



City of Middletown

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October 29, 1986

Stephen T. Gionfriddo, Chairman
Planning and Zoning Commission
219 Farm Hill Road
Middletown, Ct. 06457

Re: Case review on disqualification from participating
in a hearing or decision

Dear Chairman Gionfriddo and Commission members:

Attached you will find a legal paper addressing the issue of "Under what factual situations does a Planning and Zoning Commissioner have to disqualify himself or herself from participating in a hearing or decision of the board under Section 8-11 of the Connecticut General Statutes, as amended?" This compilation of cases is presented for your review so that you will have a better understanding of under what situations you should disqualify yourself from participating in a hearing or decision of the board.

In light of the fact that future members of the Common Council may one day become members of the Planning and Zoning Commission, I am also providing them a copy of this document.

Sincerely yours,



Ralph E. Wilson
City Attorney

REW/es
Enc.

cc: Sebastian J. Garafalo, Mayor
Richard Tomc, Corporation Counsel

ISSUE: Under what factual situations does a Planning and Zoning Commissioner have to disqualify himself or herself from participating in a hearing or decision of the board under Section 8-11 of the Connecticut General Statutes, as amended?

LAW: Section 8-11 of the Connecticut General Statutes, as amended, entitled: "Disqualification of members of zoning authorities" provides:

"No member of any zoning commission or board and no member of any zoning board of appeals or of any municipal agency exercising the powers of any zoning commission or board of appeals, whether existing under the general statutes or under any special act, shall appear for or represent any person, firm, corporation or other entity in any matter pending before the planning or zoning commission or board or said board of appeals or any agency exercising the powers of any such commission or board in the same municipality, whether or not he is a member of the board or commission hearing such matter. No member of any zoning commission or board and no member of any zoning board of appeals 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 the event of such disqualification, such fact shall be entered on the records of the commission or board and, unless otherwise provided by special act, any municipality may provide by ordinance that an elector may be chosen, in a manner specified in the ordinance to act as a member of such commission or board in the hearing and determination of such matter, except that replacement shall first be made from alternate members pursuant to the provisions of sections 8-1b and 8-5a."

The following are cases in which the Connecticut courts have found some conflict situation to exist:

Thorne v. Zoning Commission of the Town of Old Saybrook, 178 Conn. 198, 423 A. 2d 861 (1979). A chairman of the Zoning Commission of Old Saybrook who had voted in favor of the zone change, who was moderator of the public hearing and who participated was found to be interested in the decision and thus his action nulled, because this commissioner's sister and parents owned and occupied property adjacent to the target of the proposed zone change. The commissioner's participation in the hearing and decision was a violation of Connecticut General Statutes Sec. 8-11 which provides for disqualification of members of zoning authorities, in essence, upon any matter in which he or she is directly or indirectly interested in a personal or financial sense. It is important to note the test used by the court, in determining whether a zoning member's participation should be prohibited. This test is whether or not the member's interest reasonably might conflict and not whether the interest does conflict.

The Court stated that Section 8-11 of the Connecticut General Statutes functions as a preventative measure to assure the public that individual property rights will be protected in the zoning process. Public policy requires that zoning officials decline to participate in those situations where there is a reasonable conflict with one's private, personal or financial interest.

A personal interest has been defined as an interest in either the subject matter or the relationship with the parties appearing before the zoning commission is such as to impair the impartiality expected to characterize each member of the zoning authority. Such an interest can take the form of favoritism toward one party or hostility toward the opposing party.

Low v. Madison, 135 Conn. 1, 60 A. 2d 774 (1948). A husband who served on the Zoning Commission of the Town of Madison could not vote upon an application by his wife to have a certain area, including the wife's property, changed from a residence zone to a business zone. The Court found that since the husband was in possession of information regarding his wife's contemplated use of the property, which information was not available to others and not disclosed at the public hearing, there was a conflict between his private interest and public duty. Low was decided before the adoption of Connecticut General Statutes Secs. 8-11 and 8-21, in which the conflict situation has been fully honed.

Mills v. Town Planning and Zoning Commission, 144 Conn. 493 (1957). This was a situation in which two developers had submitted applications for zone change to build a shopping center. A zoning commission member publicly stated that he would welcome and favor the application of one developer over the other. Subsequently, the other developer's application was turned down. The court held that the zoning commission member should have disqualified himself.

