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To: Bradley Bewkes, Chairperson, Land Use/Urban Redevelopment Committee
Board of Representatives

From: Douglas C. Dalena, Director of Legal Affairs & Corporation Counsel
Michael S. Toma, Assistant Corporation Counsel
Cynthia C. Anger, Assistant Corporation Counsel

Date: February 7, 2022

Re: Opinion regarding resolution LU31.004

Questions Presented

The chairperson of the Land Use Committee and several leaders of the Board of Representatives have asked for an opinion on the legal risks that the Board of Representatives may face if it adopts proposed resolution LU31.004, which seeks to command the Zoning Board to refer a purported petition pursuant to Section C6-40-9 of the City Charter to reject Zoning Approval No. 221-20 ("the petition"[1]) to the Board of Representatives. Should the Zoning Board not comply, the resolution states that the Board of Representatives will proceed as if the petition had been referred and requests that the Town Clerk perform an independent analysis of the submitted petition signatures and report her findings to the Board of Representatives.

In addition, the Board asks whether the Zoning Board, acting through the Land Use Bureau, was correct in taking no action to refer the petition to the Board of Representatives, whether certain opponents of Approval No. 221-20 (the "Approval") are correct in their assertion that, contrary to the Corporation Counsel opinion provided to the Land Use Bureau on this subject, that the Approval applied to more than one zone, and finally, what is the proper role or authority, if any, of the Town Clerk in responding to the resolution or in the process dictated by Section C6-40-9, which sets forth the requirements for petitions for rejection of zoning text amendments.

For purposes of this opinion, we will consider the request to assess legal risk a request to assess the Board's authority to take the proposed action, and where necessary will describe any more

[1] The use of the term "the petition" is solely for brevity to refer to the signature sheets and related documents submitted to the Zoning Board and should not be construed as a conclusion that a valid petition exists that meets the requirements of Section C6-40-9 of the City Charter.

specific legal risks associated with the proposed action. In general, acting without authority could subject the City to unnecessary litigation that, in addition to requiring significant expenditures of taxpayer funds to employ outside counsel, could lead to confusion about the acceptable uses of property, the stability and integrity of processes dictated by the Charter and state law, and which of two conflicting decisions from two independent boards should be followed, and could ultimately lead to the rejection by a court of such *ultra vires* (translated, "beyond the powers") actions and the associated disruption from such an outcome.

Summary of Conclusions

We conclude that: (1) the Zoning Board, acting through its staff, was the proper entity to validate and count petition signatures submitted pursuant to Charter Section C6-40-9; (2) the Zoning Board was correct in taking no action after its analysis, informed by advice from the Corporation Counsel, concluded that an insufficient number of valid signatures from property owners were submitted to trigger a referral pursuant to Section C6-40-9; (3) Approval No. 221-20 concerned one zone, not multiple zones, and therefore, valid petition signatures could come only from owners of property inside or within 500 feet of the areas so zoned; (4) the Board of Representatives has no authority under the Charter or Connecticut General Statutes to command the Zoning Board to refer a petition, to modify a process dictated by the Charter, or to create a new process not provided in the Charter, which the resolution would do; (5) whether by command or request, the Board of Representatives has no authority to create a role for or confer authority on the Town Clerk that does not appear in the Charter, and has no authority absent a referral to proceed as if the Zoning Board had referred a petition; (6) the Charter prescribes no role and confers no authority on the Town Clerk to participate in the process and there is no authority for the Town Clerk to audit, analyze or make findings regarding the validity of signatures submitted to the Zoning Board pursuant to Section C6-40-9, or to make her own legal analysis of how many zones were affected.

Background

On December 8, 2021, public notice was given of the Approval, which made certain amendments to the text of the zoning regulations in the Commercial Design (C-D) zone. The statutory period to appeal such a decision passed without the filing of an administrative appeal in the Superior Court. Separately, however, a group of citizens gathered and submitted petition signatures to the Zoning Board seeking a referral of the Approval to, and its subsequent rejection by, the Board of Representatives pursuant to Section C6-40-9.

