



Law Office of
RICHARD N. WIEDIS

2351 Champlain St., NW, Washington, D.C. 20009
TEL: (202) 841-6735
EMAIL: richwiedis@gmail.com

February 7, 2016

Re: Case No. 19174, Appeal of Unit Owners' Association of The Erie Condominium

Dear Board of Zoning Adjustment,

My name is Richard Wiedis and I have been the President of the Erie Condominium Unit Owners' Association ("Appellant") for the last seven years. As you know, the Appellant filed an appeal of the issuance of building permit B140680. Yesterday, I received a copy of DCRA's Joinder of Permit Holder's Motion to Dismiss Appeal as Untimely Filed, prepared by DCRA counsel Maximilian Tondro ("the Joinder Motion"). Appellant's counsel is providing the Board of Zoning Adjustment ("the Board") with a response to DCRA's filing. As a long time resident of the District of Columbia, however, I feel compelled to express my extreme disappointment with this filing by an Official of the Government as the filing includes numerous conclusions and arguments that are entirely without factual support.

The issues with Mr. Tondro's Joinder Motion are too numerous to detail here. Therefore, I have chosen several assertions in his Joinder Motion that lack factual support to detail for the Board. I appreciate your willingness to consider this additional information.

As a preliminary matter, Mr. Tondro argues that this matter is mostly a private dispute between two parties and that Appellant is attempting to involve the Zoning Administrator and the Board to gain leverage. There is nothing in Mr. Tondro's motion that even remotely supports this inflammatory and false allegation. The allegation is even more egregious because shortly after the Appellant filed its appeal of the building permit in October 2015, counsel for the Erie, Ms. Horvitz, reached out to Mr. Tondro to discuss this matter and provide several facts that would be important for him to consider in taking a position. Instead of taking the time or opportunity to speak with Ms. Horvitz or gather any first-hand knowledge of what occurred in this case by speaking with residents of the Erie, Mr. Tondro unfortunately

Board of Zoning Adjustment
District of Columbia
CASE NO. 19174
EXHIBIT NO. 24

failed to return our counsel's call and other phone messages she left on his voicemail. Mr. Tondro's conduct in this case is akin to a prosecutor for the District Attorney's Office reaching a conclusion that a defendant had committed a crime without bothering to gather any facts whatsoever or speak with available witnesses. His opinion on this ground alone should be disregarded in its entirety.

Next, Mr. Tondro's Joinder Motion claims that "Appellants, who are very familiar with the building permit process and the Zoning Regulations and who have retained experience (sic) counsel, failed to appeal the Permit until months after the appeal period had closed, despite having first hand knowledge of the issuance of the Permit and the ability to consult the Approved Plans as of the time of issuance." As a tax paying citizen, I am personally shocked that Mr. Tondro could make these allegations in a public proceeding.

Mr. Tondro appears to have done no investigation to support his characterization of the Erie residents and I can state as a matter of fact that not one of us has ever spoken with him or anyone on his staff. His characterization of the Erie and its relative experience in the area is utterly false. First, not a single resident of the Erie has any expertise in the building permit process. I personally am a criminal lawyer and entrepreneur, I have never dealt with the building permit process, nor to my knowledge has any other resident of the Erie. Second, while Ms. Horvitz is an experienced zoning attorney, her representation of the Erie effectively ceased in 2013 after Erie successfully settled with the prior owner of the property, obtained concessions that the Zoning Administrator approved, and asked the new Owner questions about plans for the property. There was a substantial lull in activity at the property after the current owner (2337 Champlain Street, LLC) purchased the property, reconfigured its design, and provided Erie with a list of benefits and characteristics of the new design.

The Owner represented in writing, among other things, that it would not increase the height of the penthouse structure (above the 9 feet in the prior Owner's plans). In fact, the Owner's representatives sat in my living room and represented that they were dealing with us in good faith. Unfortunately, it appears that representation was also untrue. I had no advanced notice that the permit had issued and the Owner never provided me with the plans they had submitted for approval either before or after the permit had issued. Contrary to Mr. Tondro's factually infirm claims, the Erie did not retain Ms. Horvitz to monitor all permitting, construction and zoning matters in detail that might arise after 2013, and Erie had no reason to think that such an expense was necessary until it became apparent in October of 2015 that the Owner's prior representations were untrue. Mr. Tondro was free to return our counsel's calls and discover these facts. He failed, however, to do so before signing and

submitting his Joinder Motion to this Board. It is preposterous that Mr. Tondro would make representations to this Board about the Appellant's attorney-client relationship without ever having investigated the nature and timing of that relationship.

Mr. Tondro further claims that the permit set of plans was available to the Erie. Again, his Joinder Motion provides no support for this contention. To the contrary, I personally went to DCRA to try to obtain copies of the permitted plans in preparation for this proceeding. When I arrived, I was told by multiple officials that the permit set of plans was not available to the public and, when I questioned this assertion, I was told that the DCRA did not have them or could not find them. If DCRA is contending that it somehow published the Approved Plans, then I challenge that contention.

Mr. Tondro also concludes without factual basis that the residents of the Erie "had notice of permit issuance that exceeded most neighbors to development projects." Again, Mr. Tondro cites not a single fact to support this conclusion. He offers no evidence that the Owner transmitted a copy of the permit to Erie upon issuance, told Erie about the issued permit between June and September of 2015, sent a complete and accurate set of plans to Erie at any time, or corrected the prior false statements about the project before October of 2015. He ignores entirely the many meetings and communications where the Owner provided Erie with **false** statements about the plans.

If there is any doubt about the Owner's deceptive practices, Mr. Tondro and this Board should investigate whether the Owner provided the Zoning Administrator with complete and accurate plans in 2014 and if those plans differed from the set that the Owner purportedly provided to Erie at the same time. We believe that the Owner failed to fully disclose its plans to the Zoning Administrator due to known non-compliance with BZA Order 18830. Mr. Tondro's Joinder Motion mentions none of this, not because he disagrees with Erie's contentions, but because he never took any reasonable steps to investigate what occurred here before filing his Joinder Motion.

Mr. Tondro writes that Erie does not claim that the Owner exceeded the scope of the Approved Plans because the plans approved on June 27, 2015 show the penthouses as built. Again, Mr. Tondro assumes facts for which there is no known support. Erie has never seen a full set of Approved Plans and does not know if the penthouses are built in accordance with those plans. In early November, 2015, Ms. Horvitz asked the Zoning Administrator to investigate the issue of zoning compliance and never received a substantive response. Instead, his staff advised Ms. Horvitz a month later that the Zoning Administrator does not issue stop work orders when there is a pending appeal of a building permit. If Mr. Tondro is representing to the Board that the penthouse and parapet have been built to an elevation of 213.10 feet, then the

Board can ask why his client authorized a 16.45 foot penthouse when the Board only approved a 9-foot penthouse.

Based on the above and the submission of Erie's counsel, I respectfully request that the Board disregard Mr. Tondro's Motion and deny Owner's Motion to dismiss the Appeal as untimely.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard N. Wiedis". The signature is written in a cursive style with a large initial 'R'.

Richard N. Wiedis