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ResearchReport

Applicability of Zoning Laws and Regulations to the State

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Issue

Do local zoning regulations apply to projects in which state property (e.g., a state office building) or commercial property (e.g., a mall) is converted to affordable housing?

This report updates OLR Report 2007-R-0219.

The Office of Legislative Research is not authorized to provide legal opinions, and this report should not be considered one.

Summary

Although no Connecticut statute addresses the state's relationship to local zoning, courts have held that state government's use of its own property is immune from municipal zoning and other land use controls. Several attorney general's opinions extend this immunity to situations in which (1) the state leases private property for a state purpose or (2) a private business operates on state property in furtherance of a governmental function. However, zoning regulations generally apply to a private entity that has been delegated a state function, or operates with some state funding or support, but does not operate on state property.

Although we did not identify any cases that analyze this question with respect to affordable housing, under the above framework local zoning regulations would likely not apply to (1) the state (a) converting state-owned property into affordable housing or (b) leasing private property and using it for a state purpose, such as increasing affordable housing stock, or (2) a private entity establishing or operating affordable housing on a state-acquired property to further a state

objective. However, as noted above, zoning regulations would likely apply if a private entity converted private property, such as a mall, into affordable housing, even if the project received some state support or assistance (though the impact of zoning could be limited by the Affordable Housing Land Use Appeals Procedure (i.e., CGS § 8-30g)).

Please note that while state agencies do not have to comply with local zoning, other laws may apply that address similar concerns. For example, agencies undertaking an action that may significantly affect the environment must, under the Connecticut Environmental Policy Act, prepare a detailed evaluation that examines water quality and health impacts, ambient noise levels, aesthetic or visual effects, traffic impacts, and consistency with state and local planning documents, among other items (CGS § 22a-1b et seq. and Conn. Agencies Regs., § 22a-1a-1 et seq.). Their projects may also be subject to review by the Office of the State Traffic Administration (CGS § 14-311, as amended by PA 23-135, § 3).

Related 2023 Legislation

A recently passed law requires the Office of Policy and Management secretary, in consultation with the administrative services and transportation commissioners, to study whether any state-owned real property (excluding conserved lands) is available and suitable for developing as housing. The study must focus on property that is suited to transit-oriented and affordable housing development and must be submitted to the governor and legislature by January 1, 2024 (PA 23-204, § 200, effective October 1, 2023).

Another new law requires the Department of Veterans Affairs, within available appropriations, to convert, rehabilitate, and renovate vacant, underused, or otherwise available properties for housing homeless or housing insecure veterans. The department must build, improve, or remediate infrastructure as needed to support the residential use of these properties (PA 23-207, § 22, effective July 1, 2023).

Applicability of Local Zoning Regulation

State Use of State Property

While no statute specifically exempts the state from local zoning regulation, several concepts found in Connecticut case law provide this immunity. These are stated in 9 *Connecticut Practice Series, Land Use Law and Practice § 1:5* (4th edition, accessed via Westlaw on November 6, 2023):

1. A municipality has no inherent powers of its own, only those expressly granted by the state. No statute expressly gives towns the right to regulate state functions through zoning or other land use control (citing *Simons* v. *Canty*, 195 Conn. 524 (1985)).

2. Local law must yield to the superior power of the state in an area of statewide concern (citing *Shelton* v. *DEEP Commissioner*, 193 Conn. 506 (1984) and *Bencivenga* v. *Milford*, 183 Conn. 168 (1981)).

3. Statutes limiting rights are not construed as covering the state government unless that appears to be the legislature's clear intention (citing *State* v. *Goldfarb*, 160 Conn. 320 (1971)).

In a 1949 opinion, the Office of the Attorney General (OAG) reached the same conclusion in response to a question from UConn about the application of zoning regulations to property it intended to use for the School of Social Work:

> *"the zoning laws cannot be construed to embrace the sovereignty of the State. There does not appear, by express terms or necessary implication in the zoning act [i.e., CGS § 8-2], a clear legislative intent to include the State or impair the rights of the State by zoning regulations" (Opinion dated August 22, 1949).*

However, the state has consented to be regulated by local zoning in at least one situation. The law requires the Department of Transportation to conform to zoning ordinances (and avail itself of variances and special exceptions) when it uses any site acquired by eminent domain for a maintenance storage area or garage (CGS § 13a-73(b)).

