



Land Use-Urban Redevelopment Committee – Board of Representatives

Virgil de la Cruz, Co-Chair

Charles Pia, Jr., Co-Chair

Committee Report

Date: Tuesday, July 10, 2018
Time: 7:00 p.m.
Place: Legislative Chambers, 4th Floor, Government Center

The Land Use-Urban Redevelopment Committee met as indicated above. In attendance were Co-Chairs Pia and de la Cruz and Committee Member Reps. Cottrell, Graziosi, Lee, Lion, Michelson, Sherwood and Summerville. Also present were Reps. Di Costanzo, Fedeli, Jacobson, McGarry, McMullen, Miller, Morson, Nabel and Patterson; Kathryn Emmett and Jim Minor, Law Department; Ralph Blessing, Land Use Bureau Chief; William Hennessey, Esq. and Lisa Feinberg, Esq., Carmody Torrance Sandak & Hennessey LLP; John Cannavino, Esq., Cummings & Lockwood; Edward McCreery, Esq., Pullman & Comley LLC, Leonard Braman, Esq. and Steven Grushkin, Esq., Wofsey Rosen Kweskin & Kuriansky, LLP, Rick Redniss, Redniss & Mead; and approximately 56 members of the public.

Co-Chair Pia called the meeting to order at 7:03 p.m.

Co-Chair Pia explained the process to be followed – the Committee will consider Item 1 this evening and vote on a recommendation to the full Board. The full Board will then vote on Item 1 at a Special Meeting to be held on Monday. He would like the Committee to hold Item 2 until after the Board vote on the petition. If the Board approves the petition, the committee will then take up the actual appeal on Wednesday evening, including a public hearing, and then continue, if necessary on Thursday evening. The Committee will take action on the appeal on the night of the regular Committee meeting later in July.

Item No.	Description	Invitee(s) or Designee(s)
1. LU30.014	VERIFICATION; Process for Appealing Amendments to Article II, Section III, Definition 45, Gymnasium or Physical Culture Establishment, and Article III, Section 9, BBB. C-D Designed Commercial District of the Zoning Regulations. 06/06/18 – Submitted by Zoning Board	APPROVED 9-0-0

Ms. Rosenson reviewed her memos of [June 28, 2018](#) and [July 10, 2018](#) regarding her review of the petition. She noted that the review was based upon guidance provided by the Law Department

Mr. Minor explained that he had been asked to answer several questions in order to determine whether certain categories of signatures in the petition could be counted. He stated as follows:

- The petition was against ZB Application 217-01, which does two things: the first part it changes the text for the definition of gymnasium or physical culture establishment, which can be in 6 zones (not the C-D zone) and the second part allows the new definition of gymnasium to apply in a C-D zone subject to the strict requirements. This

change does not permit anything to be built, but requires a future special exception application.

- Charter §C6-40-9 permits an appeal by petition within 10 days of publication of the decision of the Zoning Board. Under that provision, if the text change applies to more than one zone, at least 300 signatures of landowners are required.
- The law cited in his opinion of [June 27, 2018](#) supports the proposition that all persons who own property jointly with another person must sign the petition, and noted that prior opinions of the Law Department are directly on point and conclude that all owners of a piece of property are required to sign, as does an opinion by Robert Fuller, who was hired by the Board of Representatives.
- Condominium owners own only a unit within the walls and an undivided interest in the common elements (the land and the building). There is only one Supreme Court case that addresses this issue. Gentry v. Norwalk, held that the significant factor was not that each owner owned real property under CGS 47-73, but that each owner owned an undivided interest in the common elements, and so each owner was entitled to a fractional vote under the Historic District statute.
- Since Charter §C6-40-9 requires all owners to sign, the condominium association must sign on behalf of the owners
- State statutes give zoning authority to the Zoning Board, and does not permit approval/disapproval by legislative bodies. Stamford has a specific exception to this based on 1953 Special Act 613, but the process is weighted in favor of the Zoning Board: the Board can only reject a decision of the Zoning Board with 21 votes and the decision of the Zoning Board stands if the Board of Representatives fails to take action in 2 months. While this may not seem fair, there will be other opportunities to challenge this at the time of the Special Exception application. There are also opportunities to challenge this in court.
- The Law Department is not trying to favor any particular party, but to explain what it determines the law is.