Analysis

THE ZONING BOARD, ACTING THROUGH ITS STAFF, WAS THE PROPER ENTITY TO VALIDATE AND COUNT PETITION SIGNATURES SUBMITTED PURSUANT TO CHARTER SECTION C6-40-9 AND WAS CORRECT IN TAKING NO ACTION AFTER ITS ANALYSIS CONCLUDED THAT A VALID PETITION HAD NOT BEEN SUBMITTED.

The City's Charter establishes the limits of municipal authority, A city charter is the "fountainhead of municipal powers." *Alexander v. Retirement Board*, 57 Conn. App. 751, 759 (2000). "The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised." *Id.* "Agents of a city have no source of authority beyond the charter. [T]heir powers are measured and limited by the express language in which authority is given or by the implication necessary to enable them to perform some duty cast upon them by express language." (Citations omitted.) *Id*; See also, *Fennell v. City of Hartford*, 238 Conn. 809, 813-14 (1996), citing *Stamford Ridgeway Associates v. Board of Representatives*, 214 Conn. 407, 423 (1990).

Section C6-40-9 gives (1) to the Zoning Board the authority to approve or reject proposed text amendments; (2) to property owners in or within 500 feet of the affected area or, if the text amendment applies to more than one zone or citywide, to any 300 property owners, the authority to submit petition signatures seeking to overturn such approvals; and (3) to the Board of Representatives the authority to approve or reject the Zoning Board's decision if and only if the requirements of C6-40-9 are met, including the requisite number of signatures from the required number or percentage of eligible property owners.[2]

"Where the municipal charter prescribes a particular procedure by which a specific act is to be done or a power is to be performed, that procedure must be followed for the act to be lawful."

[2] Section C6-40-9 provides: "After the effective date of the Master Plan, if following a public hearing at which a proposed amendment to the Zoning Regulations, other than the Zoning Map was considered, a petition is filed with the Zoning Board within ten days after the official publication of the Board's decision thereon opposing such decision, such decision with respect to such amendment 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 any 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 C6-40-1 of this Charter. The failure by 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 number of signatures required on any such written petition shall be one hundred, or twenty percent of the owners of privately-owned land within five hundred feet of the area so zoned, whichever is least, if the proposed amendment applies to only one zone. All signers must be landowners in any areas so zoned, or in areas located within five hundred feet of any areas so zoned. If any such amendment applies to two or more zones, or the entire City, the signatures of at least three hundred landowners shall be required, and such signers may be landowners anywhere in the City."

Caldrello v. Planning Board, 193 Conn. 387, 391, (1984). "Strict compliance is required when a Charter points out a particular way in which an act is to be done, and if it is not followed, the act is not lawful." *DeMayo v. Quinn*, 315 Conn. 37, 41 (2014).

The City Charter in Section C6-40-9 prescribes a procedure for receiving and processing petitions seeking referral of a Zoning Board decision to the Board of Representatives. First, it sets a time limit of 10 days after publication of the Zoning Board's decision to submit a petition. Second, it requires that petitions be filed with the Zoning Board and not another entity or agency. Third, it sets a deadline for referring a petition of 20 days after the petition was filed. Fourth, it sets a deadline for the Board of Representatives to approve or reject the petition "*following such referral."* (Emphasis added.) Finally, it sets the standards for what a petition must contain. The standards include a numerical threshold for signatures and define who can sign. Specifically, it provides: "The number of signatures required *on any such written petition* shall be one hundred, or twenty percent of the owners of privately-owned land within five hundred feet of the area so zoned, whichever is least, if the proposed amendment applies to only one zone. *All signers must be landowners in any areas so zoned, or in areas located within five hundred feet of any areas so zoned.* If any such amendment applies to two or more zones, or the entire City, the signatures of at least three hundred landowners shall be required, and such signers may be landowners anywhere in the City." (Emphasis added.)

