LOVEJOY, HEFFERAN, RIMER AND CUNEO, P. C.
ATTORNEYS AT LAW

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PLEASE REPLY TO: Wilton Office

April 22, 1985

Sandra Goldstein, President
Board of Representatives
429 Atlantic Street
Stamford, CT 06901

Re: Petitions to Board of Representatives to Review Zoning Amendments Adopted by the Stamford Zoning Board

Dear Mrs. Goldstein:

By letter of April 19, 1985 you have requested an opinion from me as special counsel on legal questions arising from petitions which have been filed with the Board of Representatives to request review by it of zone changes made by the Stamford Zoning Board. The main issue centers over validity of the petitions and specifically their compliance with provisions of the Stamford Charter.

The pertinent facts here are as follows. The Stamford Zoning Board proposed and held hearings upon several applications to consider changes or amendments to the Stamford Zoning Map. Each application covered a fairly large area of the city, encompassing property on many streets and in several zones. Within each of these geographical areas covered by each application there were numerous proposed zone changes, although in each instance there were properties for which no zone change was proposed. Following public hearings, the Zoning Board voted to make some proposed zone changes within each geographical area, following to a large extent the Zoning Board's original proposals, although some changes were made following the input received at the public hearings. After the Board reached decisions on the applications before it, each of which contained multiple zone changes, petitions were filed by property owners in various areas of the city, requesting reconsideration by the Stamford Board of Representatives of specific zone changes or amendments, in accordance with the Stamford Charter.

An initial question has been raised as to which section of the Stamford Charter governs this problem. The applicable section is section 552.2 entitled "Referral to Board of Representatives by Opponents of Proposed Amendment to Zoning Map After the Effective Date of the Master Plan". Since the Master Plan has already been amended, the procedural sections of the Charter concerning the Master Plan, such as section 522.4, do not apply here. Section 552.2 provides as follows:

> "After the effective date of the Master Plan, if twenty percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Zoning Map, or if the owners of twenty percent or more of the privately-owned land located within five hundred feet of the borders of such area, file a signed petition with the Zoning Board within ten days after the official publication of the decision thereon, objecting to the proposed amendment, said decision shall have no force or effect but the matter shall be referred by the Zoning Board to the Board of Representatives within twenty days after such official publication, together with written findings, recommendations and reasons. The Board of Representatives shall approve or reject such proposed amendment at or before its second regularly-scheduled meeting following such referral. When acting upon such matters the Board of Representatives shall be guided by the same standards as are prescribed for the Zoning Board in Section 550 of this Act. The failure of the Board of Representatives either to approve or reject said amendment within the above time limit shall be deemed as approval of the Zoning Board's decision."

The main question presented by your letter is how the 20% requirement in Section 552.2 is computed, as this will determine whether valid petitions have been filed. Before setting forth how the twenty percent computation is made, it is important to determine what land area it encompasses. The Charter provision refers to "land in the area included in any proposed amendment to the Zoning Map", or "land located within five hundred feet of the borders of such area." Where a municipal charter is enacted either by special act of the legislature or under the Home Rule Act, language in the charter provision is controlling. West Hartford Taxpayers Ass'n v. Streeter, 190 Conn. 736, 742. Section 552.2 was part of a special act enacted by the legislature, and should be construed in the same manner as a statute. To determine the intent of a charter provision, the enactment must be examined in its entirety and its parts reconciled and made operative

so far as possible. New Haven Police Local 530 v. Logue, 188 Conn. 290, 297. When interpreting a local charter or ordinance provision, the language used in the applicable provision is controlling, but when two constructions are possible, the one which makes the provision effective and workable should be adopted rather than the one which leads to difficult and possibly bizarre results. Maciejewski v. West Hartford, 194 Conn. 139, 152. The question becomes what was the legislative intent and meaning of the language "any proposed amendment to the Zoning Map" as used in section 552.2 of the Stamford Charter. Burke v. Board of Representatives, 148 Conn. 33, 43.