Mr. Cannavino stated that there are two key legal issues to determine if the petition is valid : Are condominium owners landowners and ia a single co-owner or a tenant-in-common a landowner for purposes of C6-40-9:

- It is black letter law that a condominium owner is not a landowner - they can't mortgage the property, lease the land or grant an easement over the land; only the condominium association has authority to do this
- The solution to the disenfranchisement of condominium owners is to amend the charter to accommodate this new species of real property owner
- This is seen by looking at the assessment for condominiums which do not show taxes on the land
- The real intent of the Charter was not to include condominiums because they did not exist at the time
- Joint tenants or tenants-in-common cannot act alone as to real property
- If the Board is not comfortable with the advice of the Corporation Counsel's office, it can hire its own independent special counsel, as was done in the past when Robert Fuller was hired

Mr. Braman distributed the attached [handout](#) with the text Charter §C6-40-9 and the definition of owner contained in §1-12 of the Code of Ordinances. He stated that

- The ultimate purpose of these charter provisions is to give the right to landowners to protest zone and text changes
- The plain language of the charter supports giving condominium owners the ability to sign the petition

- they own undivided interest in land pursuant to the Common Interest Ownership Act
- There is no need to amend the Charter
- Condominium unit owners are given separate notice if there is a zoning application for a property abutting your unit, including for the application in this case
- Condominium unit owners can appeal from a Zoning Board decision to the courts under CGS §8-8 and distinguished Gentry as limited to its facts
- Many provisions in the Code of Ordinances apply to condominium units.
- Joint owners are owners in plain language. If the drafters wanted to require both owners, they could have specified that in the Charter; the Charter language focuses on the number of signatures and the status of the person who signed
- Cases cited by Mr. Minor apply to zone and map changes which have a different standard for appealing to the Board of Representatives; this is a case of first impression

Mr. Grushkin stated that

- There is a misconception about condominiums; condominium associations do not own property; all they do is act on behalf of unit properties
- The assessors take that into consideration by valuing the real property based upon fair market value; the association is not taxed; only the unit owners are taxed
- There are 18,000 single residents and 12,000 condo units in Stamford

Mr. McCreery noted that

- There is not a separate tax bill to the condominium associations
- The case law cited relate to percentage of property ownership cases; in those cases voting a piece of land, so need all owners to sign; this case only requires a signature of a landowner
- Condominium ownership is a new form of ownership
- The land is not voting here

Committee members discussed this among themselves and with guests as follows:

- Mr. Minor noted that a 1982 opinion from the Law Department concludes that there is no difference between “owners of land” and “landowners” for purposes of the text change section (prior section 553.2) and the Woldan precedent, requiring all owners to sign, is applicable
 - Stamford’s charter provision is unusual, because the Board which has a legislative function would have to act in the capacity of a zoning Board
- Who owns the land in a condominium; why isn’t a fractional owner considered an owner
 - Mr. Minor responded that all the condominium owners own a fractional interest in the land; the charter does not allow voting by fractional owners; that is the way it has been interpreted as a protest petition in case law
- Code §1-12 does permit partial owners
 - This section only applies to the Code, not the Charter
 - §114-2 excludes condominium owners from owners, but it is also an ordinance and does not count
- Two addresses on one tax lot should count as separate parcels of land
 - Ms. Rosenson explained that where one tax lot had 2 separate addresses, it counted as one parcel of land, but individuals who owned adjoining tax lots could sign separately for each tax lot
- None of the cases cited relate to the number of signatures rather than the percentage
- The point of this provision is to provide a grass roots mechanism to appeal a text change
- It is impressive that petitioners collected 696 signatures in 10 days
- The definition of owner in the Code is an informative definition; condo owners should count as separate signatures and multiple owners should count