The Connecticut Supreme Court has addressed who can sign a petition as a landowner, concluding that where property is owned by multiple parties, all the owners must sign for that property to be counted. In the words of the court, "those owning the entire interest in the property must join to make a valid protest." Warren v. Borawski, 130 Conn. 676, 681 (Conn. 1944). See also Woldan v. City of Stamford, 22 Conn. Supp. 164, 166 (Com. Pl. 1960), citing Warren v. Borawski. If only one person signs for a property with multiple owners, that signature cannot be counted as valid. For example, if a husband and wife own a home jointly, both must sign to be counted, and the failure of one to sign means the other's signature is not counted.[3]

[3] It has been argued that the total number of signatures, not the total number of eligible properties, should count because the language of Section C6-40-9 provides, "The number of signatures required on any such written petition shall be one hundred, or twenty percent of the owners of privately-owned land within five hundred feet of the area so zoned, whichever is least …" This interpretation cannot be supported because the only reasonable interpretation of the quoted language is that, like "twenty percent," "one hundred" modifies the words "of the owners of privately owned land …" To interpret it otherwise would remove any qualitative standard from petitions and allow anyone – regardless of their ownership interest in eligible property – to sign and be counted toward the 100-signature numerical standard but not toward the 20% standard. It would mean that signatures from those without authority to sign can be counted. Most importantly, it disregards the holdings of multiple Connecticut courts, which when faced with this question, have disqualified individual signatures because they were from owners of only partial interest in a property. It is also persuasive that the phrasing in the same Charter section of the standard for petitions opposing text amendments that affect multiple zones or the entire city uses the construction, "the signatures of at least three hundred landowners shall be required …." It would produce an absurd result and ignore current Connecticut case law to interpret the Charter to disqualify signatures based on property ownership if counting by raw numbers but allow them if counting by percentage. "This court traditionally eschews construction of statutory language which leads to absurd consequences and bizarre results." *State v. Rodgers*, 198 Conn. 53, 61 (1985). It has also been argued that owners of individual condominium units should be counted, despite current case law – which is binding

The counting and validation process

Since 2020, following the Charter and applicable law, the Land Use Bureau has employed the following process, endorsed in a 1957 Corporation Counsel opinion, to validate petitions: Upon receipt of a petition by the Zoning Board, the Land Use Bureau staff reviews the petition for timeliness and whether it contains the requisite number of signatures. A list of eligible signers is established by overlaying the areas subject to the amendment onto the City's tax map using Geographic Information Systems (GIS) software. A list of eligible private properties is compiled. The petition signatures are then compared to the properties on the map, and the number of signatures is calculated to determine if enough have been submitted. A valid petition, meaning one that is filed on time and with the minimum number of signatures by affected landowners as defined by the Charter, is referred to the Board of Representatives. Invalid petitions are not. The Land Use Bureau followed this procedure in evaluating the petition challenging Zoning Board Approval No. 221-20 after consultation with, and based on advice from, Corporation Counsel.[4] The Land Use Bureau described its process in a December 28, 2021, memo to the Zoning Board.

The Zoning Board is authorized to validate and count petition signatures and the Board of Representatives is not.

"It is well established that a city's charter is the fountainhead of municipal powers ... The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised ... It follows that agents of a city, including its commissions, have no source of authority beyond the charter. [T]heir powers are measured and limited by the express language in which authority is given or by the implication necessary to enable them to perform some duty cast upon them by express language ... The interpretation of a charter is a question of law, and the rules of statutory interpretation generally apply." (Citation omitted; internal quotation marks omitted.) *AEL Realty Holdings v. Board of Representatives*, 82 Conn. App. 613, 616-17 (2004). "In construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended." *Norwich Land Co. v. Public Utilities Commission*, 170 Conn. 1, 4 (1975). With these principles in mind, and for the reasons described herein, we conclude that the Zoning Board counts and validates petition signatures.

