The courts apply a three part test to determine if *due process* rights have been violated:

- 1) What is the nature of the interest to be protected? [*Note: heath & property*]
- 2) Does the Board's current procedure risk an erroneous deprivation of rights? Are additional safeguards needed? [*N: Yes, community groups can't present cases*]
- 3) What government interest does the current procedure protect and what administrative or fiscal burdens would be imposed by changing it? [*N: New procedure fulfills Board's interest in saving time; none. [Citations omitted]*]

These Constitutional rights apply to Town Board hearings. “Due process of law is extended to those situations when a citizen is deprived of life, liberty, or property whether the proceeding be judicial, **administrative**, or executive in nature.” (Emphasis added) [*Citations omitted*]

When complex legal and scientific points must be made in three minutes, *the opportunity to be heard is not meaningful*. “For process to be due it is not sufficient that it affords an opportunity to be present, it must also afford a **meaningful opportunity to be heard**;

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**and unless meaningful, it may not be regarded as an opportunity to be heard;** anything less is not due process because it denies access to the process.” (Emphasis added.) [*Citations omitted*]

The purpose of the due process clause is to ensure that the procedure is fundamentally fair. The current procedure is not fair and it must be replaced with a fair process. “Procedure of due process is a **guarantee of fair procedure.**” (Emphasis added.) [*Citations omitted*].

## EQUAL PROTECTION RIGHTS IN THE COURTS

The *Equal Protection* clause is intended to treat those who are similarly-situated alike. Lawyers on both sides of an issue i.e. “developer lawyers” v. “neighbor” lawyers should have equal time to make their legal points. Similarly, experts on both sides should be treated equally so that they can each make scientific points and present evidence to the Board. Since environmental and civic leaders often have extensive expertise and evidence to present to the Board and can represent hundreds, if not thousands of people, they should be afforded additional reasonable time.

There is no rational basis to treat lawyers and experts on one side differently than lawyers and experts on the other side. “The constitutional guarantee of equal protection is **intended to keep government decision-makers from treating different persons who are in all relevant aspects alike.**” (Emphasis added.) [*Citations omitted*]

“**Agency of state denies equal protection when it treats persons similarly situated differently under the law.**” (Emphasis added.) [*Citations omitted*]

“Equal protection clause of the federal and New York Constitutions guarantee every person the **equal protection of the laws, which is essentially a directive that all persons similarly situated should be treated alike.**” (Emphasis added.) [*Citations omitted*]

“Under Equal Protection clauses, **different treatment of those similarly-situated must bear a rational relationship to a legitimate objective.**” (Emphasis added.) [*Citations omitted*]

By giving developers, applicants, and their experts *unlimited* time at hearings, and all others only *three* minutes, the present hearing process constitutes systemic discrimination, which favors one class over another. “To constitute **denial of equal protection, there must be a purposeful and systematic discrimination designed to favor one individual or class over another individual or class with no rational differentiation between them.**” (Emphasis added.) [*Citations omitted*]

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Tiffany S. Sarlato  
Southampton Town Attorney  
Southampton Town Hall  
116 Hampton Road  
Southampton, New York 11968

April 13<sup>th</sup>, 2015: Re: **UNCONSTITUTIONAL PRACTICES**; Violations of Due Process and Equal Protection guarantees by the United States and New York State Constitutions. Southampton Town Board Hearing Procedure is unconstitutional.

Dear Ms. Scarlato:

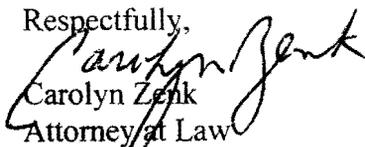
I represent a citizen's group called, **CLEAN-Citizens for Clean Drinking Water, Clean Air, and Clean Bays**. I am a former Councilwoman in Southampton Town. I am writing to you personally to make sure that the Town Board's hearing procedure is amended so that it protects the Constitutional rights of all of Southampton's citizens.

I have spent an afternoon reviewing my client's rights under both the United States and New York Constitutions with respect to the *Due Process* and *Equal Protection* clauses. I have reviewed the case law thereunder. I have concluded that the current hearing process violates both Constitutions.

Specifically, under current procedures developers, their lawyers, and their experts are given *unlimited time* to present their cases at public hearings. Civic and environmental leaders, their lawyers, and their experts are given only *three minutes* apiece. As a lawyer, I'm sure you would not appreciate it if you were presented with the same situation in a court of law. Your opponent could endlessly drone on about his case, while you were given three minutes to present your legal arguments and three minutes for each of your expert witness. This procedure is grossly unfair at the administrative level as well.

You have a unique opportunity to make a significant and historic difference in the Town of Southampton by making sure the hearing procedures are amended in a manner that would dramatically further the public interest while protecting the Town Board's desire to keep hearings shorter by simply allowing both groups fifteen minutes. Please read my attached letter and call me with any questions. Thank you.

Respectfully,

  
Carolyn Zenk  
Attorney at Law

Encl. April 12<sup>th</sup>, 2015 letter to Town Board

- EXHIBIT B -

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