Several provisions in Chapter 55 of the Stamford Charter refer to amendments or proposed amendments to either the Zoning Map or the Zoning Regulations. An amendment is a change, alteration or correction. Each of the applications before the Zoning Board covered, for understandable reasons, large sections, areas or neighborhoods of Stamford. However, each application included both areas for which zone changes were proposed, as well as other areas which were recommended to remain unchanged. Since the applications were part of complex, comprehensive rezoning of large sections of Stamford, each application contained multiple zoning amendments or zone changes. The Charter does not contain any prohibition in combining more than one proposed zone change in the same general area into one application. However, when final action was taken by the Zoning Board, each application granted by it in fact consisted of many separate amendments to the Zoning Map. Section 552.2 allows a petition to be filed concerning the area included in "any proposed amendment to the Zoning Map". Accordingly, it is my opinion that each separate zone change or amendment (even though combined with other amendments in one application) may be referred from the Zoning Board to the Board of Representatives if a proper petition is filed. Each zoning amendment may cover more than one property and includes all contiguous properties for which the same changes were made, as shown on the various zoning maps which were part of the applications and decisions of the Zoning Board. A change of zone for an area from one zone into two different zones would be two separate zone changes. Also, if an area was previously divided into two different zones but is changed into one new zone, this would be two separate zoning amendments even though both areas are now contained in the same zone.

Two other possible interpretations of Section 552.2 have been suggested: (1) That the right to petition refers to the entire area included in each zoning application acted upon by the Zoning Board; and (2) That the twenty percent rule applies to all of the zone changes contained within each application. Both of these interpretations, the first more than the second, lead to bizarre and irrational results, and frustrate the purpose

of the charter provision. Section 552.2 is designed to give the right to appeal to the Board of Representatives if enough persons affected by a zoning amendment request reconsideration by the Board of Representatives. As previously noted, each of the zoning applications included properties for which no zone changes were proposed. Accordingly, they are not "land in the area included in any proposed amendment to the Zoning Map." Also, the right to appeal to the Board of Representatives would, as a practical matter, be completely frustrated if a large percentage of the area included in the application was not proposed for a zone change (for example, the entire City of Stamford), as in such a case it would be impossible to obtain enough signatures to meet the twenty percent requirement. The same problem exists, although on a lesser scale, if all of the zoning amendments are considered together in determining if enough property owners signed the petition. The rights of a group of dissatisfied property owners to appeal their zone change to the Board of Representatives should not be determined by the extent to which owners of property in other areas are satisfied by their own zone changes, particularly since these other zone changes may involve different zone classifications or may be located a considerable distance away. Stated another way, the ability to petition the Board of Representatives should not be determined by how many separate zone changes are combined into one application. "A charter of a city must be construed, if possible, so as reasonably to promote its ultimate purpose." Arminio v. Butler, 183 Conn. 211, 218. It also could not have been the intent of the legislature to allow objectors to one zone change to be able to affect property owners in another, distant area, by filing a protest petition including twenty percent of the land involved in both zone changes. If all of the amendments were considered together in determining the twenty percent requirement, the Board of Representatives could be burdened with reviewing zone changes in areas where both the Zoning Board and the property owners in the zone were completely satisfied with that zoning amendment. Such a result would also be contrary to the intent of the charter provision, which limits the right to file a protest petition to persons in the affected area or within five hundred feet of it. For these reasons, all of the amendments should not be combined in determining whether a particular petition is sufficient. The same concept applies whether or not two Zoning Map amendments for non-contiguous areas are to the same zone or a different zone.

Once the area of each zoning amendment is established, there are two computations that must be made to determine whether each petition is sufficient. Section 552.2 allows either: (1) twenty percent or more of the property owners in the area included in the zone change; or (2) twenty percent or more of the owners of land within five hundred feet of the zone

