SC/7

AVON
WILENSKY

CORPORATION COUNSEL
FRANK H D'ANDREA JR

ASSISTANT CORPORATION COUNSEL
THEODORE GOOLIN
GERALD KOLINSKY
RONALD M SCHWARTZ
JOHN E SMYTH

CITY OF STAMFORD, CONNECTICUT 06901
DEPARTMENT OF LAW

August 5, 1970

Mr. James B. Hibben
Director of Urban Renewal
Urban Redevelopment Commission
342 Atlantic Street
Stamford, Connecticut 06901

Dear Mr. Hibben:

You have requested our opinion regarding the relationship of the zoning regulations of the City of Stamford to the Urban Renewal Plan of the City of Stamford as approved by the Board of Representatives. As indicated in your letter, some problems have arisen because certain zoning regulations have been promulgated subsequent to the adoption of the Urban Renewal Plan which appear to conflict with said Plan. Your inquiry goes to the very essence of the broad social policies underlying urban renewal in general. It raises important questions of law, concerning the extent to which those policies will be implemented without reference to local zoning regulations which may not fully coincide with an approved plan.

It has been stated that "municipal control of land use began too late to prevent urban blight, and in some communities the combined force of zoning and subdivision controls has proved ineffective to remove it. Where this condition exists, communities have had no alternative but to remove existing buildings and uses and to undertake new development of the land. This has been accomplished through urban renewal and redevelopment programs underwritten by the Federal and State governments. These programs are as vital to the final success of community planning as the regulations that restrict land uses . . ." American Law of Zoning (1968) Sec. 1.16.

The State of Connecticut has promulgated comprehensive laws authorizing urban renewal and redevelopment and giving power to the legislative body of any municipality to designate a redevelopment agency. Such agencies are specifically authorized by Section 8-126 of the Connecticut General Statutes. The City of

Stamford has created an Urban Redevelopment Commission pursuant to said authority. Section 2-21, Stamford City Code. The public policy underlying redevelopment projects and agencies is stated in Section 8-124 to be as follows:

> It is found and declared that there have existed and will continue to exist in the future in municipalities of the state sub-standard, 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 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. (empnasis added)

A redevelopment agency is authorized, by Sections 8-127 and 8-142 of the General Statutes, to prepare a redevelopment or urban renewal plan and submit the same to the planning board of the municipality. It is required that this plan show -

> "such land acquisition, demolition and removal of structures, redevelopment, improvements and rehabilitation as may be proposed to be carried out in the area of the urban renewal project, zoning and planning changes, if any, land uses, maximum densities, building requirements and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements . . . " Conn. Gen. Stat., Section 8-142 (emphasis added)

Once the Plan has been considered and approved by the planning board,

> ". . . such plan and any modifications and extensions thereof shall show the location of proposed redevelopment areas and the general location and extent of use of land for housing, business, industry, communications and transportation, recreation, public buildings and such other public and private uses as are deemed by the planning agency essential to the purpose of redevelopment". Conn. Gen. Stat., Section 8-127.

The redevelopment agency must then hold a public hearing on the Plan. It may approve the Plan if it finds, among other things that the Plan:

> ". . . is satisfactory as to site planning, relation to the comprehensive or general plan of the municipality. . ."

The entire Plan must finally be approved by the legislative body of the City.

The Statute also sets forth how an approved plan may be modified by the redevelopment agency, or in the case of substantial change, by the legislative body of the city. The Statute refers to no other requirements regarding approvals by other public agencies or bodies.

