

MEMORANDUM

FROM : OFFICE OF THE CITY ATTORNEY  
MIDDLETOWN, CONNECTICUT 06457

TO : Stephen T. Gionfriddo, Mayor

DATE : October 26, 1993

RE : Legal Opinion Request

FACTUAL BACKGROUND SUBMITTED WITH REQUEST:

The Planning and Zoning Commission is questioning the completeness of an application requesting a zoning map amendment. There are 12 lots proposed for rezoning. Six of the lot owners have signed supporting the amendment, five have not and one is the City of Middletown. Those not signing have expressed strong opposition to the application and have threatened legal action. The application is complete in all other regards.

QUESTION PRESENTED:

When members of the public propose to rezone property, are the signatures of all owners within the proposed rezoning required as part of the application?

ANSWER: Yes.

ANALYSIS:

Connecticut General Statutes §8-3(c) provides that "petitions requesting a change in the regulations or boundaries of zoning districts shall be submitted in writing and in a form prescribed by the commission and shall be considered at a public hearing within the period of time permitted under section 8-7d." C.G.S. §8-3(c), as amended.

Article XI, §4 of the Planning and Zoning Commission's Bylaws provides that "[n]o application shall be scheduled for a public hearing until that time when the Planning and Zoning Commission, upon consultation with staff, determines that the application is complete and satisfies the general requirements for the type of application. Incomplete applications not completed by the second meeting they appear as new business shall be denied."

Section 71 of the Zoning Code provides, in pertinent part, that "[t]hese Regulations and the zones established hereunder may be amended, modified, changed, added to, or repealed by ... (B) the Commission approval of an application filed by any other person or entity. Applications shall consist of three parts: (1) Completed applications form(s) provided by the Commission's Office...."

The Connecticut Supreme Court has held that a nonowner must possess a legal interest in the property in order to have standing to make an application. Richards v. Planning & Zoning Commission, 170 Conn. 318, 343-24 (1976); See also Michel v. Planning & Zoning Commission, 28 Conn. App. 314, 324-25 (1992).

The Richards court held as follows:

From an examination of our cases and those of other jurisdictions, it is not possible to extract a precise comprehensive principle which adequately defines the necessary interest which a nonowner must possess in order to have standing to apply for a special permit or a variance. The decisions have not been based primarily on whether a particular applicant could properly be characterized as an optionee or a lessee, but, rather, on whether the applicant was in fact a real party in interest with respect to the subject property. Whether the applicant is in control of the property, whether he is in possession or has a present or future right to possession, whether the use applied in the property, and the extent of the interest of other persons in the same property, are all relevant considerations in making that determination.

Richards, supra, at 323-24.

In Richards, the Wilton Board of Education applied for and was granted a special use permit for the storage and maintenance of school buses on town-owned property. The zoning regulations did not require an applicant to be the owner of the property and the town was not contesting the application. The trial court found that the board was neither the owner of the site nor the authorized agent of the town with respect to it and, therefore, the board lacked the legal interest required to qualify as an applicant for the permit. Richards, supra, at 319-320.

The Supreme Court reversed this decision holding that nonowners who are real parties in interest in property have standing to apply for special zoning treatment. The Court reviewed cases in which the applicant had contracted to purchase property; was the director of the corporation which owned the property; was in possession of the property; was leasing the property; had an option to buy the property; had an option to lease; and was leasing the property and applied for the variance over the objection of the lessor. Richards, supra, at 321-23.

The Richards Court held that a nonowner may make application if the nonowner is the real party in interest with respect to the subject property. Id. at 323.

In 1991 the Supreme Court distinguished the present situation from an application for zoning text amendment. Ghent v. Zoning Commission, 220 Conn. 584 (1991).

The Ghent Court held as follows:

We have indicated that there is a "necessary interest which a nonowner must possess in order to have standing to apply for a special permit or a variance." Richards v. Planning & Zoning Commission, 170 Conn. 318, 323, 365 A.2d 1130 (1976). We are not inclined, however, to impose such a requirement for changes in the text of zoning regulations that apply generally throughout the city. Section 7.31-1 of the Waterbury zoning ordinance, which prescribes the requirements for filing an application for a zoning regulation amendment, contains no restriction based upon the interest of a petitioner. Section 7.33, by contrast, requires that petitioners for amendments to the zoning map be owners of property seeking a change of zone for their own property or their agents.

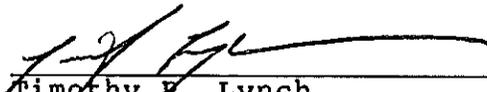
Ghent, supra, at 591 (footnotes omitted).

In the present situation, the Zoning Code and the Commission's Bylaws do not expressly require that the applicant be the owner of the property. Section 71 of the Zoning Code provides for an application filed by "any other person or entity". However, the application form referenced by the Code requires the property owner's signature. Therefore, the property owner's consent is required to make the application.

#### CONCLUSION

The Planning & Zoning Commission's application form expressly requires the property owner's signature.

Further, the applicants in this situation do not meet the requirements for nonowner standing.

