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ALTERNATIVE ZONING TECHNIQUES

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You asked for a discussion of the similarities and differences among, floating zones, planned development districts (PDDs), and overlay zones and the authority for adopting these techniques under Connecticut law.

SUMMARY

The techniques you asked about represent a departure from traditional zoning. Under traditional zoning, municipalities divide land into zones and regulate how land is used in these zones. Generally, only certain types of land uses are allowed in each zone. In addition, traditional zoning regulations specify, *inter alia*, the distance buildings must be set back from lot lines, the proportion of the lot that can be covered by buildings, and the maximum height of buildings and other structures on the property.

Overlay zones typically impose further restrictions on how land can be used, in addition to the restrictions imposed by traditional zoning. These restrictions often address broader issues and concerns. For example, aquifer protection zones restrict or prohibit activities that could jeopardize drinking water sources, independent of how the affected land is zoned.

In contrast to overlay zones, floating zones and PDDs are alternatives to traditional zoning that give municipalities and developers greater flexibility by emphasizing general goals instead of strict regulatory requirements. They make it easier for developers to plan and develop

projects involving a mix of different uses. The difference between floating zones and PDDs are largely procedural. The creation of floating zones takes place in a two steps, in which the municipality first amends its zoning regulations to permit certain types of uses and then approves specific projects comply with the amended regulations. In PDDs, the zoning commission normally approves the zoning regulation amendment and the specific project in one step. Floating zones differ from overlay zones in that latter is site specific, while the former “floats” over a zoning map until there is a proposal for a specific development.

Although the statutes and special acts authorizing zoning in specific municipalities (with the exception of PA 06-128) do not specifically address overlay zones, PDDs, or floating zones, the courts have held that the law implicitly grants municipalities the power to use these techniques. Most recently, the state Supreme Court upheld the creation of a PDD in New Haven under the special act granting the city zoning authority. Before the Court rendered its decision, the legislature specifically authorizes New Haven to use these and related techniques, subject to several limitations (PA 06-128).

TRADITIONAL ZONING

CGS § 8-2 and similar provisions in the special zoning acts applicable to individual municipalities allow municipalities to engage in traditional zoning. Specifically, these laws allow municipalities to divide towns into zones and regulate the way buildings are built and used in these zones. Under CGS § 8-2, the zoning regulations must be uniform for each class of building or land use within a zone, but can vary between zones. Commonly, such zones are limited to specific types of uses, for example single family housing and ancillary uses. Zoning regulations routinely specify how close buildings can be to the edges of the lot and how tall they can be. Zoning regulations can also permit certain classes or kinds of buildings or land uses only with a special permit or special exception that meet the standards set forth in the regulations that are designed to protect public health, safety, convenience, and property values.

Traditional zoning is sometimes called Euclidean, after a 1925 U.S. Supreme Court case, *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926), that first upheld the use of zoning. As the Appellate Court noted in *Campion v. Board of Aldermen, City of New Haven*, 85 Conn. App. 820 (2004), Euclidean zoning is a fairly static and rigid form of zoning in which each zone is dedicated to a particular purpose, either residential, commercial, or industrial, as depicted on the municipality's official zoning map.

ALTERNATIVE ZONING TECHNIQUES

Floating Zones

The Connecticut Supreme Court has defined floating zones as a special detailed use district of undetermined location in which the proposed kind, size, and form of structures must be preapproved. It is legislatively predeemed compatible with the area in which it eventually locates if specified standards are met and the particular application is not unreasonable. . . . It differs from the traditional Euclidean zone in that it has no defined boundaries and is said to float over the entire area where it may eventually be established.

(Schwartz v. Town Plan and Zoning Commission of Hamden, 168 Conn. 22, 23 (1975))

According to *Land Use Law and Practice* (B. Fuller, 2006), establishing a floating zone is a two-step process. The zoning commission first adopts the floating zone regulations, which do not apply to any particular property, but merely designate a type of use that can be allowed in the municipality. The second step is the actual change of zone and approval of a specific project, although in practice the amendment to the regulations and the approval of a specific project may be made at the same commission meeting.

Floating zones are proposed when a project does not appear to fit into existing zones. To avoid “spot zoning” (zoning small parcels of land for uses that differ from the surrounding area) the regulations generally contain standards and permitted uses that can be applied to more than one site. Alternatively, the regulations may require a developer to obtain a special permit as a condition for using property in the zone for the preapproved uses.

Planned Development Districts

A number of municipalities have provisions in their zoning regulations establishing planned development districts, which can incorporate mixed use or special purpose developments. In practice, such districts allow the municipality and a developer to negotiate standards for a development that might not fit existing zoning categories. Under Branford and Shelton’s zoning regulations, the planning and zoning commission can establish planned development districts within a special

development area designated on the zoning map. The commission can establish such districts when it finds it necessary and appropriate for the purposes of developing tracts to be developed or redeveloped.

