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CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
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October 16, 2023

Yi-An Huang
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Response to Awaiting Report No. 23-23 re: legal opinion which clarifies the state law on zoning petition signature requirements to ensure clarity and lawful deliberation in the future

Dear Mr. Huang:

I am writing in response to Awaiting Report No. 23-23 which requests a legal opinion which clarifies the state law on petition signature requirements to ensure clarity and lawful deliberation in the future (the "Council Order"). This Council Order arose out of a resident zoning petition filed by Douglas Brown, a property owner, on January 4, 2023 (the "Brown Petition"). The Brown Petition was filed by an individual property owner but was citywide in scope, and would have affected multiple zoning districts and almost every residential parcel in the City. On February 13, 2023, the Law Department issued an opinion to the Council that stated that:

"[i]t appears that Mr. Brown is a trustee for a trust that owns 35 Standish Street, which is in a Residence B Zoning District. However, the amendments are not limited to affecting Mr. Brown's property or the district in which his property is located. A single citizen cannot initiate a zoning amendment that would affect a zoning district in which the single citizen has no property interest. Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 101 Mass. App. Ct. 1108 (2022) (unreported). Accordingly, the Brown Petition cannot be initiated by an individual landowner. It may be permissible as a zoning petition filed by ten registered voters, but that was not the case here."

Therefore, the Law Department opined that the City Council should rescind the vote to refer that petition to the Planning Board and Ordinance Committee because the vote was defective as a matter of law.

The Council Order states that “[d]iscussion in the City Council over the [February 13, 2023] legal opinion resulted in confusion about the legal right of a single individual property owner to file zoning petitions which may come up for future petitions” and therefore requested this opinion. Specifically, the Council Order requests clarification concerning the applicability of Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 101 Mass.App.Ct. 1108 (2022) to the facts presented by the filing of the Brown Petition. The Council Order also cites to and links to Land Court decision, which is a 1992 case from the Town of Shrewsbury, Davolio v. Town of Shrewsbury, 1992 WL 12151913 (Land Ct. 1992). The Council Order states that case “appears to confirm and affirm the right of a single individual property owner affected by the decision to file a zoning petition.”

As discussed below, our opinion that an individual landowner cannot initiate a zoning amendment that would affect a zoning district in which the individual landowner has no property interest has not changed and is in keeping with state law. The law allows an individual landowner the ability to initiate a zoning petition that would affect that landowner’s property, but requires ten registered voters to initiate the process to make zoning changes to other zoning districts or other specific properties. The intent is that an individual landowner can have a role in shaping the zoning that applies to their property, but there needs to be the support of at least ten community members to initiate changes to the zoning applicable elsewhere in the city. The cases cited in the Council Order either support this standard or are distinguishable.

As stated in the February 13, 2023 Council Order response, Mr. Brown is a trustee for a trust that owns a property located in a Residence B Zoning District. The proposed Brown Petition would have affected all Residence A-1, A-2 and B Districts. As such, the proposed Brown Petition was not limited to the Residence B Zoning District. In Bellingham, the Appeals Court found that the zoning petition at issue in the case was not proper because the petitioner did not own any of the parcels included in the zoning amendment.¹ The Bellingham case holds that “permitting a single citizen with no property interest in the affected district to initiate a zoning amendment would be contrary to the clear language of the statute.” Thus, while Mr. Brown may be able to bring a zoning petition that affects only the Residence B Zoning District, he cannot bring a petition that would also affect Residence A-1 and A-2 Zoning Districts. The Brown Petition was therefore invalid under state law.

Likewise, the Davolio case is distinguishable from the Brown Petition because the petitioner in Davolio owned property in the zoning district that was the subject of the rezoning. In

¹ The Council Order cites to Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham by linking to the Land Court decision in that case (Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 2021 WL 2994398, 20 MISC 000115 (Land Ct. 2021)). However, the Land Court decision cited was appealed to the Appeals Court. Where a case has been appealed, and an appellate level decision has been issued, the appellate level decision is controlling in the case. While a court can look at a trial court decision as persuasive authority, it is not precedent. Notwithstanding, the Land Court decision in the Bellingham case (Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 2021 WL 2994398, 20 MISC 000115 (Land Ct. 2021)) found that “as a matter of law, strict compliance with G.L. c. 40A, §5, first para., is required, that strict compliance did not occur here [because the petitioner did not own land in the districts that would be affected by the proposed change], and that the failure to comply was ‘significantly inconsistent with, or prejudicial to, the apparent legislative objectives of the prescribed procedures.’” Therefore, the Land Court decision also found that there was a requirement that a petitioner own land in the affected district.

the Davolio case, the defendants Spag's Supply Inc. and C.J. & S., Inc., the real estate holding company for Spag's, owned a number of parcels in the Town of Shrewsbury. By virtue of several town meeting votes, the defendants acquired from the town an additional parcel in the town's commercial-business zoning district, rezoned another parcel to be in the commercial-business zoning district, and altered the provisions of what was allowed in the commercial-business zoning district. The Land Court found that the defendants "are affected by Article 11 and apparently also by Article 12 [the two town meeting warrant articles that sought to alter the provisions of what was allowed in the commercial-business zoning district], although its relation to the Spag's proposal was not made clear." Accordingly, the Land Court found that the defendants owned land to be affected by the zoning change, although the Land Court did not specify if that was by virtue of Spag's Supply Inc. and C.J. & S., Inc. acquiring the parcel in the commercial-business zoning district from the town, rezoning another parcel that it owned to be in the commercial-business zoning district, or by owning other property that was in the commercial-business zoning district. In any event, the Land Court found that Spag's Supply Inc. and C.J. & S., Inc. had an ownership interest in a property in the commercial-business district and therefore could properly file a zoning petition to amend the commercial-business district.

The two cases cited above stand for the proposition that, pursuant to G.L. c. 40A, §5, an individual property owner cannot initiate a zoning amendment that would affect a zoning district in which the individual property owner has no property interest. As such, the Brown Petition was not permissible because it affected Residence A-1, A-2 and B zoning districts, and Mr. Brown is only an owner of land in a Residence B Zoning District. In the future, the City Council can accept resident initiated zoning petitions from an individual property owner owning land in the district that would be affected by the proposed zoning change, or by ten registered voters in the City. A citywide petition affecting multiple zoning districts would require ten registered voters to submit the petition, unless an individual property owner owned property in all affected districts.

Very truly yours,



Megan B. Bayer
Acting City Solicitor