




TOWN ATTORNEY'S OFFICE

TO: Laurie Whitten, Director of Planning

FROM: James N. Tallberg, Town Attorney 

DATE: August 26, 2022

SUBJECT: Felician Sisters Rezone – Conn. Gen. Stat. §8-3(b) Protest Petition

FACTS

The facts provided have been clarified by review of the pertinent minutes and Planning Department records. The Felician Sisters North American Real Estate Trust (“Felician Sisters”) is seeking a zone change for its Route 5 property, located partially in the Historic District, from HR-33 (Historic Residential) to SDD (Special Development District). On September 8, 2021, an Administrative Review Team meeting was held on the matter. The applicant’s formal application for the zone change was heard before the PZC on September 23.¹ On October 28th, the applicant requested that the matter be tabled. On November 18th, the applicant withdrew its application. The matter is again before the PZC and public hearings have been held.

A protest petition, specifically permitted by Conn. Gen. Stat. §8-3(b), has been submitted to the PZC by abutters to the proposed zone change. There are two methods of calculating collected signatures to determine whether a protest petition is valid. Regardless of which calculation method is used, so long as its particular specifications are satisfied, a valid protest petition triggers a requirement for a supermajority vote (5) of the PZC members to approve the zone change at issue.

ISSUE

What signature calculation method requirements must be satisfied in order to trigger the requirement of a supermajority vote to approve the requested zone change?

SHORT ANSWER

The two methods of calculating signatures to determine a protest petition’s validity seek to ascertain whether signatures have been obtained from:

- a. A grouping of landowners that, together, own at least **20% of the affected land’s total surface area**; or
- b. A grouping of landowners that, together, own **20% of the total surface area of the land located within 500 feet from the outer perimeter of the land subject to the zone change.**

Accordingly, so long as the signatures on a submitted protest petition satisfy either of these two discrete requirements, the petition may be deemed valid, and a supermajority

^{1/} While there may have been informal discussions around the matter of a zone change, the applicant ultimately went forward with its formal zone change application.

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may be required to approve the zone change. While option “a” is relatively straight forward, questions of interpretation related to option “b” have necessitated this office’s review of § 8-3.

In short, quoting former Judge Fuller’s treatise, *Land Use Law and Practice*, recent Connecticut Supreme Court case law has held unequivocally that, with respect to option “b,” a supermajority vote requirement to effectuate a zone change is triggered by a protest petition that contains *signatures of owners of 20 percent of the area of the lots within 500’ of the proposed zone change*, *High Ridge Real Estate Owner, LLC v. Board of Representatives of Stamford*, 342 Conn. 423, 439 (2022), and not merely owners of 20 percent of the total number of lots within 500 feet from the affected area’s perimeter.

LAW AND DISCUSSION

Conn. Gen. Stat. §8-3(b) provides, in pertinent part:

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 ***[owners of twenty percent or more of the area] of the lots within five hundred feet in all directions [from] the [outer perimeter 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.

(Emphasis added.) Conn. Gen. Stat. §8-3(b).

In March of 2022, the Connecticut Supreme Court considered this specific language. Although reviewing a provision in the Stamford Charter, the municipal charter’s language tracked that of §8-3. In its interpretation, the Court relied heavily on former Judge Robert Fuller’s treatise, *Land Use Law and Practice*:

Section 8-3 allows two different groups of objectors to trigger the two-thirds vote provisions... With either type of protest petition, what is required is a protest filed by the owners (whether one owner or many owners) of at least 20 [percent] ***of certain areas***. It is not the owners of 20 percent of the [affected or abutting] lots with who we are concerned ***but the owners of 20 percent of the area of the [affected or abutting] lots***. [When] there is more than one owner of a lot such as a husband a wife jointly owning a lot, those owning the entire interest in the property must jointly object to the change.

(Emphasis added.) *High Ridge Real Estate Owner, LLC v. Board of Representatives of Stamford*, 342 Conn. 423, 439 (2022), quoting R. Fuller, 9 Connecticut Practice Series: *Land Use Law and Practice* (4th Ed. 2015) § 4:2, p. 61.

Judge Fuller, although discussing an earlier iteration of the statute, also relied on the court’s interpretation in *Muller v. Town Plan and Zoning Commission of Hamden* in discussing how the computation is to be made:

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If the statute is construed to mean land bounded by a line drawn at a distance of 500 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 20 percent rule is to be applied becomes fairly simple, and as already noted, the construction furnishes an exact standard of the determination of the area.

Id. 145 Conn. 325, 329 (1958). *Accord, Civitello v. Milford Planning & Zoning Board*, CV-89-0029795-S (J.D. Ansonia/Milford at Derby, June 26, 1990, Sequino, J.), pp. 3-5.

Parenthetically, Judge Berger, who reviewed the matter at the trial court level, discussed the policy issues at play with a protest petition. His comments, while dicta, substantiate an interpretation that only a collection signatures from the owners of 20 percent of the total surface area of the relevant lots – either lots directly affected as in option “a,” above, or abutting lots as in “b,” above – is sufficient to require a supermajority vote to approve the zone change. Among other things, Judge Berger noted that the protest petition has been used to discriminate on the basis of race, and “[i]n the extreme, conceivably just one person who owns all the lots within 500 feet could create an anomalous situation, i.e., one person would be able to impose a supermajority under (b)” if an interpretation looking only to the ***total number of lots represented*** on the petition signature sheet were to be adopted. *High Ridge Real Estate Owner, LLC v. Board of Representative of the City of Stamford* Docket No. LD CV-18-6102462-S (J.D. Hartford, February 19, 2020, Berger J.), p. 13, n. 12.

In conclusion, Connecticut Supreme Court case law has consistently held that signatures from owners of 20 percent or more of the surface area of either (a) the land within the area of the proposed zone change, or (b) the surface area of the lots within 500 feet of the area of the proposed zone change, are required to trigger the requirement of a supermajority vote of the PZC, and that signatures of owners of 20 percent *of the total number of lots* within 500 feet is, therefore, insufficient.