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March 20, 2018

NEW JERSEY LAWYERS SERVICE

Edward Smith, Director
Division of Codes and Standards
State of New Jersey
Department Of Community Affairs
101 South Broad Street
Trenton, NJ 08625-0802

Re: The Radburn Association

Dear Mr. Smith:

Our firm represents The Radburn Association in connection with your letter to Marion N. Paganello, President of The Radburn Association dated March 2, 2018. I write to respond to the letter and to advise that it is the position of The Radburn Association that your letter is not binding in any way on The Radburn Association for several reasons. First, the Department of Community Affairs ("DCA") does not have the authority to require The Radburn Association to take the actions outlined in your letter. Second, the DCA failed to follow its own procedures in issuing this letter and has accorded The Radburn Association no opportunity to respond to a "complaint" that was sent your agency by a group of The Radburn Association's members who identify themselves as "Radburn United." Moreover, as set forth herein, we disagree completely with your legal conclusions, your interpretations of the relevant statutes, and your assertions, all of which are illogical and unsupported by law.

The failure of the Agency to follow its own procedures and the complete lack of due process provided to The Radburn Association in this matter leads to the inescapable conclusion that the DCA is not carrying out the stated mission of the Agency to assist homeowners, but rather is serving some other undisclosed purpose. This conclusion is further supported by The Radburn Association learning that Edward R. Hannaman, Esq., an employee of the Agency, is responsible for the investigation of the Radburn United complaint. We learned this after calling the Agency regarding the matter and being advised that Mr. Hannaman was in charge of this investigation although he was not identified in any way in the March 2, 2018 letter.

Mr. Hannaman previously agreed to recuse himself from all matters concerning The Radburn Association after it was called to his attention by The Radburn's Association's attorney that he

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had communicated with a plaintiff in the Daly Field litigation (discussed below) in a manner that made clear he was biased against the The Radburn Association. It was, and still is, improper and prejudicial to The Radburn Association for Mr. Hannaman to be involved in this matter in any capacity, directly or indirectly. Plainly, Mr. Hannaman's involvement after agreeing to recuse himself from matters involving The Radburn Association has tainted the Agency's handling of this matter.

FACTUAL BACKGROUND

Radburn's History

The "Radburn Idea" conceived in the 1920's, was to group residences in clusters, with interior grassy, park like commons connecting those residences. Generally, the garages and the rear of the residences were to face a cul-de-sac and the front of the house would face the commons. This concept allowed residents to leave their home and enter directly onto grassy commons and parks. The adults could stroll along the commons and the children could play there. Vehicular traffic was at the rear and separated from pedestrian traffic. In order to assure that the parks, grassy areas and pools were properly maintained, and the facilities and amenities properly administered, and to assure that the original planning concept was followed and preserved, the founders created a nonprofit corporation, The Radburn Association in 1929, to own and control the parks, pools, amenities and facilities.

Due to the Great Depression, the Radburn community was not developed as part of a common plan as originally conceived. Rather, a variety of different developers, builders and individuals purchased lots and built homes over a period of decades. From the 1930s until the 1980s, as individuals in the area surrounding Radburn requested to be part of the Radburn community, more than 100 additional properties were subjected to the Declaration of Restrictions No. 1 Affecting Radburn, property of City Housing Corporation in the Borough of Fair Lawn, Bergen County, New Jersey, Dated March 15, 1929, (the "Declaration of Restrictions"). After the filing of the Declaration of Restrictions No. 1, there were more than fifty supplemental declarations of restrictions filed.

Each property within the Radburn community was and is required to comply with the Declaration of Restrictions. Accordingly, the deed for each property contains a deed restriction requiring compliance with the Declaration of Restrictions. Among other things, the Declaration of Restrictions provides for The Radburn Association to maintain and control the amenities and facilities it owns, to collect annual fees from residents and to oversee construction.

