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Robert Phillips, Town Planner
TOWN OF ELLINGTON
P.O. Box 187
Ellington, CT 06029

RE: Protest Petition Pursuant to CGS Sec. 8-3b

Dear Rob:

You have inquired of me the correct procedure to analyze a Protest Petition filed pursuant to Connecticut General Statute Section 8-3b in opposition to a requested zone change.

First, it is clear that it is the Commission that has the duty to determine the validity of the Petition. Further, it is the burden of those presenting the Protest Petition to establish its validity. This is *Blaker vs. Planning and Zoning Commission of the Town of Fairfield*, 219 Conn. 139.

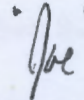
Secondly, you can assist the Commission by preparing a list of all the lots or properties within 500-feet in all directions of the property included in the proposed change, a list of the owners of each of those properties, and confirm the signatures of each of the property owners.

You have also inquired how you should handle a property owned by two or more people when only one signature appears on the Petition. *Mall vs. the Town Planning & Zoning Commission of the Town of Windsor*, 146 Conn. 397 held that the signature of an owner's son, although specifically authorized by the owner, was invalid. I have not found a case or an analysis that addresses whether the signature of one joint owner is adequate to count that entire property, counted as 50% of the property, or disqualify the property as a protester.

In your inquiry we did discuss whether base should be the number of lots or area. *Muller v. Town Plan & Zoning Commission* 145 Conn. 325 addresses and analyzes that issue. Muller holds that the phrase "within 500-feet in all directions of the property" means you draw a line 500-feet distant from the entire boundary of the land subject to the change and apply the 20% rule as a measurement of the area. Although the case did not finally address the application, it appears that if a single owner owned more than 20% of that 500-foot area, then a single signature on the Protest Petition would be adequate. *Park Regional Corp. vs. Town Plan & Zoning*, 144 Conn. 677.

It is my recommendation that you prepare a map and/or list of owners and attempt to do an analysis of each owner's land area within the 500-foot protest area. Provide the facts and leave it to the Commission to determine if the Petition meets the test of 8-3(b). I recommend this analysis be transmitted to the parties prior to the adjourned hearing. Clearly an amended or supplemental protest submitted at or before the next adjourned hearing must be considered with the original.

Very truly yours,



ATHERTON B. RYAN
Town Attorney

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