change to file the protest petition. In both cases, land which is not privately owned (e.g. municipal land) is excluded from the computation. This type of provision refers to twenty percent of the area and not twenty percent of the number of lots or twenty percent of the owners. "What is required is a protest filed by the owners (whether one owner or many owners) of at least twenty percent of certain areas. It is not the owners of twenty percent of the lots with whom we are concerned but the owners of twenty percent of certain areas of lots." Park Regional Corporation v. Town Plan and Zoning Commission, 144 Conn. 677, 684. It is also clear from the charter provision that two computations must be made. A petition may be filed by owners of twenty percent of the land included within the proposed zone change. In addition a petition may be filed by twenty percent of the owners of property within five hundred feet in all directions of the property included in the proposed zone change. The two categories are not added together in computing the twenty percent. Muller v. Town Plan and Zoning Commission, 145 Conn. 325. In making the first computation, where a property is divided by the zone line, only the property in the area of the zone change is included. In making the second computation, only that portion of a property owner's lot that is within five hundred feet of the zone change area is included. The Muller case interpreted a similar provision in section 8-3(b) of the Connecticut General Statutes, and in discussing the second computation the Court stated at page 331: "If the statute is considered to mean land bounded by a line drawn at a distance of five hundred feet from every point of the outer boundary of the property subject to the proposed change, the problem of finding the total area to which the twenty percent rule is to be applied becomes fairly simple and, as already noted, the construction furnishes an exact standard for the determination of that area."

It is also clear from Woldan v. City of Stamford, 22 Conn. Supp. 164, which interpreted section 552.2 of the Charter, that all of the property owners of a specific piece of property must sign the petition for their land to be counted in determining whether either twenty percent requirement is met.

The next question concerns what proposed amendments come before the Board of Representatives for action, what action the Board may take, and what affect its action has upon other properties included in the zoning applications. The only applications before the Board of Representatives will be the specific zone changes for which valid petitions were filed. Other zone changes in the same area are not referred under the charter provision to the Board of Representatives for action. Since more than fifteen days have passed from the decision of the Zoning Board on all of

the zoning applications, all of the zone changes contained in those applications (other than those for which valid petitions have been filed or appeals taken to the Superior Court as allowed by section 556 of the Stamford Charter) would be final. If the Board of Representatives rejects a proposed zoning amendment brought to it by a petition this would not overturn the other zone changes made by the Zoning Board, even if they were contained in the same application, again because each amendment or change to the Zoning Map is separate from the others, and they are not conditional upon each other. Generally where a zoning authority takes two actions simultaneously, even for the same property, each action stands on its own. Pecora v. Zoning Commission, 145 Conn. 435, 443; Langer v. Planning and Zoning Commission, 163 Conn. 453, 459; Weigel v. Planning and Zoning Commission, 160 Conn. 639, 650; Parish of St. Andrews Church v. Zoning Board of Appeals, 155 Conn. 350, 354, 355. Accordingly, the Board of Representatives need not concern itself with zone changes not covered by the petitions.

From past experience, you are aware of the time limits imposed by section 552.2 of the Charter and the requirement of a majority vote required by section 556.1. Schlesinger v. Board of Representatives, Superior Court at Stamford, decision dated December 9, 1980. With each of the zoning amendments that go to the Board of Representatives, the Board acts as a zoning authority, acts in a legislative capacity and exercises its own independent judgment and discretion. Burke v. Board of Representatives, 148 Conn. 33, 39, 40; Zenga v. Zebrowski, 170 Conn. 55, 60. The Board of Representatives acts upon the record referred by the Zoning Board, although it may also hold a hearing, and presumably intends to do so here. Since the Board of Representatives is acting as a zoning authority it has the same broad discretion and applies the same zoning standards as are considered by the Zoning Board under section 550 of the Charter. Burke v. Board of Representatives, supra.

Very truly yours,

Robert A. Fuller

RAF:bf

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PLEASE REPLY TO: Wilton

April 25, 1985

Sandra Goldstein, President
Board of Representatives
429 Atlantic Street
P.O. Box 10152
Stamford, Connecticut 06904-2152

Re: Petitions to Board of Representatives to Review Zoning Amendments Adopted by the Stamford Zoning Board

Dear Mrs. Goldstein:

This is to supplement my letter of April 22, 1985 and to answer questions raised at the meeting of the Planning and Zoning Committee of the Board of Representatives on April 23, 1985.