The Board of Trustees

For most of Radburn's history The Radburn Association's membership was comprised of all former elected Trustees. The Board consisted of nine unpaid volunteer Trustees elected in three ways. One Trustee was automatically installed by virtue of being elected as President of the Radburn Citizens' Association, an association comprised of all Radburn residents. Six Trustee seats were elected through a nomination process. A Radburn resident could propose himself or herself for nomination and after all interested potential nominees were identified, each Trustee on the Board would consider the qualifications of each candidate and individually and secretly rank the candidates in order of preference. The top four ranked candidates for two Trustee seats

(collectively) were placed on a ballot and stood for election by all the Radburn residents. The three year terms were staggered, so that each year two new Trustees were elected utilizing the voting process. The vetting by the Trustees was designed to assure that the Trustees, who have varied experiences and backgrounds, could collectively identify competent candidates to stand for election.

The last two Trustee seats were filled by residents who, at any time in the past, had been elected as a Trustee by the residents. The current members of The Radburn Association would elect the Trustees to fill these two seats for a one year term. By having two of the nine Trustee seats filled by former Trustees, at least two experienced and knowledgeable Trustees would be on the Board at all times.

Prior Litigation

In 2004 The Radburn Association entered into a contract to sell Daly Field, a vacant, underutilized property, to a builder who planned to create a new Radburn neighborhood. The sale was approved by the Board of Trustees of The Radburn Association since it would bring significant benefits to the community. Two companies, Pulte Homes of New Jersey (“Pulte”) and Bergen Development Group, LLC, (“Bergen Development”) are the current builders.

A number of years ago several Radburn residents unhappy with the sale of Daly Field filed two litigations against The Radburn Association. The lawsuits filed were dismissed by the courts on motions for summary judgment. Claims were made and rejected by the courts that The Radburn Association failed to comply with New Jersey's Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq. (“PREDFDA”). More particularly the plaintiffs sought to have the court invalidate The Radburn Association’s governance system which had successfully managed Radburn for eighty years. Since plaintiffs in these litigations had not been successful in pursuing litigation to make changes to The Radburn Association, they decided to pursue another avenue to effect the changes that they sought by having the legislature amend PREDFDA. They worked with Senator Robert Gordon, a former resident of Radburn, to pass the amendments.

May 2017 Amendments To Radburn Association Bylaws

Eventually the Board of Trustees recognized that PREDFDA was likely to be amended and that the amendments would change the membership of The Radburn Association and the election procedures that existed for The Radburn Association. Once the amendments to PREDFDA would be passed, The Radburn Association would be limited in addressing certain issues, including, but not limited to, whether tenants would have the right to vote and how many Trustee seats would be up for election at any given time. The purpose of the By-Law amendments to The Radburn Association By-Laws duly adopted by the membership of The Radburn Association on May 17, 2017 (the “May 2017 By-Laws”) was to make the transition from how The Radburn Association had operated in the past to how The Radburn Association would operate in the future, more smooth, and to ensure that the Board of Trustees would have the assistance of some experienced Trustees.

On May 17, 2017, at a special meeting of the then-existing membership of The Radburn Association, the membership, by more than a two-thirds majority vote, duly adopted the May

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2017 By-Laws. ((See the Certification of Ellen M. Boyle dated March 19, 2018, Exhibit A(“Boyle Cert.”)). The May 2017 By-Laws expanded the membership of The Radburn Association to include the owner of a “Unit” being any of the following: (i) a tax lot with a residential building thereon, (ii) a residential condominium, and (iii) a prospective dwelling for which the Fair Lawn Planning Board had granted certain approvals or for which a building permit has been issued (provided that there is also Committee on Architecture approval). Pursuant to the May 2017 By-Laws, the owner of each “Unit” (including each “prospective dwelling”) is entitled to cast one vote. Accordingly, Pulte and Bergen Development are entitled to cast one vote per prospective dwelling.