Although the Charter does not contain explicit language assigning the duty to count and validate the signatures on a petition, prevailing law is clear that it is not the Board of Representatives. See *Benenson v. Board of Representatives of City of Stamford*, 223 Conn. 777, 783 (1992) ("The

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on all city officials, including the Land Use Bureau staff, in performing their duties –that all owners in a common interest community must sign for the property to count. That issue is irrelevant here, because only one condominium unit owner in any of the affected areas submitted a signature, so counting that signature would not have changed the outcome.

[4] Charter Sec. C5-20-5 authorizes various City officials, including a department head, to request legal opinions from the Corporation Counsel. The Corporation Counsel is the exclusive entity designated by our Charter to provide legal advice and opinions to City departments. Charter Sec. C5-20-3.

charter does not provide for the approval or rejection of the 'petition' itself by the Board of Representatives.") See also *Burke v. Board of Representatives*, 148 Conn. 33, 39 (1961) (once a petition is filed with the Zoning Board, "[t]he question before the board of representatives is whether to approve or to reject the amendment.")

Referral of a petition without first determining its validity would require the Board of Representatives to take an action – determining its validity – that current law prohibits.

The Charter requires that petitions be filed with the Zoning Board, not the Board of Representatives. If the intent of the Charter was for the Board of Representatives to count and validate petition signatures, the language requiring submission to and referral by the Zoning Board would be unnecessary and superfluous.

It has been suggested that because the Zoning Board was the applicant in this matter, the Zoning Board and the Land Use Bureau should not participate in the processing of a related petition. This is not the case. In fulfilling their statutory responsibilities, land use agencies and other municipal employees frequently and non-controversially do work on behalf of the boards that they serve and must take actions that guarantee the rights of members of the public who oppose their positions or actions. They are entrusted with counting and validating petition signatures in statutory schemes that are analogous to the Charter's petition process. See, *e.g.*, the protest petition process under General Statutes § 8-3(b) ("If a protest against a proposed change is filed at or before a hearing with the zoning commission, signed by the owners of twenty percent or more of the area of the lots included in such proposed change or of the lots within five hundred feet in all directions of the property included in the proposed change, such change shall not be adopted except by a vote of two-thirds of all the members of the commission.") See also the petition process to require a public hearing under General Statutes § 22a-42a(c)(1) (Inland Wetlands agency must hold a hearing if it receives "a petition signed by at least 25 persons who are eighteen years of age or older and who reside in the municipality in which the regulated activity is proposed, and the petition requesting a hearing is filed with the agency within fourteen days of receipt of the application.") Further, Charter section C6-40-9 requires interested parties to file petitions with the Zoning Board and not the Board of Representatives or any other agency. It makes sense that the Zoning Board should validate and count a petition's signatures, and that the Land Use Bureau, as its staff, should assist it in performing this work.

Stamford's Land Use Bureau provides administrative support, professional expertise, and independent analysis to the City's land use boards. In the matter of the Zoning Board Approval No. 221-20 petition, there is no allegation that the Land Use Bureau staff erred in applying the legal advice given to them, miscounted, or missed certain geographical areas or individual homes in its analysis. Furthermore, there is no allegation that Land Use Bureau staff or the Zoning Board acted unethically or had a personal stake in the outcome. We have not found any provision of law suggesting that it would be a conflict for the Zoning Board or its staff to verify the validity of and count the petition signatures. "An agency which has the authority to enact regulations is vested with a large measure of discretion, and the burden of showing that the

agency has acted improperly rests upon the one who asserts it." (citation omitted) *Aaron v. Conservation Comm'n of Town of Redding*, 183 Conn. 532, 537 (1981).

Considering the case law and Charter and statutory provisions discussed above, it is reasonable and rational to conclude that the Zoning Board's staff is responsible for verifying and counting petition signatures in the ordinary course of its duties. Common sense supports the view that the Land Use Bureau staff is authorized and qualified to perform these functions.[5]

A single zone can contain more than one area and Zoning Approval No. 221-20 applies to only the C-D zone.

