

Submission in support of Raised Bill # 5502 an Act concerning standing to appeal a zoning decision

Statement of Purpose:

To: Limit appeals of certain zoning decisions to an aggrieved person who owns land in this state, and clarify that an "aggrieved person", in the case of a decision by a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, includes a person who owns land that abuts or is within one hundred feet of the land involved in the decision, provided such person's land is within this state.

My name is John Lawrence Allen and I have been a member of Grace Community Church since it first began meeting in the back yard of a friend's home ten years ago. During the past decade, we have met in several different locations throughout New Canaan; we are presently meeting in New Canaan Saxe Middle School.

For the past four years our church has been trying to realize our vision to have a place to worship in New Canaan that would benefit our local community. Our efforts to see the completion of our church have been thwarted by a number of New York residents who live near the church site, but do not reside in Connecticut. Stated below are five salient points in support of our contention that it is patently unfair for an out of state resident to have standing to appeal a decision of a Connecticut zoning body that effects land in Connecticut. The proposed legislation would clarify the apparent ambiguity of Section 8-8(a)(1) of the Connecticut General Statutes. It was never the legislature's intent to confer on an out of state resident the right to interfere with the decisions of a Connecticut zoning body. Our desire is to build our church in Connecticut unfettered by out of state residents who provide no financial or other benefits to the state of Connecticut or its residents, but who choose to impose their will on residents of Connecticut.

Appeals from land use decisions from local town planning and zoning commissions to the Superior Court are authorized and governed by Section 8-8(a)(1) of the Connecticut General Statutes. In order for an individual, corporation or entity to pursue an appeal in Superior Court of a land use decision it must be an "aggrieved person."

There are two types of aggrievement: one is statutory aggrievement and the other is classical aggrievement. Under Section 8-8(a)(1), statutory aggrievement includes "any person owning land that abuts or is within a radius of 100 feet of any portion of the land involved in the decision of the board."

ISSUE: When the Connecticut legislature enacted § 8-8(a)(1), did it intend to grant zoning appeal rights to residents of New York, Massachusetts and Rhode Island?

Section 8-8(a)(1) is contained in Title Eight of the Connecticut General Statutes and Title Eight is concerned with zoning and planning issues concerning land within the state of Connecticut. There is no reference or language contained anywhere in Title Eight that indicates that it is meant to apply to land or owners of land in another state. The zoning regulations of Connecticut's municipalities, as well as the statutes of Connecticut regarding zoning do not reach across the state lines or have as their aim the control of development and the preservation of the welfare of communities outside of our state.

In a recent Supreme Court decision entitled *Abel v. the Town of New Canaan*, the Connecticut Supreme Court held that persons owning land in the communities of South Salem, New York and Lewisboro, New York had statutory standing to appeal a decision of the New Canaan Planning & Zoning Commission. In its decision, the Supreme Court acknowledged that Section 8-8(a)(1) was ambiguous and it was unclear whether the legislature in enacting that statute intended for it to apply to owners of property located outside the state. The primary basis for the Court's holding was the following sentence: "We conclude, therefore, that allowing persons who own land in another state to challenge the legality of a proposed project will protect the interests of a municipality and its citizens in uniform and harmonious development and in public health and safety, and will not solely benefit the persons who own land in another state at the expense of citizens of this state." The Court also stated: "we see no evidence that the legislature intended in this remedial statute that a municipality would be able to impose all the burdens of a land use within the municipality on persons who own land in another state, with no recourse for those persons."

With all respect to the Supreme Court, we believe that it has seriously misinterpreted the legislature's intent in enacting Section 8-8(a)(1) and that its interpretation causes greater harm than good. There are many reasons to believe that the Supreme Court's decision is contrary to the legislature's intent in enacting Title 8 including the following:

1. Title Eight makes clear that the grant to municipalities to enact zoning regulations is for the benefit and the general welfare of Connecticut municipalities. In other words, the legislative policy behind the zoning statutes is to allow, at the municipality's discretion, regulation of land use for the protection and benefit of the residents of the municipality. This can be demonstrated by the fact that there is no requirement in Connecticut that municipalities enact zoning regulations. Therefore, there are still towns in Connecticut that have no zoning regulations and in those communities there is no right to challenge a neighbor's use of his or her property. Thus, New York owners of property in adjoining states are in no worse of a position than Connecticut property owners whose property is within or abuts a Connecticut municipality who has not opted to adopt zoning regulations. The legislature has not provided every owner of property located in Connecticut with an avenue to administratively challenge land use decisions even if the property owner otherwise meets the requirements for statutory or classical aggrievement. Given that fact, it is hard to argue that the Connecticut legislature intended Section 8-8(a)(1) to provide a right to appeal to owners of land situated outside our state. The fact that the legislature has not required all municipalities to adopt zoning regulations or mandated regional zoning regulations supports the position that zoning in Connecticut is intended to benefit the welfare of municipal residents and to protect land development within the municipality at the municipality's discretion.
2. Owners of property located outside the state are not subject to Connecticut zoning

statutes. They may use their property unfettered by Connecticut municipal zoning regulations and the Connecticut General Statutes. Thus, they have substantially less, or no, need to be protected by the right to appeal a decision of the municipal zoning authority which has no authority to regulate their property.

3. In the development and use of their properties, out-of-state property owners are not burdened with having to comply with Connecticut municipal zoning regulations. Under the Supreme Court's holding, property owners in the states of New York, Massachusetts and Rhode Island whose properties border Connecticut are permitted to seek to restrict property development in Connecticut without having to comply with the Connecticut zoning restrictions. Simply put, there is absolutely no authority that the Connecticut legislature was/is concerned with the rights of property owners whose land is located in another state. If owners of property outside of the state of Connecticut are permitted to appeal decisions of local zoning commissions, a Connecticut court might be faced with the prospect of having a development satisfy a Connecticut municipality's Zoning Commission and all Connecticut property owners but be objectionable only to out-of-state property owners with no ties to the municipality. If a municipality needs to construct a public school or wants to build affordable housing within its borders, owners of out-of-state property should not be allowed to challenge these projects under local zoning regulations and thwart the development of Connecticut municipal projects.

In this regard the Supreme Court's decision provides a real incentive for developers to purchase sites across the Connecticut state line. As an illustration, if a piece of property straddles the Connecticut/New York state line, the developer would be better off only developing the piece in New York because Connecticut property owners who abut the New York piece cannot file an administrative appeal of the New York municipality zoning decision. However, under the Abel

decision, if the developer sought to develop the Connecticut parcel, New York property owners could make such a challenge in a Connecticut court.

The Supreme Court's decision in Abel does discuss the scope of standing to appeal zoning decisions in New York State. There are in New York cases which hold that New York property owners who do not own property within the New York municipality do not have standing to appeal. There are other New York cases in which a more expansive view is expressed in vague terms, but no case hold either implicitly or explicitly that out-of-state property owners have a right to appeal zoning decisions issued in New York. Thus, there are no reciprocal appeal rights provided to Connecticut residents of New York zoning decisions.

4. Contrary to the implied rationale of the Supreme Court in Abel, out-of-state property owners do have a remedy to contest development in the state of Connecticut. They have the right to pursue an injunction or claims of nuisance or other harms in a regular lawsuit, but would not be able to challenge a zoning commission's decision by way of an administrative appeal. The rights of out-of-state property owners are no less than Connecticut property owners who do not live in towns who have elected to adopt zoning regulations.

5. The decision of the Supreme Court is also contrary to long-standing general rules of construction of zoning statutes. Zoning statutes are to be strictly construed which the legislature presumably is aware of when it enacts zoning legislature. These rules of statutory construction include the following: (1) There is a presumption that when a legislature enacts a statute, it is not intended to have extra-territorial (outside the state) application. (2) Statutes are generally subject to a strict construction where they interfere with private property rights or are in derogation of rights of individual ownership. Zoning statutes are in derogation of property rights and therefore must be strictly construed. (3) Statutes in derogation of the common law must also

be strictly construed. Zoning statutes are in derogation of the common law and therefore under long-standing precedent, they are to be strictly construed.

CONCLUSION

We believe the Supreme Court's decision in *Abel v. Planning and Zoning Commission of the Town of New Canaan*, misinterpreted the Connecticut legislature's intent in enacting Conn. Gen. Stat. § 8-8(a)(1), elevates the rights of out-of-state property owners to restrict development of property of Connecticut property owners, and does this without ensuring that Connecticut property owners have equal and reciprocal rights to restrict development in neighboring states.