The May 2017 By-Laws also provided for the Trustees (upon completion of their respective terms) to be elected by the new membership, with each Trustee to serve a four-year term. Two Trustees are elected each year, except that every four years, three Trustees are elected. Upon completion of her term (which expires at the end of 2018), the President of the Citizens Association will no longer be a Trustee. The May 2017 By-Laws provide that Trustees sitting in 2017 may have their term extended (and, in fact, certain Trustees did have their term extended) by the President for up to four years, as a method to have a more orderly transition to the new system of electing Trustees. By doing so the President ensured that only two new Trustees are elected in each of 2018, 2019 and 2020, and only three in 2021.

The May 2017 By-Laws also established minimum requirements for a member to be eligible to run for a seat on the Board, and to serve as a Trustee, a limit of three consecutive terms for Trustees, a nomination procedure, procedures to remove Trustees, as well as various other changes. The May 2017 By-Laws also provided for a procedure for the members to amend the May 2017 By-Laws by an affirmative vote of two-thirds of the membership.

The May 2017 By-Laws also established a Trustees' Advisory Committee that consists of all elected Trustees and future Trustees. The Trustees' Advisory Committee would fill vacancies on the Board and elect a formal Nominating Committee. The revisions would also allow the Trustees' Advisory Committee to elect two non-voting advisors to the Board. The advisors would attend all meetings (public and non-public) of the Board and offer advice to the Trustees, but would not vote.

On July 13, 2017, PREDFDA was amended. The May 2017 By-Laws conform to PREDFDA, and in those few instances where they do not fully conform, The Radburn Association has been governing itself in full compliance with the amendments to PREDFDA. For example, The Radburn Association recently solicited candidates to run for the Board of Trustees, and as PREDFDA requires, allowed members in good standing to nominate themselves and other members in good standing.

Complaint by Radburn United

At some point, but not from the DCA, The Radburn Association inadvertently learned that some home owners calling themselves Radburn United had filed a complaint with the DCA. The complaint was not provided to The Radburn Association by either the DCA or Radburn United. On March 2, 2018, as The Radburn Association was about to mail ballots for its election of Trustees, it received the DCA's March 2, 2018 letter claiming that the May 2017 By-Laws are invalid and that the May 2017 By-Laws' definition of “prospective dwellings” is overly broad

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and inconsistent with the PREDFDA amendments. In addition, it is our understanding, that without authority or due process, the DCA required The Radburn Association members, Pulte and Bergen Development, to “voluntarily” and in violation of PREDFDA and the May 2017 By-Laws, refrain from voting as members of The Radburn Association in order to register their construction project for sale.

LEGAL POSITION

The DCA, as the Agency’s website states, can help homeowners with respect to a complaint against an association governed by PREDFDA in three areas:

- that associations adopt and properly administer alternative dispute resolution procedures (ADR)
- that associations comply with open public meeting requirements
- that associations provide owners access to financial records at reasonable times.

(See Exhibit B to Boyle Certification). As specifically stated by the DCA:

Please note that the Department of Community Affairs does not have the statutory authority to take actions such as investigating alleged wrongdoings of board members or employees, removing board members from office, ordering board members or employees to comply with governing documents or to take or rescind specific actions. Similarly, we cannot order revisions to financial practices or operating procedures, conduct audits or review elections.

(Id.).

The DCA’s March 2, 2018 letter advises that the May 2017 By-Laws are not effective because they were not filed with the county clerk. This conclusion does not fit into any of the three enumerated areas about which the DCA is authorized to assist homeowners. The DCA plainly has no authority to invalidate an association’s By-Laws.

In addition to the lack of authority for the DCA to be adjudicating this matter, there is no legal support for the DCA’s claim that because the May 2017 By-Laws were not filed with the county clerk they are invalid. P.L. 2017, c. 106 requires that the bylaws of an association “shall initially be recorded with the master deed.” The statute further advises that “no amendment [to the bylaws] shall be effective until recorded in the same office as the then existing bylaws.” Radburn, however, has no master deed and no version of its By-Laws were ever filed, including, the version that the DCA now says (without authority) controls.