In a memo dated December 23, 2021, from Corporation Counsel Kathryn Emmett to Ralph Blessing, this office concluded that Zoning Board Approval No. 221-20 applies to one zoning district located in six geographic areas of the City. In addition to the reasons provided in the December 23 memo, a close reading of section C6-40-9 supports the view that a single zone can be, and in this case is, comprised of one or more areas. Immediately following the language that instructs us on how to calculate the number of signatures required where an amendment applies to one zone, the text of section C6-40-9 goes on to say that "[a]ll signers must be landowners in any *areas so zoned*, or *in areas* located within five hundred feet of any *areas so zoned*." Emphasis added. This language, which refers separately to "zone" and "areas so zoned" demonstrates that a single zone may include more than one area. In contrast, the last sentence of the section does not refer to "areas" and simply instructs that "the signatures of at least three hundred landowners shall be required, and such signers may be landowners anywhere in the City" where an amendment applies to two or more zones or the entire City. *Id*.

In a letter to the Board of Representatives, three correspondents have asserted that because Charter section C6-40-9 does not specifically refer to "(i) zoning districts, (ii) zoning classifications or (iii) classes of districts," the six areas zoned C-D constitute six separate zones and that the petition is valid because it contains at least three hundred signatures from throughout the city. This interpretation cites to no source of legal authority and is not supported by the Charter, our Zoning Regulations, or the rules of statutory construction.[6]

The differential use of both "zone" and "areas so zoned" in the same Charter provision must have meaning. "It is a basic tenet of statutory construction that the legislature does not intend to enact meaningless provisions…. [I]n construing statutes, we presume that there is a purpose

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[5]The zoning petition validation process remains the same irrespective of who performs the function because Charter sec. C6-40-9 provides the methodology for determining which signatures may be counted. No one, other than the Corporation Counsel or a court, has authority to provide an alternate legal opinion to City boards, commissions, or employees on the application of the Charter to this matter. Furthermore, there is no scenario under which the Board of Representatives can act upon an invalid petition regardless of who performs the administrative function of validating and counting petition signatures. See *infra at pp. 5-6*

[6] Zoning regulations are local legislative enactments that are governed by the same principles that apply to the construction of statutes. *Heim v. Zoning Board of Appeals*, 289 Conn. 709, 715–16 (2008).

behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous.... Because [e]very word and phrase [of a statute] is presumed to have meaning ... [a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." (Internal quotation marks omitted, internal citations omitted.) *Connecticut Podiatric Medical Ass'n v. Health Net of Connecticut, Inc*., 302 Conn. 464, 474 (2011).

"A statute should be interpreted according to the policy which the legislation seeks to serve." *Aaron v. Conservation Comm'n of Town of Redding*, 183 Conn. 532 (1981). If the assertions of the correspondents to the Board were correct, then 300 hundred property owners from anywhere in the City – even if all of their property is outside the affected areas – would be able to appeal a decision in which they have no direct interest. Section C6-40-9 protects the interests of property owners directly affected by zoning amendments by imposing different requirements for the number of signatures on a petition based on the number of zones affected by an amendment. Here, the zoning amendment applies only to properties located in the C-D zone. It is irrational to construe section C6-40-9 to mean that the rights of the owners of properties located in the zone or within 500 feet of it to appeal to the Board of Representatives are to be determined by owners of property in other areas unaffected by the zoning amendment. Conversely, under the correspondents' theory, if a text amendment affected a very small number of property owners in a very small number of areas, collecting 300 signatures could pose an insurmountable challenge to those whose property was affected. It is more rational to conclude that the intent of the Charter was to require fewer signatures from those most likely to be directly affected by a change to the single set of rules for their property or property very close to theirs, and require more signatures but less connection to a particular area only if a single change would apply more broadly to the whole city or multiple areas with different sets of rules (e.g. R-10, R-20, R-HD, V-C). In other words, different zones.