The above statement of policy and statutory procedure was tested in the case of Gohld Realty Co. v. Hartford, 141 Conn. 135 (1954), where the Court held that the cited provisions did not constitute an unlawful delegation of legislative power to a redevelopment agency. The Court added that the General Assembly may delegate to an administrative agency the power to carry its enactment into effect by prescribing rules and regulations, provided adequate standards are set forth to guide the agency in so doing. The Court in said case specifically ruled that it was not an unlawful delegation of power to a redevelopment agency to select purchasers or lessees for the property and to determine the consideration to be paid by them and the conditions and restrictions under which they shall use the property. (emphasis added)

The Urban Renewal Plan for the Southeast Quadrant (extended Urban Renewal Project), Conn. R-43, has been adopted by the Board of Representatives of the City of Stamford after all of the statutory requirements regarding, among other things, studies, preparation and public hearing had been complied with. The Plan, therefore, represents the product, insofar as Stamford is concerned, of the public policy and procedures set forth in Sec. 8-124 of the General Statutes and the other provisions of Chapter 130 of said General Statutes. To what extent Stamford's zoning rules and regulations can be made applicable to this Plan authorized by and adopted under State law is the precise issue to be resolved herein.

It is well settled that where a conflict of authority exists between an edict of a municipal government and a state enactment, a general grant of local administrative power confers no authority to abrogate a specific state statute. Rathkopf, "The Law of Zoning and Planning" Chapter 31-7. It has further been held that where a state policy exists, a municipality may not ignore such policy unless it is specifically empowered to do so in terms clear and explicit. In the case of Shelton v. City of Shelton, 111 Conn. 433 (1930), a City ordinance prohibited absolutely the sale and use of raw milk, while a state statute on the same subject granted such sale and use conditioned upon compliance with statutory requirements. The Court held that since the provisions of the ordinance were in conflict with the provisions of the state statute, the passage of the ordinance was beyond the powers granted to the city and the ordinance was in effect, void. The Court stated with regard to the City ordinance:

> "It cannot prohibit what the statute grants. It cannot set up new standards in place of the legislative standards. It cannot substitute its judgment for the legislative judgment".

The Court in the Shelton case added, "this is not the case of the ordinance speaking where the statute is silent. It is the case of a direct conflict between statutes and ordinances; they are irreconcilibly inconsistent with one another. The ordinance must yield".

It is also a rule of statutory construction that where laws relating to the same subject matter can be reconciled, they should be given effect concurrently wherever possible.

As above quoted in Section 8-142 of the General Statutes, an urban renewal plan must indicate among other things, " . . . zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting property land use, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements . . .". The urban renewal Plan for the Southeast Quadrant in fact sets forth very specific requirements and regulations under which certain parcels of land in the Quadrant are to be utilized. Land use provisions, building requirements, parking requirements, density and height with relation to specific parcels are covered minutely. Site and building plans are subject to the approval of the Urban Renewal Commission with regard to conformity of specific architectural and esthetic controls, adequacy of safety of vehicular and pedestrian access, and other factors. The Plan states on page 19 thereof that its controls and requirements shall become effective upon approval of the plan by the Board of Representatives and shall be incorporated by reference in each instrument of disposal. The Plan in such form, after much deliberation, was in fact adopted by the Board of Representatives, being the legislative body of the City of Stamford. Present zoning regulations of the City conflict in some instances with the controls and requirements of the Plan.

It is our opinion that the zoning rules and regulations of the City of Stamford cannot and do not apply to the parcels of land in the Southeast Quadrant Project area 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.

In conclusion, it should be pointed out that the Zoning Board, in creating the CC-N Central City District North and CC-S Central City District South zones, specifically applying to the Southeast Quadrant project, has taken a constructive step toward the regulation of properties within the Quadrant insofar as they are not specifically regulated by the Plan. This, of course, has the effect of coordinating and encouraging the most beneficial use of all of the property in the area, and the zoning authorities ought to continue to provide this attention to the situation. Additional attention might also be given by the appropriate agencies to amending the Urban Renewal Plan if the seven year lapse of time since its adoption has revealed that any of its controls or requirements are now inadequate. Amendments affecting disposition parcels would, of course, require the concurrence of the redeveloper.

Yours truly,

Frank H. D'Andrea, Jr.
Corporation Counsel

FHD:sa