

OPINION 65-218

Syllabus:

1. A county rural zoning commission is required by Section 303.12, Revised Code, to hear and determine only those applications for amendment or supplement filed with it by owners or lessees of affected property.

2. Property contiguous to, or directly across the street from, an area proposed to be changed is property "affected" by a proposed amendment or supplement to the zoning resolution.

3. The county rural zoning commission may determine that additional property is "affected" by a proposed amendment or supplement to the zoning resolution.

To: C. Howard Johnson, Franklin County Pros. Atty., Columbus, Ohio
By: William B. Saxbe, Attorney General, December 3, 1965

I have your request for my opinion which reads, in part:

"The Franklin County Rural Zoning Commission has requested an opinion regarding an interpretation of Section 303.12, Revised Code which provides for the methods by which amendments or supplements may be initiated to change the county zoning resolution. Summarizing the fact situation which led to this request, it was communicated to me that a Mr. M. has applied for a change of zoning on land owned by a corporation with which Mr. M. has no connection. Mr. M. also submitted petitions for this change of zoning signed by others. None of the signers including Mr. M. reside on, or contiguous to the subject land. * * *

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"Specifically, the question is, does the Rural

Zoning Commission have to entertain and act on the application of Mr. M. and those supporting petitioners none of whom live on, or contiguous to the subject property owned by the corporation?

"* * * * *"

Section 303.12, Revised Code, provides, in pertinent part:

"Amendments or supplements to the zoning resolution may be initiated by motion of the county rural zoning commission, by the passage of a resolution therefor by the board of county commissioners or by the filing of an application therefor by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment or supplement with the county rural zoning commission. * * *

"* * * * *"

"If the proposed amendment or supplement intends to re-zone or re-district ten or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the zoning commission, by first class mail, at least twenty days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from such area proposed to be re-zoned or re-districted to the addresses of such owners appearing on the county auditor's current tax list or the treasurer's mailing list and to such other list or lists that may be specified by the board of county commissioners. * * *" (Emphasis added)

It is clear that your question requires an interpretation of the language:

"* * * owners or lessees of property within the area proposed to be changed or affected by the proposed amendment or supplement. * * *" (Emphasis added)

There is no definition of "affected" as it is used in Section 303.12, supra. There is, however, other language in that section which enables me to reach certain conclusions as to its meaning. It is provided that the zoning commission shall mail written notice of hearing on application for amendment or supplement to the zoning resolution.

"* * * to all owners of property within and contiguous to and directly across the street from such area proposed to be re-zoned or re-districted. * * *"

From this provision, that owners of contiguous property and property directly across the street from the area proposed to be re-zoned or re-districted shall receive written notice of hearing, I conclude that the General Assembly intended to include such property in the class, "affected" property. This conclusion is reinforced by the common sense dictate that property

contiguous to, and across the street from property proposed to be changed would be affected by a change in the zoning resolution.

The question then arises: Is the class, "affected" property, comprised exclusively of contiguous and across-the-street property? It is clear that it is not. Had the General Assembly intended that only the owners and lessees of property to be changed and the owners of property contiguous to, and directly across the street from such property are authorized to file an application for amendment or supplement it would have specifically so provided. From the use of the word "affected" I conclude that the General Assembly intended that others than the owners of contiguous and across-the-street property are authorized to file applications for amendment and supplement to the zoning regulations.

As I have noted, supra, there is no definition of "affected" as such term is used in Section 303.12, supra. Therefore, I further conclude that the General Assembly has left to the county rural zoning commission the determination what property, in addition to the contiguous and across-the-street property, is "affected" by a proposed zoning change.

In answer to your specific question, it is my opinion that property contiguous to, or directly across the street from, an area proposed to be changed is property "affected" by a proposed amendment or supplement to the zoning resolution. The county rural zoning commission may determine that additional property is "affected" by a proposed amendment or supplement to the zoning resolution. A county rural zoning commission is required to hear and determine only those applications for amendment or supplement filed with it by owners or lessees of affected property.