The Zoning Board is required to refer to the Board of Representatives only those petitions that meet the standards in the Charter.

Charter section C6-40-9 provides that when a petition is filed with the Zoning Board challenging an amendment to the Zoning Regulations, other than the Zoning Map, the matter "shall be referred by the Zoning Board to the Board of Representatives." Whether the word "shall" is mandatory or precatory (i.e. a command or a recommendation) depends upon its context. *Y Downtown, Inc. v. Westport Planning & Zoning Comm*., Superior Court of Connecticut, Judicial District of Stamford–Norwalk, January 19, 2011, WL 384095. Construing Charter section C6-40-9 to mean that the Zoning Board must refer *all* petitions, even invalid ones, to the Board of Representatives ignores established principles of statutory construction and the full context of the Charter.

"It is ... a rule of statutory construction that those who promulgate statutes or rules do not intend to promulgate statutes or rules that lead to absurd consequences or bizarre results. [A] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent.

If there are two possible interpretations of a statute, we will adopt the more reasonable construction over one that is unreasonable." (Internal quotation marks omitted, internal citations omitted.) *Ensign-Bickford Realty Corp. v. Town of Simsbury Zoning Comm.*, 245 Conn. 257, 270-71 (1998). Statutes must be construed in a manner that will not thwart the intended purpose or lead to absurd results. *Willow Springs Condominium Ass'n, Inc. v. Seventh BRT Development Corp*. 245 Conn. 17, n. 26 (1998). The legislative intent expressed in Stamford's Charter enables the Board of Representatives to approve or reject any amendment by the zoning board to the zoning map or regulation *if proper and timely objection is made*. See *Burke v. Board of Representatives*, 148 Conn. 33, 43-44 (1961).

"The validity of petitions must be determined; their validity is not presumed." *Blaker v. Planning and Zoning Commission of Fairfield*, 219 Conn. 139 (1991).

"Agents of a city, including [the board of representatives], have no source of authority beyond the charter." *Perretta v. New Britain*, 185 Conn. 88, 92 (1981). In *Woldan v. City of Stamford*, 22 Conn. Supp. 164 (1960), the Board of Representatives Legislative Rules Committee was notified of alleged irregularities and invalid signatures on a zoning petition. Nevertheless, the Board acted on the petition and rejected the zoning amendment. After excluding improper signatures, the Court concluded that the matter was not properly before Board and the Board of Representatives exceeded the scope of its authority when it considered an invalid petition. Courts have held that a valid petition is a pre-requisite in other contexts. For example, in *Waterbury Homeowners Ass'n v. City of Waterbury*, 28 Conn. Supp. 295 (1969), the Court held that where a section of city charter prescribed the method of conducting a bond referendum, the city board of aldermen could not, on its own motion and in the face of an invalid petition for a referendum to finance a new school complex, lawfully order the referendum requested by petitioners.

"It is axiomatic that the law does not require a useless and futile act." C*onnecticut Light & Power Co. v. Costello*, 161 Conn. 430 (1971). As explained above, the law in Connecticut as it applies to petitions challenging decisions of the Zoning Board is that the Board of Representatives has no authority to rule on the validity of petitions. Common sense suggests that requiring the Zoning Board to refer an invalid petition to the Board of Representatives leads to the absurd result of a matter coming before the Board upon which it cannot act. The act of referring an invalid petition is a useless and futile act because the Board of Representatives has no jurisdiction to consider the petition.

The context of preceding and related Charter sections supports the interpretation that in all cases, only a petition that meets the threshold requirements for validity and number of signatures can be referred to the Board of Representatives. Furthermore, the use of the phrase "[t]he number of signatures required *on any such written petition* shall be ..." implies that only when it has the required number of valid signatures does it meet the definition of a petition that has been or can be referred. "[W]e are [also] guided by the principle that the legislature is always presumed to have created a harmonious and consistent body of law.... [T]his tenet of statutory

construction ... requires us to read statutes together when they relate to the same subject matter.... Accordingly, [i]n determining the meaning of a statute ... we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction." (Internal quotation marks omitted.) *In re Jusstice W.*, 308 Conn. 652, 663 (2012).

