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TO: CARMEN DOMONKOS, PRESIDENT
BOARD OF REPRESENTATIVES

FROM: JOHN W. MULLIN
ASSISTANT CORPORATION COUNSEL

RE: **INTERRELATIONSHIP BETWEEN LAND USE CONTROLS OF URBAN REDEVELOPMENT COMMISSION AND LOCAL ZONING REGULATIONS OF THE CITY OF STAMFORD**

DATE: DECEMBER 21, 2000

Please be advised that I have received your request for an opinion as to whether the Urban Redevelopment Commission is obligated to abide by the City of Stamford's local zoning regulations. I have been informed by the Director of Legal Affairs, Andrew McDonald, that this office has had prior opportunities to research and render a written opinion on this topic. More specifically, former Corporation Counsel, Frank D'Andrea, had provided a fairly comprehensive opinion in this regard to Mr. James Hibben, the former Director of Urban Renewal, dated August 5, 1970 a copy of which Attorney McDonald had forwarded to you along with his prior memo dated September 12, 2000. I have had an opportunity to review the applicable law in this area and wish to provide you with the following update.

As an initial matter, please recall that it was the opinion of this office in 1970, when Judge D'Andrea formerly held the position of Corporation Counsel for the City of Stamford:

> ***". . . that the zoning rules and regulations of the City of Stamford cannot and do not apply to the parcels of land in the [urban redevelopment plan] insofar as the Urban Renewal Plan has specifically and clearly set forth the zoning controls and requirements for said parcels. On the other hand, where the Plan is silent with regard to any aspect of a parcel's development, whether or not that parcel has been or is to be acquired for redevelopment, the zoning and other enactments of the City will be effective and must be adhered to. . .Thus, under established principles of law, the Urban Renewal Plan, authorized by state law, and adopted by the local authorities, takes precedence over the municipally established zoning rules wherever a conflict exists; at the same time, the local regulations are given effect wherever a reconciliation with the Plan is possible."***

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I believe that the core components of the above-stated opinion remain essentially correct today. Wherever an Urban Redevelopment Plan has specifically set forth the land use controls which are to be made applicable to particular parcels of land covered by such Plan, such controls shall preempt local zoning regulations. In the absence of such clearly stated land use controls within an Urban Redevelopment Plan, local zoning enactments will control.

It should be pointed out at the outset of this opinion that there is a marked paucity of Connecticut case law at the Connecticut Appellate Court or Connecticut Supreme Court levels which address the specific issue of the interrelationship between local zoning regulations and land use controls contained within urban redevelopment plans. The absence of such case law therefore merits reference to the clear pronouncement of the Connecticut legislature as to the public policy which underpins the statutory authorization for the creation of municipal redevelopment agencies which is set forth in Connecticut General Statutes, §8-124, as follows:

> "It is found and declared that there have existed and will continue to exist in the future in municipalities of the state substandard, insanitary, deteriorated, deteriorating, slum or blighted areas which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities, and the existence of such areas constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, and retards the provision of housing accommodation; **that this menace is beyond remedy and control solely by regulatory process in the exercise of the police power** and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the acquisition of property for the purpose of eliminating substandard, insanitary, deteriorated, deteriorating, slum or blighted conditions thereon or preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, the disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by municipalities acting through agencies known as redevelopment agencies as

herein provided, and any assistance which may be given by any public body in connection therewith, are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions of this chapter is hereby declared as a matter of legislative determination." (Emphasis added).

In declaring the above public policy authorizing the creation of urban redevelopment agencies, it is important to note that the Connecticut legislature had specifically emphasized that the problems of urban decay and blight which it sought to address were deemed to be "beyond remedy and control solely by regulatory process in the exercise of the police power. . ." All of the land use statutes enacted in the state of Connecticut, including the enabling legislation allowing municipalities to pass local zoning ordinances and adopt local zoning regulations, are based upon the police power. The police power allows for the local regulation of use of property through the exercise of local zoning powers because uncontrolled use would be harmful to the public interest. State v. Heller, 123 Conn. 492, 495-497 (1937), appeal dismissed 303 U.S. 627, 58 S.Ct. 765, 82 L.Ed. 1088 (1938), Fuller, Connecticut Land Use Law And Practice, §1.2 (2nd Edition, 1999). The police power is the source of all zoning authority. DeMaria v. Enfield Planning and Zoning Commission, 159 Conn. 534, 541 (1970).