A question has been raised as to whether a change in the Stamford Charter in 1969 affects how the 20% requirement in section 552.2 of the Charter is to be applied. Upon investigation, I agree with the comment made at the public hearing that a change was made in 1969. While the present Charter does not show the changes from the 1953 special act, my review of it shows that a change was made since the 1953 special act was adopted. The provision originally read "if the owners of 20% or more of the privately owned land in the area included in any proposed amendment to the zoning map, or if the owners of 20% or more of the privately owned land located within 500 feet of the borders of such area," file the proper petition that the matter is referred to the Board of Representatives. Apparently in 1969 the first phrase was changed to read, as it does now, "If 20% or more of the owners of the privately owned land in the area included in any proposed amendment to the zoning map" filed a proper petition the matter is referred to the Board of Representatives. The second phrase remained the same. The same principles as apply to interpretation of statutes, apply to interpretation of city charters. In interpreting a charter, the intent of the provisions of the charter, or amendments to it, should be carried out. Arminio vs Butler, 183 Conn. 211, 218. When a change is made it must be presumed that it was done for a purpose and with the intent to

make a change in the law. With this in mind, it would appear that the change was made in 1969 to allow a protest petition concerning land covered by an amendment to the zoning map to be signed by 20% of the land owners rather than the owners of 20% of the area included in a proposed zone change. The present provision is now different from provisions in other municipal charters, and can lead to some unusual results, but it must be applied as written. This leads to the further question of whether all the owners of a particular parcel within the zone change must sign the petition in order to be included in computing the 20% (and whether those co-owners that don't sign are included in the total number of owners within the zone change). While this point is debatable, it is my opinion that the better position is that all the owners of each separate parcel, no matter what its size, must sign the petition in order to count as an "owner". In other words, owners of only a fractional interest in a parcel do not get a separate vote. Woldan vs City of Stamford, 22 Conn. Supp. 164, 166, citing Warren vs Borawski, 130 Conn. 676, 681. The Charter change in 1969 would not seem to affect determination of who is an "owner" of property. Following this approach, the total number of parcels in the zone change are first computed and then a determination is made as to whether owners of 20% of these parcels signed valid petitions.

Another question raised is what action the Board of Representatives may take on a petition. Section 552.2 states that when a valid petition is filed "the matter shall be referred by the Zoning Board to the Board of Representatives. . ." (emphasis added). It is clear from the use of the word "shall" that referral is mandatory, not discretionary. The Charter provision further provides that "the Board of Representatives shall approve or reject such proposed amendment. . .". As discussed in my letter of April 22, 1985 each change or amendment to the zoning map is subject to the petition process, no matter how many properties are included in each zone change or amendment. Generally when a zoning commission or similar zoning authority acts upon a proposed amendment to the zoning map it may grant part of it and reject the rest. Also if a proposal is to change an area from one zone to a second zone, the zoning commission, within its discretion, could change the property to a third zone. However, section 552.2 states that the Board of Representatives "shall approve or reject such proposed amendment." The Charter provision must be applied as written, meaning that the Board of Representatives has two choices with each proposed zoning amendment: approve it in its entirety or reject it in its entirety. The provision as written does not allow one or more properties within the same amendment to be exempted from the change.

The procedure to be followed by the Board of Representatives pursuant to the Charter provision is discussed in Burke vs Board of Representa-

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April 26, 1985

PLEASE REPLY TO: Wilton

Sandra Goldstein, President
Board of Representatives
429 Atlantic Street
P.O. Box 10152
Stamford, Connecticut 06904-2152

Re: Petitions to Board of Representatives to Review Zoning Amendments; Guidelines on Conflict of Interest

Dear Mrs. Goldstein:

This is in response to your letter requesting guidelines for the Board of Representatives on the subject of conflict of interest.

There are two aspects to the conflict of interest problem, both under state statutes and case law, and the Stamford Code of Ethics. Potential problem areas are: (1) representing someone before the Planning and Zoning Committee or the Board of Representatives and (2) participation or voting in a matter in which a Board member has a personal or financial interest.

Connecticut has a statute which applies to this situation and which could cause problems for members of the Board of Representatives and thus for the City of Stamford in the event of an appeal to the Superior Court. §8-11 of the Connecticut General Statutes applies to municipal zoning authorities acting under special acts as well as those which are under the General Statutes. It provides in part: "No member of any zoning commission or board. . .or of any municipal agency exercising the powers of any zoning commission . . . whether existing under the General Statutes or under any special act, shall <u>appear for or represent</u> any person, firm, corporation or other entity in any matter pending before the . . . zoning commission or board. . . or any agency exercising the powers of any such commission or board in the same municipality, <u>whether or not he is a member of the board or commission hearing such matter.</u> No member of any zoning commission or board. . . shall participate