Extensive research has disclosed no law or legal precedent requiring an association that does not have a master deed to file its By-Laws in some other way. Indeed, The Radburn Association’s By-Laws have been considered by the Superior Court of New Jersey, the New Jersey Appellate Division, and this Agency. It has never before been suggested by any of these authorities that The Radburn Association’s By-Laws were not effective because they were not filed.

There is certainly no requirement that amendments to By-Laws be filed when the original By-Laws were not filed. The plain language of the law specifically requires that amended By-Laws

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be recorded in the same office as the existing By-Laws. It provides no requirement, however, for an association that did not have a master deed and therefore did not file its By-Laws, to file its amended By-Laws. I note that the May 2017 By-Laws were (i) carefully studied by a By-Laws committee of the Board, (ii) voted on by the membership of The Radburn Association that was determined by the Appellate Division to be the lawful membership, and (iii) duly adopted by a vote of more than two thirds of the members. The DCA's letter simply ignoring the rights of those home owner members who adopted the May 2017 By-Laws is inconsistent with the DCA's authority. The May 2017 By-Laws are not invalid and The Radburn Association will continue to be governed by them.

Presumably, the purpose of the requirement that By-Laws be filed is so that purchasers of units covered by a master deed will be aware of, and have notice of, the By-Laws they will be governed by when they purchase that unit. Here the May 2017 By-Laws are on The Radburn Association's web site and are available for any purchaser and the public to review. While the May 2017 By-Laws are not required to be filed, The Radburn Association will, nonetheless, attempt to file them with the Bergen County clerk, so as to put an end to any argument, no matter how specious, that The Radburn Association's By-Laws are invalid.

The Radburn Association also notes that the DCA's handling of this matter is directly contrary to its' own procedures. According to the information provided on DCA's website, when a home owner is seeking assistance with a complaint against an association there is a process to be followed. The home owner needs to complete the Common Interest Association Complaint Form. (Boyle Cert. Exhibit C). The home owner submits the complaint form to the Agency and according to the DCA's web site, "agency staff review the documentation submitted in support of the complaint and if it is determined that there is jurisdiction, the agency will compose and send a letter to the board president requesting a response to the allegations made in the complaint." The association is then given an opportunity to respond. (Boyle Cert., Exhibit D).

In this matter the complaint sent by Radburn United did not comply with the DCA's procedures. No notice was provided to The Radburn Association of the complaint by either Radburn United or the DCA. Certainly The Radburn Association was given no opportunity to respond to the allegations in the complaint. Nor, was The Radburn Association given the opportunity to assert its position regarding the matters set forth in the DCA's March 2, 2018 letter. Plainly this is not the proper way for the Agency to handle such a complaint and indeed it violates all notions of due process inherent in our system as recognized by the DCA's own published processes.

It appears that Edward R. Hannaman, Esq., an employee of the DCA, has had a role in the Agency's decision making regarding The Radburn Association. This is inexcusable given Mr. Hannaman's conflict of interest and the fact that he agreed almost ten years ago to recuse himself from any matter involving The Radburn Association. (See Boyle Cert. Exhibit E). Mr. Hannaman did so after emails he exchanged with the plaintiff's in litigation against The Radburn Association came to light during discovery in those matter. These emails made plain that Mr. Hannaman was not a neutral and disinterested representative of the DCA but rather that he had an agenda against The Radburn Association. Any involvement in this matter by Mr. Hannaman who agreed to recuse himself has been prejudicial to The Radburn Association. Please make sure that Mr. Hannaman is walled off from any discussion or communications regarding The Radburn Association.

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Radburn is a National Historic landmark, is on the national registry of historic places, and is probably the most stable planned community since the Motor Age. It is wholly inappropriate for any community, never mind a community such as Radburn, to be denied due process or to be the victim of an attempt to dictate the will of unknown actors in how it is managed, all in the name of a state Agency.

Thank you for your attention to this matter.

Very truly yours,
KIRMSER, LAMASTRA, CUNNINGHAM &
SKINNER

A handwritten signature in black ink that reads "Ellen M. Boyle". The signature is written in a cursive, flowing style.

Ellen M. Boyle

EMB:nml

cc: The Radburn Association