

MEMORANDUM FROM THE LAW OFFICES OF  
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TO:	Richard P. Roberts
FROM:	Michael C. Collins
DATE:	2/14/2022
RE:	Opinion Re: Open Space Classification in Thompson – PA 490

This memorandum is in response to a request for advice from Tyra Penn-Gesek, the Director of Planning & Development for the Town of Thompson regarding the past and future participation by the Town in the classification of land as Open Space for purposes of taxation pursuant to PA 490. The communication from Ms. Penn-Gesek, which is attached, included a synopsis of relevant facts as well as some attachments providing context for where the Town is and has been on the issue. Reference to certain of those facts will be included below.

The classification of land as open space for purposes of taxation is controlled by Connecticut General Statutes Section 12-107e. Prior to July 1, 1979, that statute read in pertinent part as follows: “The planning commission of any municipality in preparing a plan of development for such municipality may designate upon such plan areas which it recommends for preservation as areas of open land. Land included in any area so designated upon such plan as finally adopted may be classified as open space land for purposes of property taxation....” As set forth in the synopsis that has been provided, the Town Planning Commission voted to approve the designation of Open Space land in Town in the Plan of Development in June of 1979. The Assessor at the time apparently began enrolling parcels as Open Space for purposes of taxation once the Planning Commission took this action.

The State Legislature passed Public Act 79-513, §3, which amended Connecticut General Statutes Section 12-107e by adding the requirement that the designation of areas of open space land recommended for preservation in a plan of conservation and development for a municipality must be “approved by a majority vote of the legislative body of such municipality”. The public act, and with it this requirement, became effective on July 1, 1979. The legislative body of the Town of Thompson has never approved the designation. It is our opinion that once the amendment to the statute pursuant to the public act became effective, there was no authority for the Assessor to enroll additional parcels as Open Space for purposes of taxation.

There have been some court decisions that have interpreted the statute that support our conclusion. The Superior Court in Wee Burn Country Club, Inc. v. Town of

Darien, 2010 WL 1006054, addressed a motion to strike the claim that the town had illegally changed the basis of the valuation of land used as a golf course that when the town no longer considered it as recreational open space. In that case, the property had been valued beginning at some time in the 1970's based on its use as recreational open space. However, in October 2008 and 2009, the Assessor assessed the property and did not base the value upon its current use as recreational space. The court found, in striking the plaintiff's claim that the action by the town was illegal, that the requirement of legislative body approval that was imposed in 1979 had not been satisfied. The court found further that it would be contrary to the statute to allow the property owner to "bypass the requirements of §12-107e, merely because the property has in the past been valued as open space."

The court in Wee Burn relied upon the Supreme Court case of Aspetuck Valley Country Club, Inc. v. Weston, 292 Conn. 817 (2009) in arriving at its decision. The two cases had similar, but not identical facts. The property owner in Aspetuck owned property that had been used as a golf course for approximately forty years. The property was designated as open space on the plan of development in 1969. The property owner applied for an open space designation for tax assessment purposes for the first time in 2004. The application was denied because the legislative body had not approved the designation by majority vote. The Supreme Court found on appeal that the legislative history of §12-107e was clear (once it had been amended by Public Act 79-513, §3) that the legislature intended that property designated as open space in a municipality's plan of development must be approved by a majority of the municipality's legislative body before it may be classified as open space land for tax assessment purposes.

### Conclusion

It is our opinion that once Public Act 79-513, §3 became effective on July 1, 1979 no property was eligible to be classified as open space for the purposes of taxation in any municipality until the legislative body of that municipality approved by a majority vote the designation of areas of open space land recommended for preservation in a plan of conservation. Since the legislative body of Town of Thompson has never approved the designation, no authority to classify any property as open space for purposes of taxation after July 1, 1979 has been established. Any interpretation by a prior Assessor that a program enrolling parcels as open space for purposes of taxation that was established prior to the amendment of General Statutes Section 12-107e by Public Act 79-513, §3 was "grandfathered" such that the requirement of legislative body approval did not apply was incorrect. No new parcels may be classified or enrolled as open space for purposes of taxation unless and until this statutory requirement has been satisfied. The steps to accomplish this that are discussed in the correspondence from Ms. Penn-Gesek are appropriate.

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