

TO: Hon. Thomas J. Serra, Mayor
FROM: Dominique S. Thornton, Corporation Counsel
RE: Summary of Opinion Letter: Disqualification
Due to Common Council Conflict; Predetermination
DATE: April 11, 1995

QUESTION PRESENTED:

Considering their previous actions, can Council members vote on a zone change application of Tuttle Road Associates to R-1 Zone?

CONCLUSION: Commissioners may vote unless they have irrevocably made up their own minds whether to approve or disapprove regardless of any arguments which may be advanced at the public hearing.

1. "The decision as to whether a particular interest is sufficient to disqualify...is necessarily a factual one and depends upon the circumstances of the particular case." Cioffoletti v. Ridgefield P. & Z. Commission, 209 Conn. 544, 552 (1989).

2. "To prove predetermination, it must be shown that the agency members were irrevocably committed to the particular action no matter what evidence was produced." Id.

3. "The law does not require that members of zoning commissions must have no opinion concerning the proper development of their communities. It would be strange, indeed, if this were true." Id.

4. "When a zoning commission acts on a zone change it acts in a legislative capacity." Primamerica v. Planning and Zoning Commission, 211 Conn. 85, 96 (19); Parks v. Planning and Zoning Commission, 178 Conn. 657, 660 (19).

5. "Unless there was a clear abuse of discretion which resulted in unlawful discrimination against a property owner, or an unreasonable deprivation of property rights, the welfare of the public and not the gain of a private individual is the paramount consideration for a Commission in considering a zone change." Corsino v. Grover, 148 Conn. 299 (1961).

6. Each Commissioner must decide for himself or herself whether or not he or she has made up his or her mind to approve or disapprove the change regardless of the considerations that may be advanced at the hearing and disqualify himself or herself if that is the case.