Charter sections C6-40-5 and C6-40-6, which govern petitions challenging the Zoning Board's decision regarding a proposed change to the zoning map, require that only if the threshold number of signatures is submitted shall a petition be referred to the Board of Representatives. Like Section C6-40-9, those sections require petitions to be filed with the Zoning Board, even when the Zoning Board or a City department is the applicant. While it is true that the thresholds for signatures are different, most of the language is identical. The only significant difference other than the signature thresholds in Section C6-40-9 is that it sets apart the different signature standards for changes affecting one zone than for changes affecting multiple zones or the whole City, with those different standards described in two separate sentences instead of being folded into one long and unwieldy sentence. While it is rational to conclude that the reason for the different sentence construction is clarity and brevity, it is not rational to conclude that, even where the Zoning Board is the applicant, accepting and referring petitions could be entrusted to the Zoning Board in all cases but validating and counting signatures could fall to the Zoning Board only for map changes but not for text changes.

For all these reasons, the word "shall" in the context of Charter section C6-40-9 cannot be considered mandatory unless the conditions requiring referral are present (see *Ghent v. Plan. Comm'n of City of Waterbury*, 219 Conn. 511, 515 (1991), and the Zoning Board is not required to refer an invalid petition to the Board of Representatives.

The Zoning Board decision at issue was a text amendment subject to Charter Section C6-40-9. The petitioners filed the purported petition with the Zoning Board, and, following the advice of counsel and the law as interpreted by valid, current decisions of Connecticut courts, the Land Use Bureau counted and verified the number of signatures on the petition to determine if the petition contained signatures from the lesser of 100 or 20% of the owners of privately-owned land within five hundred feet of the C-D zone, all in accordance with the relevant Charter section. Because the petition did not have the requisite number of signatures to constitute a valid petition, the Zoning Board correctly took no action to refer the matter to the Board of Representatives.

THE BOARD OF REPRESENTATIVES HAS NO AUTHORITY UNDER THE CHARTER OR CONNECTICUT GENERAL STATUTES TO COMMAND THE REFERRAL OF A PETITION, TO MODIFY A PROCESS DICTATED BY THE CHARTER, OR TO CREATE A NEW PROCESS NOT PROVIDED IN THE CHARTER, WHICH THE RESOLUTION WOULD DO.

Our Supreme Court in *Benenson* held that the express terms of the Stamford City Charter do not provide for the approval or rejection of a petition by the Board of Representatives. Likewise, the

Charter does not provide a procedure for the Board of Representatives to review, revisit, or revise the decision of a Zoning Board on the validity of a petition, and neither does it provide a procedure to demand documents or order the referral of a petition.

Nevertheless, the resolution purports to command the Zoning Board to refer the petition to the Board of Representatives within 10 days after passage of the resolution. But the time for filing a petition that meets the requirements of Section C6-40-9 has passed, and the Zoning Board determined in a timely manner that no such petition had been filed within the required 20-day period. The Zoning Board is an independent board and acts pursuant to authority granted to it by the Charter and the General Statutes. See *Olson v. Avon,*143 Conn. 448, 454, (1956) (a municipality's zoning commission acts independently of the local legislative body). Therefore, the Zoning Board is not subject to oversight by the Board of Representatives except in the manner expressly provided for in the Charter. The Charter does not give the Board of Representatives the authority to direct the activities of the Zoning Board in the handling of a petition filed under Section C6-40-9.