It is important to also note that the Connecticut legislature, in further crafting the statutory scheme creating the powers for urban renewal, bestowed broad and sweeping powers to redevelopment agencies to carry out urban renewal plans and projects. In this regard, Connecticut General Statutes, §8-143 states, in pertinent part, that ***"[a] redevelopment agency shall have all the powers necessary and convenient to undertake and carry out urban renewal plans and urban renewal projects. . ."*** (Emphasis added). In granting these broad and sweeping powers to urban redevelopment agencies, the statutory language embodied in Connecticut General Statutes, §8-143 is notably devoid of any attempt to subject the exercise of these powers to the provisions of local zoning regulations.[1]

[1] Under Section 6-18.1 of the City of Stamford Code of Ordinances, similar powers to incorporate land use controls into a project plan or development plan are extended to the Urban Redevelopment Commission: (1) pursuant to C.G.S. §8-188 as the "Development Agency" under Chapter 132 of the General Statutes (§§8-187 through 8-200b, inclusive) relating to Municipal Development Projects, and (2) pursuant to C.G.S. §32-224 as the "Implementing Agency" under the Economic Development and Manufacturing Assistance Act of 1990, Chapter 588L of the General Statutes (§§32-220 through 32-234, inclusive).

Although, as indicated above, Connecticut's highest courts have not specifically addressed the issue of the preemption of local zoning regulations by land use controls contained within urban redevelopment plans authorized by Connecticut General Statutes, §§8-125, et seq., it is helpful to review decisions which do address analogous instances where local zoning regulations can come into conflict with state statutory schemes which govern problems of statewide concern similar to the problems of urban blight and decay. For example, with regard to the statewide problem of solid waste disposal, the Connecticut Supreme Court has reasoned in the case of Shelton v. Commissioner of the Department of Environmental Protection, 193 Conn. 506 (1984), that although home rule enables municipalities to handle their own affairs, where the General Assembly deems it necessary to render a statewide solution to a delicate problem (whether it be problems associated with urban decay or solid waste disposal), the state regulation will preempt the application of local zoning ordinances.

In the Shelton case, the Supreme Court of the state of Connecticut held that the general zoning authority conferred upon municipalities pursuant to Connecticut General Statutes, §8-2 "does not extend to the enactment of zoning regulations that conflict with a DEP [Department of Environmental Protection] permit." Id., at 517. This case arose from the proposed implementation of a plan to operate a regional landfill in the city of Shelton on a site where a smaller private landfill had previously been operated. The city had, in part, sought to enjoin the Connecticut Resources Recovery Authority ("CRRA") from operating the proposed landfill claiming that its proposed expansion would violate Shelton zoning regulations. With respect to this issue, although the trial court had found that local zoning regulations indeed overrode the statewide planning decisions of the defendants, the CRRA and the DEP, on appeal, the Connecticut Supreme Court found on behalf of the DEP and the CRRA and remanded the case to the trial court with directions to dismiss the appeal brought by the city of Shelton. In reaching this decision, the Shelton court found that local zoning regulations were preempted by statewide environmental regulation on the basis that the issue of solid waste disposal "presents ever increasing problems that are no longer subject to local solution." Id., at 523. The legal analysis conducted by the Shelton court involved a careful review of the Shelton zoning ordinances and regulations and the state statutory scheme which is collectively referred to as the Solid Waste Management Act (Connecticut General Statutes, §§22a-257 through 22a-281), including the legislative findings and intent of the Connecticut legislature in enacting these statutes. "Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the

achievement of the state's objectives." Id., at 517. Upon completing its analysis, the Shelton court stated, as follows:

> "These statutes evidence a legislative intent to commit the difficult regional problems of solid waste disposal to regional and statewide solution. The legislature could reasonably have determined that only a decision-making body with a mandate to consider the needs of more than one community could adequately balance the competing concerns of various localities within the state. ***Local zoning regulations, such as Shelton's, which operate to exclude the facilities that the CRRA has found necessary, and the DEP has found environmentally acceptable, frustrate the explicit purposes of the state statutes and are therefore preempted."*** (Emphasis added), Id., at 518.