State Use of Leased Private Property

At least two attorney general opinions have held that the state is immune from local zoning when it leases private property and uses it for a state purpose. In 1987, a state agency's commissioner asked the attorney general whether a facility the state leased was subject to local zoning. The circumstance involved the predecessor to the Department of Mental Health and Addiction Services potentially leasing private property in a residential zone to locate a crisis intervention center in Stamford. The attorney general opined that the facility would be exempt from zoning because it was to be under state control and custody and staffed by state employees and used for a legislatively created purpose. That the state would be leasing a private building was irrelevant, the facility would still be exempt from zoning (1988 Conn. Op. Atty. Gen., No. 88-002).

In 1988, House Speaker Stolberg asked the attorney general the same question concerning the legislature's leasing private property to establish a day care center. The attorney general stated that the property was not subject to local zoning because the center was (1) established by legislative mandate to further a state policy addressing the state's childcare problem and (2) to be largely state-run and state-funded. He based his opinion largely on the principal that "municipal zoning ordinances do not apply to the state or its agencies unless the legislature has clearly indicated a contrary intent" (1988 Conn. Op. Atty. Gen., No. 88-19).

Private Enterprises Operating on State Property

At least four attorney general opinions addressing private enterprises on state property reach the same conclusion: businesses leasing space from the state and providing a service in furtherance of a governmental function are not subject to local zoning regulations.

According to these opinions, the state's immunity from zoning extends to private enterprises leasing state property when the private enterprise supports a state function. Examples of private enterprises exempt from zoning under this principle include the following:

1. a hotel located on state-owned airport property and leased to a private operator ("*Where a governmental body is entitled to an exemption from zoning laws for a particular function, and it leases part of the premises involved therein to a private individual or corporation, the private lessee is likewise entitled to an exemption…The exemption extends to facilities for the enjoyment of the dedicated use."*) (Opinion dated December 10, 1959);

2. the lessee of state park land that operated ski resort facilities *("The improvement of the parking, eating and toilet facilities would be in furtherance of the full enjoyment of the State Park recreational uses providing the public with added conveniences for the full enjoyment of the dedicated use."*) (Opinion dated July 10, 1963);

3. a shopping center located on UConn property and used by dormitory residents *("It is clear, then, that a University-owned shopping center is similar in nature to the hotel that dispenses alcohol at a state-owned airport. Although not essential to the agency's mission, it provides a useful service."*) (1986 Conn. Op. Atty. Gen., No. 86-63); and

4. a transit-oriented development (TOD) project that the Department of Transportation was participating in, and as part of which the state would lease land to a private developer for a combination of public and private development (*"Since [prior OAG]… opinions addressed both the governmental function involved and whether the private use contributed to that function, it is important to review here exactly how the planned garage in Stamford will serve a public function…We credit your conclusion that the private and commercial development aspects of the Stamford project are intended to advance the important public purpose served by the TOD legislation.")* (2014 Conn. Op. Atty. Gen., No. 2014-006).

Delegated or State-Supported Function Performed on Private Property

Connecticut case law and OAG guidance distinguish between private enterprises operating on state property in furtherance of a governmental function and those operating with state support on non-state property. The Connecticut Practice Series (see above) states the following, regarding private entities and the applicability of zoning regulations: "[t]he State's exemption from local zoning regulations does not apply to and cannot be delegated to an organization acting for the State pursuant to a statute even if the State itself would be exempt if it engaged in the same use."

In an unpublished 1997 Superior Court case, the court determined that a nonprofit that was operating an alternative incarceration program on private property under contract with the state's Judicial Department was not exempt from local zoning, even if the department would have been exempt if it had operated the program itself (*Community Renewal Team of Greater Hartford, Inc.* v. *Shelton Planning and Zoning Comm.,* No. CV 950050073S, 1997 WL 133502 (Conn. Super. Mar. 11, 1997)).

The above-cited 2014 attorney general opinion on TOD projects reached the same conclusion, determining that local zoning would apply to a scenario in which a state-supported TOD project would be developed by a private entity on non-state property. Similarly, the above-cited 1988 attorney general opinion involving a proposed crisis intervention center in Stamford distinguished between scenarios involving leased property in which the state operated a state-funded and state-employee staffed satellite office (exempt from zoning) and the state licensed and supported a nonprofit-operated facility (subject to zoning).

JSB:kl