in the hearing or decision of the board or commission of which he is a member upon any matter in which he is directly or indirectly interested in a personal or financial sense. . .". In Stamford not only does the Zoning Board exercise zoning powers, but in this case the Board of Representatives is acting as a zoning authority, and even though it acts under its Charter, which was derived from a special act, the statute would apply. Therefore, it is important that no member of the Board of Representatives appear for or represent anyone at the public hearing before the Planning and Zoning Committee or take a position in the form of representing particular constituents or others before the Board of Representatives. This does not mean that a member of the Board of Representatives cannot take a position on the petitions before the Board merely because someone in his or her district has an interest in the petition. The prohibition is against representing that person, not against representing the general interests of an area of Stamford or the city as a whole. In fact, the Board members are expected to represent the public interest., the same as with all other matters before the Board of Representatives. The statute is directed to personal representation of proponents or opponents of the zone changes. This entire problem is best avoided by not having any members of the Board of Representative make presentations to the Planning and Zoning Committee.

It is also my recommendation that members of the Zoning Board not make presentations to the Planning and Zoning Committee on behalf of anyone, since §8-11 covers that as well, and applies even though the Zoning Board members are not hearing the petitions. I think it is permissible for members of the Zoning Board to appear before the limited purpose only of explaining the position of the Zoning Board on particular zoning amendments, but even here it would be preferable to limit the presentation to written findings, recommendatio and reasons for the decision of the Zoning Board on each of the amendments, as set forth in the Charter.

The second sentence in §8-11, above, has parallel provisions in both Connecticut case law and the Stamford Code of Ethics. Members of a zoning authority should disqualify themselves when the decision of the zoning authority could provide financial benefit, or when the member of the zoning authority has a personal interest in the outcome. Under the zoning cases "a personal interest is either an interest in the subject matter or a relationship with the parties before the zoning authority, impairing the impartiality expected to characterize each member of the zoning authority. A personal interest can take the form of favoritism toward one party or hostility toward the opposing party; it is a personal bias or prejudice which imperils the openmindedness and sense of fairness which a zoning official in our state is required to possess." Anderson vs Zoning

Commission, 157 Conn. 285, 290, 291. A personal opinion of a member of the Board of Representatives favoring a particular type of zoning in one area of the city is not a personal interest under the zoning cases, as a vote either for or against a zone change is bound to favor some persons and go against others. The Stamford Code of Ethics defines a personal interest as "an interest which shall affect or benefit the individual or his immediate family and which is not common to the interest of other citizens of the municipality. Personal interest need not be financial." The Code of Ethics defines financial interest as an interest, direct or indirect, in excess of $500.00 per year to a municipal official, and which is not common to the interest of other citizens of the city. Connecticut case law does not set a monetary amount in determining financial interest.

It is impossible to define precisely what is and what is not a conflict of interest. The situation where a husband, wife, parent, child, business employer, personal friend or partner are interested in the outcome of a particular application are fairly obvious examples of conflict of interest, as is the situation where a Board member gains a significant financial benefit depending upon whether or not a particular zone change is granted. In each case what is or is not a conflict of interest is a question of fact and largely a matter of common sense. The main concept is that public policy requires that members of public boards should not place themselves in a position in which their personal interest conflicts with their public duty. Moreover, the test is not whether there is an actual conflict of interest, but whether there is an objective, public perception that a conflict exists.

The courts are less apt to find conflict of interest in situations such as this one where the municipal agency is acting in a legislative capacity. LaTorre vs Hartford, 167 Conn. 1. Also, as stated in the Anderson case: "Local governments would, however, be seriously handicapped if any conceivable interest, no matter how remote and speculative, would require the disqualification of a zoning official. If this were so, it would not only discourage but might even prevent capable men and women of serving as members of the various zoning authorities. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. They must, however, be also mindful that to abrogate a municipal action on the basis that some remote and nebulous interest may be present would be to deprive unjustifiably a municipality, in many important instances, of the services of its duly elected or appointed officials." Page 291.

The following matters should also be kept in mind by Board members:

1. Even though a Board member may have a conflict of interest

on one petition, this does not mean that he or she is disqualified from deciding the others.