Municipalities are "creations of the state, have no inherent legislative authority…and can wield only those powers expressly granted to them by the legislature or necessary to the exercise of an expressly delegated power." *Simons v. Canty*, 195 Conn. 525, 529-30 (1985). Consequently, an exercise of authority beyond the limits established by the Charter is invalid. Neither the City nor its officers can do any act not authorized by the Charter or the state statutes. All acts beyond the scope of the powers granted are void. *Highgate Condominium Assn. v. Watertown Fire District,* 210 Conn. 6, 16-17 (1989).

Here, the Zoning Board has not failed to act. It has exercised its lawful authority, conferred by the Charter and the General Statutes, to perform a duty assigned by the Charter. It has sought and followed legal advice of the only entity authorized to provide it, the Corporation Counsel. Heeding that advice and the decisions of Connecticut courts, it has followed currently applicable law, as it and all city officials must. Notwithstanding any sincere belief among some members of the Board of Representatives that in their view, the Zoning Board or its staff have not followed the proper procedure, timelines, or legal standards, it cannot, as the resolution states, "proceed in the same manner as if the Petition had been referred to it by the Zoning Board …" Resolution No. LU31.004. The Board of Representatives may not impose its own remedy. It simply does not have this power under the law. It is not an enforcement body and it is not a court of law. This is an essential feature of the rule of law and the separation of powers.

The Board of Representatives has no authority to create a role for the Town Clerk in a process prescribed by Charter, the Town Clerk has no authority to provide an analysis of the signatures, and the Board of Representatives has no authority to apply such an analysis

Just as the Board of Representatives has no authority to direct the actions of the Zoning Board absent express provisions in the Charter or statutes, the Board of Representatives has no

authority to direct the actions of the Town Clerk, absent express provisions. The resolution does not command the Town Clerk to take certain action; instead, the resolution requests the Town Clerk to take certain actions, and a request is not legally binding on the Town Clerk, but the resolution does seek to confer authority on the Town Clerk and create a role for her that she does not have under the Charter or statutes. In addition, the proposed resolution purports to request from the Town Clerk a copy of the petition and "proceed in the same manner as if the Petition had been referred to it by the Zoning Board … ." These things it may not do, again because they create procedures and authorities above and beyond those dictated by the Charter.[7]
The resolution also requests that the Town Clerk "analyze the signatories to the Petition and submit a report of its findings to the Board of Representatives no later than 72 hours before the regular February Board of Representatives Land Use Committee meeting."
If the Town Clerk voluntarily participated in the process of reviewing and calculating the number of signatures on a petition for the purpose of determining whether the requisite number of signatures has been obtained, her participation would be beyond the scope of her legal authority. Neither the Charter nor the state statutes authorize the Town Clerk to participate in the process of reviewing a petition filed under Charter Section C6-40-9 for validity. As discussed above, case law requires a public official such as the Town Clerk to have express legal authority to undertake an action. Without such an express grant of authority, the Town Clerk's participation in the process would be unlawful, potentially leading to litigation against both the City and Town Clerk.

Just as there is no provision in the Charter for a second review of a petition by the Board of Representatives, nor is there any power for any other City official to provide an alternate analysis once it has been reviewed by Zoning Board and/or its staff, and any alternate analysis would have no more legal effect than correspondence from a member of the public. Even if there were another office or entity authorized to validate petition signatures – and we must reiterate that there is not – the legal standards for such review have been determined. The Corporation Counsel has already rendered an opinion regarding such standards, and anyone conducting such a review on behalf of the City would be bound by that opinion. The Town Clerk would not be at liberty to seek another legal opinion from a different source, and it must be made clear that any attempt to provide an independent analysis of the legal standards involved to influence official action by the City would not just violate the Charter; it could also subject the person doing so, if that person is not a licensed attorney, to a charge of practicing law without a license, a class D felony under Section 51-88 of the General Statutes.

We appreciate the opportunity to provide advice in this matter and will be available to consult further should it become necessary.

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[7] Nothing in this opinion should be interpreted to deny or interfere with the right of any person to obtain public records from any public agency, as defined in the Connecticut Freedom of Information Act.