Bridgeport is considering establishing a planned development district for the Steel Point project to convert the former working-class neighborhood and industrial area into housing and commercial attractions, including shops, restaurants and marina facilities.

New Haven has dozens of planned development districts, including large parts of downtown and Science Park, which is the site of biotech offices and laboratories. Unlike floating zones, planned development districts established under the New Haven zoning ordinance combine into a single step the approval of a zoning map amendment and a general development plan for the district. As noted in *Campion v. Board of Aldermen, City of New Haven*, 85 Conn. App. 820 (2004), PDDs in New Haven differ from floating zones in that they do not have detailed standards.

Overlay Zones

As noted in *Stauton v. Madison Planning and Zoning Commission* 2003 WL 548354 (2003) an overlay zone differs from a floating zone in that a floating zone may potentially be located anywhere in a municipality, while an overlay zone is site specific. Unlike floating zones, property in an overlay zone may continue to be subject to all of the regulations, responsibilities, and controls associated with the underlying zone unless the property owner applies for a special permit that would allow additional uses of the property not normally allowed in the underlying zone but allowed in the overlay zone.

A number of municipalities, such as Danbury, Granby, Hebron, Ridgefield, and Westport, have established overlay zones pursuant CGS § 22a-354h *et seq.*, which requires:

1. planning and zoning commissions to delineate, in accordance with the Department of Environmental Protection (DEP) regulations, aquifer protection areas on their zoning maps;
2. municipalities to adopt regulations governing regulated activities in these areas; and
3. municipalities to designate a local agency to enforce these regulations.

Regulated activities are actions, processes, and conditions that DEP, by regulation, determines involve the production, handling, use, storage, or disposal of material that may threaten the groundwater in an aquifer. Certain activities are prohibited in the overlay zone, even though they are permitted under the underlying zoning regulations. Other activities are only allowed with a special permit.

Municipalities such as Colchester, Greenwich, and Stonington have developed overlay zones pursuant to CGS § 8-2 to protect historic assets without having to form local historic districts. In Greenwich, the historic overlay zone is designed to preserve unique buildings and structures with historic or aesthetic values related to the town's history. Property owners can request the additional overlay designation, and the application is subject to an advisory review by the town's historic district commission. If the application is approved, the property owner can increase the density of development on the site, consistent with the zoning regulations.

In Bristol, the Downtown/Neighborhood Transition zone is an overlay zone that is designed to provide a functional transition between the intensive, mixed-use development of downtown and the adjacent, predominantly residential neighborhoods. Among other uses, the zone permits certain types of commercial activities not normally allowed in single-family residential zones, such as specialty retail establishments and professional offices.

Similarly, Madison established an overlay zone as an initial step to permit the development of an adult community in an area that had previously been zoned for industrial and commercial uses. See *Stauton v. Madison Planning and Zoning Commission*, 2003 WL 548354.

LEGAL AUTHORITY

Until the passage of PA 06-128, which explicitly allowed New Haven to use certain alternative forms of zoning, the statutes have not specifically allowed municipalities to establish planned development districts, overlay zones, or floating zones. Nonetheless, the courts have found that these powers are implicit in the statutes and zoning special acts.

Floating Zones

The state Supreme Court has held that the legislature authorized, in a 1959 amendment to CGS § 8-2, the use of floating zones as a means of providing flexibility in zoning. *Lurie v. Planning and Zoning Commission* 160 Conn. 295 (1971), see also *Schwartz v. Town Plan & Zoning*

Commission, 168 Conn. 20, 22-23 (1975) and *Pleasant Valley Neighborhood Association v. Planning & Zoning Commission*, 15 Conn. App. 110, 115 (1988).

In *Sheridan v. Planning Board*, 159 Conn. 1, 17 (1969), the Supreme Court similarly concluded that floating zones were authorized under the special act giving Stamford zoning authority even though the act did not specifically use the term “floating zone.” The court concluded that the language in the special act, just as that in CGS § 8-2, is sufficiently broad to permit the creation of floating zones. In creating a floating zone, and in applying it to a particular area, the Stamford zoning board was regulating the location and use of buildings and land in a manner which clearly is permitted under the special act. The Appellate Court similarly ruled that New Haven’s special act authorizes floating zones in *Campion v. Board of Aldermen, City of New Haven*, 85 Conn. App. 820 (2004).