2. The individual Board member must disqualify himself or herself; the Board cannot do so.

3. Where there is a conflict of interest, a Board member who is disqualified should not participate in either the deliberations or the vote upon the application. It is not enough that the Board member abstains from voting on the application, and if he or she participates in the decision making process there is a risk that the Board's decision may be set aside on appeal. In such cases, the Board members should disqualify himself or herself at the commencement of the proceeding.

4. There is no definite rule as to conflict of interest when a member of a zoning authority lives in the vicinity of the property which is the subject of an application. Proximity is not conclusive as to whether or not there is a conflict of interest, e.g. a Board member living fairly close to a particular property or area might not have a conflict, while one living a considerable distance away may have a conflict. However, proximity to the area involved in the zoning amendment can be a material factor, and in most cases where a Board member lives very close to the area involved it is recommended that such Board member should disqualify himself or herself. I would recommend disqualification if the Board member actually lives in the area affected by a specific zoning amendment before the Board and must disqualify himself or herself if he or she owns property subject to a proposed zoning amendment. Kovalik vs Planning and Zoning Commission, 155 Conn. 497.

As previously mentioned, each situation must be judged on its own facts, but examples from a few Connecticut cases might be helpful. On the representation issue, Luery vs Zoning Board of Stamford, 150 Conn. 136, 146 concluded that it was improper under §8-11 for a member of the Zoning Board of Appeals (which is also covered by that statute) to represent an organization which supported a zoning application and appear as a member of the Executive Committee of the organization before the Zoning Board to read a written statement urging support of the application. In R.K. Development Corporati vs Norwalk, 156 Conn. 369, 373 a member of the Common Council, the legislative body of Norwalk, and which reviewed subdivision applications, appeared before the Norwalk Planning Commission. Under the Norwalk Charter, subdivision applications were presented first to the Planning Commission, but the power of final approval was given to the Common Council. The Council member appeared before the Planning Commission on behalf of his wife and other constituents

in the area in opposition to an application. This was found to be a violation of §8-21 (the planning counterpart of §8-11) because "although the Planning Commission is an entity separate in membership and authority from the Common Council, it is an arm of the Council and performs important preliminary work and makes recommendations on all plans submitted to it which must ultimately be passed on by the Council." Bossert Corp. vs Norwalk, 157 Conn. 279 in a somewhat similar situation held that it was improper for a law partner of a member of the Norwalk Common Council to represent clients before the Planning Commission; this was true even though the Council member disqualified himself and did not participate and vote in the matter when it finally went to the Common Council for review. The cases have indicated that other town public officials not specifically covered by the statute, such as the Mayor or First Selectman, may appear before the zoning authority. Finally on the subject of representation, it should be stressed that there is a problem even though the Board member representing constituents has no personal or financial interest in the outcome of the matter before the Board.

It is difficult to draw the line between what is and is not a personal or financial conflict of interest. For example, in Josephson vs Planning Board of Stamford, 151 Conn. 489 the Board member had free office space in the real estate office of the selling broker of property involved in the application before the Planning Board and this was held to be a conflict of interest. On the other hand, in Furtney vs Simsbury Zoning Commission, 159 Conn. 585 a Commission member was an official of the bank where the developer-applicant did his banking, but it was held that this connection was too remote to require the Commission member to disqualify himself.

The Stamford Charter provisions on conflict of interest cover more areas than the Connecticut zoning statutes and cases but these additional areas do not apply to the situation here. The Charter provisions that would apply are substantially similar to the conflict of interest concepts discussed above. See sections 3 and 4, Stamford Code of Ethics.

There is some case law which suggests that a conflict of interest claim must be raised in a timely manner, and that if someone has knowledge of facts or circumstances supporting a conflict of interest before the zoning authority discusses or acts upon an application, that the objection must be made then so the agency member can make the decision as to whether or not to disqualify himself or herself. If possible, you should give an opportunity for members of the public to make any conflict of interest claims before the Board considers the applications, and this may provide some protection if such claims are later made in the event of an appeal to the Superior Court. Obviously this concept does not apply to conflicts

of interest which are unknown to the public at the time of the Board meeting.

Very truly yours,

Robert A. Fuller

RAF/blt