The legislative findings underpinning the enactment of the Connecticut Solid Waste Management Act (Connecticut General Statutes, §§22a-257 through 22a-281, inclusive) were designed to address the statewide problem of inappropriate solid waste disposal practices which were found to have resulted in unnecessary environmental damage and the wasting of valuable land and other resources, thereby "constituting a continuing hazard to the health and welfare of the people of the state. . ." Connecticut General Statutes, §22a-258. Such legislative findings are strikingly similar to the declaration of public policy to address the statewide problems of urban blight and decay "which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of the state. . ." through the creation of Urban Redevelopment Plans as evinced by the Connecticut legislature in Connecticut General Statutes, §8-124. Therefore, as the legislature has seen fit to carve out the area of Urban Redevelopment as one to be addressed by state law (and to be implemented by municipal redevelopment agencies), local zoning regulations, to the extent that they are in conflict with land use controls embodied within an Urban Redevelopment Plan, must defer to those controls mandated by the Redevelopment Plan. To the extent that an Urban Redevelopment Plan is silent as to some aspect of land use regulation concerning property located in an area of the city contained within the parameters of an Urban Redevelopment Plan, the Stamford Zoning Regulations will control the manner in which that aspect of land use will be regulated.

I feel obligated in rendering this opinion to refer to one Connecticut Superior Court decision which would appear to express a contrary view of the law in this area. In the case of

Jimmies, Inc. v. West Haven Planning & Zoning Commission, 1994 WL 112206 (Conn. Super. 1994), a trial court was asked to address the issue of the effect, if any, of Connecticut General Statutes, §8-136 (which state statute prescribes the manner in which a redevelopment plan may be modified) on the ability of a municipality to rezone lands covered by a redevelopment plan. With respect to the factual background of the case, the city of West Haven, by means of a local ordinance, had established the West Haven Redevelopment Agency pursuant to the authority of Connecticut General Statutes, §8-126. In 1963, the West Haven Redevelopment Agency created an Urban Redevelopment Plan for the city and in due course, two plans were adopted and implemented. The plaintiff corporation owned property within the redevelopment area, a portion of which was conveyed to the city of West Haven in 1989 with the retention by the seller of certain rights to repurchase the property. In 1991 and 1992 the West Haven Planning & Zoning Commission adopted new zoning regulations and a new zoning map which changes encompassed and affected the area covered by the redevelopment plan. The effect of these changes was to reduce the low-rise developmental potential within the redevelopment area by 25%, and to reduce mid-rise developmental potential by 45%. The plaintiff corporation filed the action, claiming, in part, that the re-zoning of their property within the parameters of the redevelopment plan constituted an improper attempt by the West Haven Planning & Zoning Commission to utilize zoning powers to impermissibly alter the redevelopment plan when the power to effect a modification of a redevelopment plan is rightfully invested in the local redevelopment agency pursuant to the provisions of Connecticut General Statutes, §8-136.

In holding that §8-136 of the Urban Redevelopment state statutory scheme does not preempt or prohibit zoning amendments adopted in compliance with Chapter 124 of the General Statutes (the zoning powers enabling statutes), the Jimmies, Inc. court reasoned that ". . . in the absence of Connecticut authority, or at least analogous authority from another jurisdiction, the court finds itself without adequate legal basis to rule that §8-136 preempts or prohibits zoning amendments adopted in compliance with Chapter 124." In my view, based upon my review of the applicable law as to the question posed, I find it difficult to concur with the Superior Court decision rendered in Jimmies, Inc. v. West Haven Planning & Zoning Commission, 1994 WL 112206 (Conn. Super. 1994). The court's specific finding of an "absence of authority" to support the notion that Urban Redevelopment land use controls preempt local zoning regulations would appear to ignore the rather clear pronouncement by the Connecticut legislature in Connecticut General Statute, §8-124 that urban blight and decay "is beyond remedy and control solely by regulatory process in the exercise of the police power" (i.e. zoning). Furthermore, the cited decision appears to further ignore the clear reasoning of the Connecticut Supreme Court in cases

such as Shelton v. Commissioner of the Department of Environmental Protection, 193 Conn. 506 (1984), discussed above, which rather definitively find the preemption of local zoning regulations in areas affecting the public health and welfare wherein a statewide problem which needed to be addressed has in fact been addressed by state statute and regulation.

In light of these flaws, I remain comfortable with my opinion that local zoning regulations are preempted by land use controls set forth in an Urban Redevelopment Plan to the extent that such zoning regulations are in conflict with the land use measures mandated by the Urban Redevelopment Plan.

Thank you for providing me with the opportunity to research and write about this interesting area of the law. If you should have any additional questions or concerns regarding this matter, please do not hesitate to contact me.