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May 18, 1990

Sandra Goldstein, President
Board of Representatives
City of Stamford

Re: Petition of Referral for Zone Change (Appl. 89-034);
Whether Property in Greenwich Should Be Computed In
The 20% Requirement; Definition Of "Privately-Owned
Property" in Section 6-40-5 of Charter

Dear Sandra:

You have requested an opinion concerning the following circumstances: The Zoning Board by Application 89-034 has approved a zone change from R-10 to R-D10 (Designed Residential District) for a 22 acre parcel on the south side of Palmers Hill Road and the east side of Havermeier Lane, on the Stamford-Greenwich line. A petition seeking referral to the Board of Representatives pursuant to § 6-40-5 of the Stamford Charter has been filed. Two questions are asked: What is the definition of "privately-owned land", and does that include land owned by non-profit, tax exempt organizations such as United Way, Child Care Center, and Family and Children's Services, which own land within the 500 foot radius? The second question asks whether land owners in Greenwich are computed in the 20% requirement, since § 6-40-5 states that for a petition of referral to the Board of Representatives to be successful, the "owners of 20% or more of the privately-owned land located within 500 feet of the borders of such area (the area of the zone change)" must file a signed petition with the Zoning Board, objecting to the proposed amendment.

1. What is the definition of "privately-owned land" in § 6-40-5, and does this include land owned by United Way, Child Care Center, and Family and Children's Services?

Answer: Any land other than land owned by a government is "privately-owned land", and land owned by these agencies is included in the definition of "privately-owned land".

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The common definition of "private property" is that which is owned by an individual or some other private owner, ordinarily devoted to the private uses of that private owner. Even if private property serves a quasi-public service, such as the property of a college or university, it is still characterized as private property within the constitutional protection afforded to such property. 63A Am. Jur.2d § 12.

2. Since the subject parcel lies on the border between Stamford and Greenwich, is land located in Greenwich counted toward the 20% requirement in § 6-40-5?

Answer: Yes.

There are no Connecticut decisions precisely in point, but one decision concerning the definition of "aggrieved party" under the General Statutes is instructive. In Hamelin v. Zoning Board, 19 Conn. Supp. 445 (1955), property owners who lived directly across the property which was rezoned appealed to the Superior Court, even though none of them were landowners or taxpayers in the Borough of Wallingford. The successful applicant moved to dismiss, claiming that residents and taxpayers of a different municipality are not "aggrieved persons" within the meaning of the General Statutes. The lower court decided that the property owners, even though they lived in a different municipality, were affected by the zone change and had the right to judicial review of the Borough of Wallingford's decision.

In other states, the majority rule is that property owners and residents of an adjoining city may file a protest petition to the legislative body of the adjacent municipality. In Koppel v. City of Fairway, 371 P.2d 113 (Kan. 1962), property owners of the City of Roeland Park filed a petition objecting to the rezoning of a large parcel in an adjoining City, which was rezoned from residential to retail business district classification. This 23 acre tract was bounded on the west by the City line, and protests were filed by more than 20% of the owners of frontage across the street but in the adjacent city. The City of Fairway ignored these protests on the grounds that the protestors did not live in the City, and the protestors appealed. The court reviewed the State statute, which did not mention that owners of property had to be owners of property within the municipality that enacted the zone change. The court cited a New Jersey decision reasoning that a municipality "owes a duty to hear any residents and taxpayers of adjoining municipalities who may be adversely affected by proposed zoning changes ... as they would to those of their residents ...

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to do less would be to make a fetish out of an invisible municipal boundary ... and a mockery of the principles of zoning." (371 P.2d 113, at pgs. 116-117). Therefore, the court ruled that the non-resident property owners should have been considered the same as resident property owners.

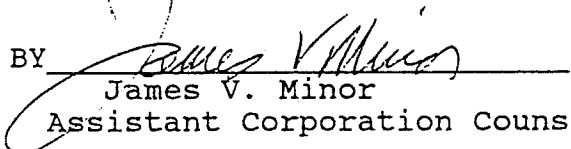
Section 6-40-5 is similar to the new Jersey statute since it does not limit the property to be counted to Stamford property. The preceding section, 6-40-4, does limit the class of property owners who can apply to the Zoning Board to amend the Zoning Map to "any Stamford property owner." A rule of statutory construction is that express exclusion of non-Stamford property in one section is an implied inclusion of all property in another section of the Charter which does not so limit where the property is located.

See the decisions cited in Annotation, "Standing Of Owner Of Property ... But Not Within Territory Of Zoning Authority, To Attack Zoning", 69 A.L.R.3rd 805, 809-811, 814-819; Annotation, "Standing Of Municipal Corporation ... To Attack Zoning Of Land Lying Outside Its Borders", 49 A.L.R.3rd 1126, 1131-1133. The majority and more recent of these decisions agree in allowing non-residents who fit within a Charter or statutory definition as entitled to file a petition of protest. In other words, the majority of decisions do not base "standing" to attack a zoning decision upon municipal boundaries, but upon the usual test of whether the person fits within the standard test of being adversely affected.

If you have any questions, do not hesitate to contact this office.

Very truly yours,

Mary E. Sommer
Corporation Counsel

BY 
James V. Minor
Assistant Corporation Counsel

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REQUEST OF LAW DEPARTMENT

DEPARTMENT, COMMISSION, COMMITTEE
OR AGENCY MAKING REQUEST:

Board of Representatives

REQUEST FOR:

TELEPHONE NUMBER:

OPINION

LITIGATION

LEGISLATION

TAX REFERRAL

CONTRACT/LEASE REVIEW

CONTRACT/LEASE PREPARATION

PROPERTY ACQUISITION

EASEMENT PREPARATION/REVIEW

OTHER:

SUBJECT:

Land to be acquired in a judicial process

REASON FOR REQUEST:

petition must be finished by June 1st

STATUTORY/CHARTER REFERENCE (If applicable):

Charter Sec. 6-40-b

IF BOARD OF REPS ACTION IS REQUIRED,
DATE OF APPROVAL OR AUTHORIZATION:

DATE NEEDED BY:

As soon as possible

PLEASE SET A PRIORITY:

2 weeks

- Priority #1 - within five (5) working days of receipt
- Priority #2 - within two (2) weeks of receipt
- Priority #3 - within one (1) month of receipt
- Priority #4 - Other

PLEASE PROVIDE ANY ADDITIONAL INFORMATION, COMMENTS, TERMS, REFERENCE TO
PRIOR OPINIONS, SPECIAL INSTRUCTIONS, ETC., WHICH WILL FACILITATE
COMPLIANCE WITH THIS REQUEST, AND LIST ALL ATTACHMENTS SUBMITTED.

Please determine what is "privately held land" (Land owned by United Way, Child Care
Center, Family and Children's Services?)

Does the Stamford Charter relate to land-owners in Greenwich? Does Greenwich land
count toward the 20% requirement?

DATE OF
REQUEST:

May 11, 1990

Sandra Goldstein, Pres.
Signature of Person Making Request

Signature of Department Head, or
Commission/Committee/Agency Chairperson

Please prepare in triplicate; send white and yellow to Law Department,
retain pink copy for your files.

DL 5/29

10/10/90