  
\_\_\_\_\_  
Timothy F. Lynch  
Deputy City Attorney

TPL/dw

cc: William Warner, AICP,  
Planning & Zoning Director

**REQUEST FOR OPINION, ADVICE OR OTHER LEGAL SERVICE**  
**(Submit to Mayor in Duplicate)**

RECEIVED  
1993 OCT 14 PM 1:06  
CITY OF MIDDLETOWN  
MAYOR'S OFFICE

**TO:** MAYOR'S OFFICE

**FROM:** William Warner AICP, Director of Planning

**SUBJECT:**

**FACTS:** (In brief Statement tell WHO, WHAT, WHEN, WHERE, WHY & HOW.)

93 OCT 14  
The Planning and Zoning Commission is questioning the completeness of an application requesting a zoning map amendment. There are 12 lots proposed for rezoning. Six of the lot owners have signed supporting the amendment, five have not and one is the City of Middletown. Those not signing have expressed strong opposition to the application and have threatened legal action. The application is complete in all other regards.

**LAW:** (Cite appropriate ORDINANCE, REGULATION, STATUTE, OR CASE LAW that you think applies to this question.)

Section 71 Zoning Code  
CGS Section 8-3  
Bylaws, Article XI

**QUESTION:** What, in your own words is the precise question you wish to have answered?)

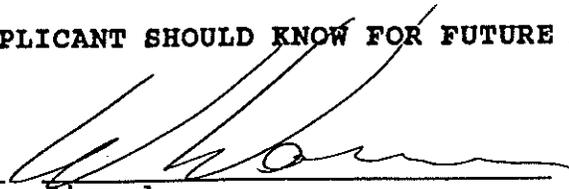
When members of the public propose to rezone property, are the signatures of all owners within the proposed rezoning required as part of the application?

**ESTIMATE OF PRIORITY:** Check One.

X EMERGENCY STANDBY FOR FUTURE ACTION  
by 10/27/93 statutory time frames have begun.

URGENT APPLICANT SHOULD KNOW FOR FUTURE ACTION

Date: 10-14-93

  
Signed:

RECEIVED  
CITY ATTORNEY'S OFFICE  
93 OCT 18 PM 1:46

Please fill out this application so we will know who you are, what you are applying to do, and how to contact you. With this basic information we will evaluate your project as it relates to City regulations as quickly as possible. Thank you for your cooperation.

(PLEASE PRINT) IF AN AGENDA ITEM, BOTH PAGES 1 & 2 MUST BE FILLED OUT FOR THIS APPLICATION TO BE COMPLETE

GENERAL INFORMATION ABOUT THE PEOPLE INVOLVED Date October 5, 1993  
Applicant: Theodore R. Werner, et al Phone# (203) 343-0628  
Address: 300 Margarite Road City Middletown State CT Zip 06457  
Agent\ Occupation: NA Phone# ( )  
Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

WHAT ARE YOU APPLYING TO DO? (CHECK ONE OR MORE)

- Add an addition to a single\two family dwelling to be used for \_\_\_\_\_
- +  Construct a single family dwelling (A-2 survey required)
- +  Add an addition to a multi-family or non-residential building to be used for (A-2 survey required) \_\_\_\_\_
- Convert an existing building from present use as \_\_\_\_\_ to a new use as \_\_\_\_\_
- +  Construct one or more new buildings to be used for (A-2 survey required) \_\_\_\_\_
- +  Subdivide land into building lots (A-2 survey required)
- Change the text of the Zoning Code or the Zoning Map
- Install a sign
- Start a Residential Unit Business Pursuit
- +  Extract Natural Resources like sand or gravel or fill an area
- Other re-zone from R-15 to R-30 to bring the Middletown Zoning Map into conformity with the Middletown Plan of Development

93 OCT -7 AM 11:30

FACTS ABOUT LAND PROPOSED FOR USE

Landowner! See Schedule "B" attached hereto Phone# ( )  
Location: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Frontage on Public Street(s) \_\_\_\_\_ Zone \_\_\_\_\_ Lot Area \_\_\_\_\_  
Is this project within 500' of a Municipal Boundary? Yes \_\_\_\_\_ No \_\_\_\_\_  
Is this project located in a FEMA 100 or 500 year flood plain? Yes \_\_\_\_\_ No \_\_\_\_\_  
Public Utilities Available: City Water  Sewer ; Septic\Well

L. Bowers  
+SIGNATURE OF I.W.A. STAFF  
DATE APPLIED 10/7/93  
 PERMIT REQUIRED  
 PERMIT NOT REQUIRED  
 IWA REVIEW REQUIRED

Theodore R. Werner ET AL.  
See Schedule "A" attached hereto  
SIGNATURE OF APPLICANT\AGENT\*\*  
Theodore R. Werner ET AL.  
See Schedule "A" attached hereto  
SIGNATURE OF OWNER\*\*

\*\*Both signatures required. I certify to the best of my knowledge that the above information is true and correct, and that, if required, an application for an Inland\Wetlands permit has been filed before or on the same day as the filing of this application with the P&Z Commission.

10/2/93  
CA # 715  
\$110.00

INITIAL APPLICATION FOR LAND-USE IN MIDDLETOWN, CT