- Condo owners should count as separate units – the condo association can't sell the land once it is divided into separate units
- The fact that this is the first time the City received this type of petition is a testament to how hard it is
- Who was directing the petitioners regarding how to collect signatures; did they know that condo signatures were not valid
 - Mr. Braman said that the petitioners were not aware that condo owners did not count nor that both owners needed to sign
- There is a discrepancy between the Code and the Charter; asking a legislative body to accept the opinion of appointed judges; why does opinion go against the voters
 - Ms. Emmett stated that role and purpose of the law department is to provide their best legal judgment as to what the law requires in this situation; the department is not acting as advocates
- Gentry v. Norwalk contains specific voting procedures and was decided based upon those procedures, so why is it applicable here?
 - Mr. Minor said the decision is relevant because condo owners are being treated the same as co-owners of a home, who both need to be sign
 - It is not necessary that all members of the condominium association must agree; it depends upon the rules of the association
- The precedent cases rely on language that doesn't exist because the charter provisions changed from owners of 20% of the land to 20% of the owners of the land, changing the focus from land to owners
 - Mr. Minor noted that these language changes were not in the C6-40-9 or its predecessor provisions
 - Mr. Cannavino stated that this is a distinction without a difference. The case law which addresses "owner of land" under §C6-40-5 notes that it has the same meaning as landowner
- Generally this is a matter better left to the Courts, but the Charter has given it to the Board of Representatives; by definition the Board's job going forward with this appeal is political and the decision of jurisdiction is being made by lay people
- If you share your ownership interest, are you a landowner for legal purposes; you can't transfer land alone or mortgage it
- A condominium owner having only a pro-rata share is ludicrous
- The legal conclusion is persuasive but goes against the notion that the Charter allows condo units to vote
- What would the likelihood of success in the Courts?
 - Mr. Braman stated that approving this petition will give 700 citizens a voice; if the Board votes in favor of the text change, they may not go to court
 - The Charter is designed to be interpreted expansive, not to frustrate citizens
- All votes on the Board are equal; lawyers opinions do not carry more weight
- The Zoning Board is not impartial; they are appointed by the Mayor and approved by the Board of Representatives
- The Board of Representatives is supposed to work for constituents
- The members of the Zoning Board are on the Zoning Board because the Board of Representatives approves their appointments and can overrule their opinion just as the they overruled the Planning Board
- Given the confusion about this provision, when it is time for Charter revision, the Charter should clearly explain the procedure, or it should be written in the Code
- All the attorneys have been persuasive; this is the first time the Board has addressed the issue of condo owners
- The process is designed to be cumbersome; condominiums did not exist in 1955; if they had, they probably would have been included as owners; the purpose of this provision is to exclude renters; it is an unjust conclusion that the land should be speaking

- Petitioners should have been given instructions by the City
- As the City grows, single home ownership is not what the City is about; people who own property should have a say in how their land is valued
- No one helped the petitioners
 - Mr. Blessing explained that when the petition was brought in prior to the deadline, he informed the applicant that they probably needed 300 signatures; the bureau reached out to the Law Department, which had to do research
 - Mr. Braman stated that he is not taking the position that they were misled by the Land Use Bureau; he takes issue with the conclusions of the law department as to whether condo owners are landowners
 - The Land Use bureau did not know about the petition until June 4th
 - Ms. Emmett stated that there have been conversations about the lack of directions and there are plans to correct that; the job of the Law Department is to provide the best advice; their advice was based upon the office's long-term interpretations of these provisions
- Several underlying principles of this nation apply: No taxation without representation, a government of, by and for the people, equal protection under the laws; the arc of history has bent away from the few toward the many
- It is hard to believe that the drafters of the Charter intended to disenfranchise a part of the population that is 12% of the tax base.
- The federal constitution gives citizens the right to petition the government.

A motion to approve this petition was made, seconded and approved by a vote of 9-0-0 (Reps. Pia, de la Cruz, Cottrell, Graziosi, Lee, Lion, Michelson, Sherwood and Summerville in favor).

2. [LU30.015](#) REJECTION; Appeal of Amendments to Article II, Section III, Definition 45, Gymnasium or Physical Culture Establishment, and Article III, Section 9, BBB. C-D Designed Commercial District of the Zoning Regulations. **HELD 7-2-0**
 06/06/18 – Submitted by Zoning Board

A motion to hold this item was made, seconded and approved by a vote of 7-2-0 (Reps. Pia, de la Cruz, Graziosi, Lee, Lion, Michelson and Summerville in favor; Reps. Cottrell and Sherwood opposed).

Co-Chair Pia adjourned the meeting at 10:10 p.m.

Respectfully submitted,
 Charles Pia, Co-Chair

This meeting is on [video](#)