

July 9, 2018

VIA EMAIL: VRosenson@StamfordCT.gov

Virgil de la Cruz and Charles Pia, Jr.
Co-Chairs
c/o Valerie T. Rosenson
Land Use-Urban Redevelopment Committee
Stamford Board of Representatives
888 Washington Boulevard, 4th Floor
Stamford, CT 06901

Re: Agenda Item LU30.014, Verification of Signatures for Petitions

Dear Co-Chairs de la Cruz and Pia:

My firm represents High Ridge Real Estate Owner, LLC, the successful applicant for the text change to Article II, Section 3, and Article III, Section 9, of the Stamford Zoning Regulations. After six (6) full nights of hearings before the Stamford Planning Board and Zoning Board, the Zoning Board unanimously approved a modified version of Application 217-01. This will allow my client to file a request for special exception and site plan approval, all subject to full review and public hearings before the Zoning Board for use of a part of its property for a Life Time Fitness facility. Following the Zoning Board's recent approval of the text change, Hank Cuthbertson, on behalf of members of Sterling Lake Homeowners Association (collectively, the "Petitioners"), filed a purported protest petition to the text change pursuant to § C6-40-9 of the Stamford Charter ostensibly containing the signatures of 696 Stamford "landowners."

The petition was carefully reviewed by the Legislative Officer for the Board of Representatives, with the benefit of legal advice from James Minor, Special Corporation Counsel in the City of Stamford Law Department. In a carefully reasoned and well supported opinion, Attorney Minor advised that "If the landowner owns property jointly with a spouse or other person, all persons must sign. If the signature is of an owner of a condominium or co-op, only the condominium or co-op can count as a landowner, and not the signature of an individual unit." Relying upon Attorney Minor's legal advice, the Legislative Officer concluded that the petition "was not validly filed" because it "was not signed by 300 landowners of privately-owned land anywhere in the City."

On July 6, 2018, Attorney Leonard M. Braman, on behalf of the Petitioners, provided a written submission to the Land Use Committee challenging the determination that the protest petition is invalid due to an insufficient number of signatures. The Petitioners cite no legal authority in support of their position whatsoever, and do not address the extensive authority cited by Attorney Minor. Rather, the Petitioners' written submission serves as little more than an appeal based upon some "sense of fairness," which they cultivate by suggesting that property owners have no other rights in the context of a text change application. That is simply not the case.

Following the Zoning Board's approval of Application 217-01, any one or more of the Petitioners could have taken an appeal to the Superior Court. Likely recognizing that there was no basis for a legal appeal, the Petitioners elected instead to pursue a protest petition pursuant to § C6-40-9 of the Stamford Charter, and assumed the burden of providing a petition containing the signatures of at least three hundred landowners.

The Petitioners challenge Attorney Minor's opinion by taking issue with long-standing Connecticut judicial precedents, which require "those owning the entire interest in the property [to] join in order to make a valid protest . . ." (Emphasis added.) *Warren v. Borawski*, 130 Conn. 676, 681 (1944). Thus, all co-owners or tenants in common must sign for a protest to be counted. See *Civitello v. Milford Planning and Zoning Board*, 1990 WL 289549 (1990); *Colby Associates v. East Haven Planning and Zoning Commission*, 1993 WL 224989 (1993). Petitioners argue to ignore clear Connecticut precedents because they believe this conclusion "makes no sense as a matter of law, logic, or mathematics." While the Petitioners may wish that the requirement for three hundred signatures meant co-owners and tenants in common can each count as a separate landowner signature (even when other co-owners and tenants in common may disagree with the protest petition), this has never been, nor is it now, the law of Connecticut.

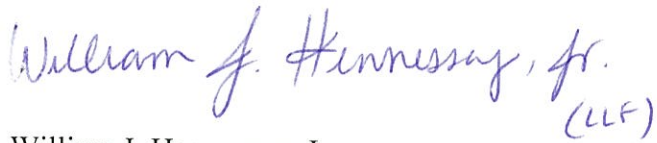
As just discussed, "[w]here there is more than one owner of a lot, such as a husband and wife jointly owning a lot, those owning the entire interest in the property must jointly object to the change." R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed.) § 4.2; see also *Warren v. Borawski*, 130 Conn. 676 (1944); *Woldan v. Stamford*, 22 Conn. Supp. 164 (1961). Mr. Fuller, the author of the foregoing zoning treatise, expressed the same conclusion when he issued an opinion on April 22, 1985, as special counsel to the Stamford Board of Representatives. See *Stamford Ridgeway Associates v. Board of Representatives*, 214 Conn. 407, footnote 5 (1990).

Petitioners also challenge Attorney Minor's opinion that condominium owners are not "landowners" within the meaning of the Charter. This issue was addressed by the Connecticut Supreme Court in *Gentry v. Norwalk*, 196 Conn. 596 (1985). In that case the Supreme Court considered the handling of the votes of condominium owners under the historical district statute, Connecticut General Statutes § 7-147b (g). Interpreting the historical district statute in the context of the Condominium Act, General Statutes §§ 47-68a through 47-90c, the Supreme Court determined that each of 67 independent condominium owners was only entitled to a 1/67 vote. Simply put, our Supreme Court in *Gentry* determined that a condominium owner, while having an interest in real property, has only a partial interest in "land." Thus, it is only the

collective whole that qualifies as a “landowner” within the clear legal precedent interpreting protest petitions.

In summary, the Legislative Officer has concluded that the petition was “not validly filed.” She relied upon the legal opinion of Special Corporation Counsel, which was well reasoned and amply supported by judicial precedent. His opinion will surely be given considerable deference should this matter ever be considered by the courts, and should be given the same respect by the Board of Representatives. Since the petition was not validly filed, the Board of Representatives has no jurisdiction to consider whether to approve or reject the text change approved by the Zoning Board.

Sincerely,


(LLF)

William J. Hennessey, Jr.

Cc: Ralph Blessing
James Minor, Esq.
John Cannavino, Esq.
Steven Grushkin, Esq.
Leonard Braman, Esq.
Edward P. McCreery, Esq.