In searching for enabling authority for Stamford’s floating zone regulation, the analysis in *Sheridan* centered on the substance and function of the regulation as it related to the broad authority conferred by the relevant special act. It also held that the validity of such “floating zones” could be challenged only in an appeal from the zoning of a particular parcel of land, not from the promulgation of the regulations.

The creation of a floating zone is a legislative act in which the commission is given broad discretion. The adoption of the floating zone regulations cannot be appealed until they are actually applied to a particular proposed development. *Schwartz v. Town Plan and Zoning Commission of Hamden*, 168 Conn. 22, (1975), *Sheridan v. Planning Board*, 159 Conn. 1, 17 (1969). Unlike a special permit, a zoning commission is not required to approve a floating zone for a specific development even if the applicant meets all of the requirements of the regulations. *Homart Development Co. v. Planning and Zoning Commission of Watertown*, 26 Conn. App. 212, 215 (1991).

Planned Development Districts

In *Blakeman v. Planning and Zoning Commission*, 82 Conn. App. 632 (2004) the Appellate Court held that commissions function in their legislative capacity when acting on applications to create a planned development district. As a result, the commissions have broad discretion. It cited the Supreme Court opinion in *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning and Zoning*

Commission, 220 Conn. 527, 542-44 (1994), in which the Court held that

the legislative discretion is wide and liberal, and must not be disturbed by the courts unless a party aggrieved by that decision establishes that the commission acted arbitrarily or illegally.... Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment.

In *Campion v. Board of Alderman, City of New Haven*, 278 Conn. 500, 514 (2006), the Supreme Court held that “the approval of a planned development district is not different from the creation of any other new zoning district.” It concluded that such districts, like a floating zone, “alters the zone boundaries of the area by carving a new zone out of an existing one,” and, consequently, represents a legitimate legislative act by the city to regulate growth and meet the need for flexibility in modern zoning (*ibid* at 517-18).

Based on its decision in *Sheridan* with respect to the permissibility of floating zones, the Court concluded that the language of New Haven’s special act is sufficiently broad to permit the creation of planned development districts under New Haven’s zoning ordinance, reversing the Appellate Court’s decision. The Supreme Court decision is available online at <http://www.jud.ct.gov/external/supapp/Cases/ARocr/CR278/278CR68.pdf>

While the Appellate Court held that New Haven’s establishment of PDD’s would not have been allowed even under CGS § 8-2, the Supreme Court did not address this issue. Assuming that the Appellate Court’s was correct in stating that the powers granted under CGS § 8-2 are broader than those granted under the special act, this would imply that CGS § 8-2 authorizes the establishment of PDDs.

Overlay Zones

In *Stauton v. Madison Planning and Zoning Commission*, 9 Conn. Ops 292 (2003), 2003 WL 548354, the court held that the use of an overlay zone to allow a planned development community did not violate the uniformity requirement of CGS § 8-2 when it was (1) the municipality required a special permit for the development under its zoning regulations, (2) the development was consistent with the municipality’s plan of development and comprehensive plan, and (3) was supported for numerous reasons given by the zoning commission.

In *Heithaus et al. v. Planning and Zoning Commission of the Town of Greenwich*, 258 Conn. 205 (2001), the Supreme Court held that the Greenwich zoning commission functioned in its administrative capacity in denying an application for a historic overlay zone. Therefore the commission's decision had to have been supported by substantial evidence in the record. In contrast, when commissions act in their legislative capacity, e.g., when amending zoning regulations, their decisions must be upheld if they are reasonably supported by the record, a less rigorous standard.

PA 06-128

This act allows municipalities meeting very narrow criteria to adopt specified zoning regulatory techniques. Its authorization applies to municipalities exercising zoning powers under a special act, that have a mayor-alderman form of government, and that were incorporated in 1784. (New Haven is the only municipality that meets these criteria.) The techniques are floating and overlay zones and flexible zoning districts. The latter include planned development districts, planned development units, special design districts, and planned area developments. A municipality that chooses to adopt these techniques must do so under its zoning regulations and comply with the act's restrictions.

A municipality's zoning regulations must establish regulatory standards for floating and overlay zones and flexible zoning districts. The flexible zoning districts must benefit the municipality, its floating and overlay zones, and the neighborhoods in which the districts are located. A flexible zoning district regulation may establish a zone within an existing residential neighborhood, but the new zone's requirements must be at least as restrictive as the underlying zone's.

The flexible zoning district regulations must not allow anyone to expand a preexisting nonconforming use (i.e., one that does not conform to the current zoning requirements but was allowed before they were adopted or changed). The act also prohibits a zoning commission from approving planned development districts in residential zones.

It is unclear whether PA 06-128, by implication, affects the ability of other municipalities to use alternative zoning techniques. The provision was added as an amendment, and the floor debate only addressed New Haven.

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