Lage v. Zoning Board of Appeals, 148 Conn. 597 (1961). A zoning board of appeals member spoke in favor of an application for a zone change when the application was presented to the planning and zoning commission. When the requested variance went before the zoning board of appeals, the commission member did not disqualify himself. The court held that this member's earlier remarks indicated a preconceived opinion about the desirability of a change, and that that opinion must have influenced his vote on the variance. Therefore, this member would have shown better judgment had he refrained from acting as a member in this particular matter.

Bossart Corporation v. City of Norwalk, 157 Conn. 279, 253 A. 2d 39 (1968). The Common Council of the City of Norwalk was to consider a development plan. After some attempts at amending the plan, it was disapproved by the Common Council. A member of the Common Council was also a member of a law firm which had represented opponents of the development plan. This plan was before the Common Council a total of five times, three of which the lawyer/council member was acting as majority leader, and two of which he was acting as president. However, on all occasions, he did disqualify himself and abstain from voting.

The court held that denial of the application was invalid because the council member's law firm represented opponents of the application. Such conduct is governed by Connecticut General Statutes Sec. 8-21 which provides, in essence, that no member of a planning commission or member of any municipal agency exercising the powers of a planning commission, shall appear for or represent any person, firm or corporation or other entity in any matter pending before a planning or zoning commission. Furthermore, the court found that in any situation which tends to weaken the public confidence and to undermine the sense of security of individual rights which a property owner must feel assured will

always exist in the exercise of zoning power, that commission member must disqualify himself or herself.

The following are cases in which the Connecticut courts have found that no conflict situation existed:

Furtney v. Zoning Commission, 159 Conn. 585, 271 A. 2d 319 (1970). A member of the zoning commission and an individual who had presented an application to the zoning commission had known each other for many years, but they were not on a first name basis and did not meet socially. The applicant had done most of his banking with the financial institution where the commission member worked but the applicant did not frequent the bank often. The court held that no conflict of interest situation existed in this particular case. The law does not require that the members of zoning commissions have no opinion regarding the proper development of their communities.

Holt-Lock, Inc. v. Zoning & Planning Commission of the Town of Granby, 161 Conn. 182, 286 A. 2d 299 (1971). A member of the town Planning and Zoning Commission was also a member of the town conservation commission. The conservation commission had expressed reservations to the zoning application in this case. The court held that this commission member was not disqualified to sit on the Planning and Zoning Commission for this case.

The court looked to Sec. 8-11 of the Connecticut General Statutes for guidance, looking to the words "... any matter in which he is directly or indirectly interested in a personal or financial sense. The court cited Anderson v. Zoning Commission, 157 Conn. 285, 290, 253 A. 2d 16, 20 (1968), in defining personal interest as "a personal bias or prejudice which personal imperils the open-mindedness and sense of fairness which a zoning official in our state is required to possess." It is important to note that the court pointed out, also citing Anderson, that the decision as to whether a particular interest is sufficient to disqualify is a factual one and depends on the circumstances of the particular case.

Anderson v. Zoning Commission, 157 Conn. 285, 253 A. 2d 16 (1968).

I. A chairman of a zoning commission disqualified himself from participating in deliberations relating to an application for a zonal change, because he lived about one-half mile from the property in question and because some of his friends would oppose the application while others would support it. This chairman then recommended a co-worker to sit on the commission because another vacancy had occurred. This co-worker was employed in the mortgage department of the Merchants Bank and Trust Company and the chairman of the commission was employed as secretary of the bank. At the same time that the chairman suggested the alternative, he announced his intention to leave the bank.

The court held that the alternate's participation in zoning commission's decision was not a violation of Sec. 8-11 of the Connecticut General Statutes.

II. A second member of the commission who participated in the zone change was the

vice-president and 45% owner of corporation's common stock. This corporation was represented by the same law firm that had represented the applicants of the zone change. Again the court held that this was not a violation of Sec. 8-11 of the Connecticut General Statutes.

Dana-Robin Corporation v. Common Council of the City of Danbury, 166 Conn. 207, 348 A. 2d 560 (1974). A member of the planning commission who was owner of stock in a corporation owning off campus dormitories for students of Western Connecticut State College was not disqualified from voting on a zoning approval of a multiple housing project located very close to the college campus.

The Court defined "interest" as having a share or concern in some project or affair, as being involved, as liable to be affected or prejudiced, as having self-interest and as being the opposite of disinterest.

LaTorre v. City of Hartford, 167 Conn. 1 (1974). A city councilman whose law firm occasionally represented a party who would benefit from a decision to widen the streets did not have to disqualify himself from voting despite the appearance of improper influence.

Armstrong v. Zoning Board of Appeals, 158 Conn. 158 (1969). A foundation applied for a zoning certificate for a school for socially and emotionally disturbed children. The planning and zoning commission granted the application. The chairman of this commission also served as chairman of the town mental health fund and acting in that capacity, had issued a letter to all town citizens soliciting funds for mental health causes. The commission's decision was appealed to the zoning board of appeals. A member of the zoning board of appeals had a son who had received treatment at a similar school also operated by this applicant in another state.

The court held that neither of these interests were sufficient to require the commission or the board member to disqualify himself.

The Court's holding was based on the fact that the law could not be interpreted to hold that a public spirited citizen who assists in a community charity is disqualified to hear a zoning matter merely because it deals with "some part of a similar effort to help human suffering in which he is in no way involved." (p. 171).

Fletcher v. Planning and Zoning Commission, 158 Conn. 497 (1969). Three members of the planning and zoning commission were "invited" to reflect upon 8-11 of Connecticut General Statutes and "invited" to disqualify themselves by a landowner during his appeal of a denial of a request for a change of zone. Two of the commission members, before becoming members, had signed a petition opposing the landowner's application. The third member had belonged to an organization which opposed the landowner's application.

However, counsel for the landowner never directly challenged the qualifications of the commission under Section 8-11, personal interest.

In the court's decision, it stated that neutrality and impartiality of members are essential

to the fair and proper operation of zoning powers.

However, in this case, the court found that these three commission members had not placed themselves in positions where their personal interests might conflict with their public duty.

It seems that if counsel for the applicant landowner had taken action and claimed that the members should be disqualified, rather than leaving the determination to the council members, this case might have been decided differently.

Stephen T. Glonfridd, Chairman, Planning & Zoning Commission,
Alternates Gerard M. Roccapriore, Francis T. Patnaude, Stephen
Gadomski and Richard L. Thompson

May 1, 1987

Alternate members of the Planning & Zoning Commission disqualification
from participating in a hearing or decision

As you may recall, on October 29, 1986, I distributed to the Commissioners a legal paper addressing the issue: "on what factual situations does a Planning and Zoning Commissioner have to disqualify himself or herself from participating in a hearing or decision of the board under Section 8-11 of the Connecticut General Statutes, as amended?"

Recently, I issued an oral opinion to an alternate member of the Planning and Zoning Commission that he could participate in the hearing despite the fact that he was disqualifying himself from any participation. The question has arisen as to the correctness of that decision.

If you review the cases that were cited and explained in the memorandum to you of October 29, 1986, you will note that the decisions deal with commission members who are participating in the decision process. That is, commission members who would be voting on a particular application before them.

Section 8-11 C.G.S., as amended, provides that: "No member of any zoning commission or board and no member of any zoning board of appeals shall participate in a hearing or decision of the board or commission of which he is a member upon any manner in which he is directly or indirectly interested in a personal or financial sense." The section goes on to state that the replacement for a disqualified regular member shall be first made from alternate members.

Accordingly, Section 8-11 C.G.S., as amended, envisions that a regular member will disqualify himself or herself and that an alternate member will sit in that individual's place.

In view of the controversy that has ensued from my oral advice to an alternate member of the commission, I requested additional research on this issue. That research has confirmed that the case law deals with those situations in which a regular member is involved and not an alternate member who has not taken the seat of the regular member who has disqualified herself or himself from taking part in the hearing or decision of the board.

However, in view of my original oral opinion and the research that has confirmed that advice, it is realized that one can make the argument that Section 8-11 C.G.S., as amended, also applies to alternate members as well as regular members. Research has not disclosed any case situation where Section 8-11 C.G.S., as amended, has been applied to an alternate member who has not been sitting as a regular member and then disqualified himself or herself. However, in view of the fact that the court, when presented with the facts, could apply Section 8-11 C.G.S., as amended, also to alternate members who are not sitting as regular members, my legal advice to the

Planning and Zoning Commission alternates is not to take part in a hearing or decision of the board or commission in which he or she has directly or indirectly a personal or financial interest. Following this broad interpretation of Section 8-11 C.G.S., as amended, will prevent the City of Middletown becoming a test case on an issue that should not predominate the actual findings of the commission as to why an application should or should not be approved.

Ralph E. Wilson
City Attorney

REW/es