

[Smagula v. Town of Hooksett](#)

In this interesting case, the Supreme Court has clarified some ambiguities surrounding the problems of zoning amendment protest petitions under [RSA 675:5](#).

Before going into the details, take a look at the timeline: this was a zoning amendment for the Hooksett 2002 town meeting. It's gone through trial and appeal in only 15 months!

Quick statutory overview: zoning amendments require a simple majority of voters present at town meeting to pass, unless a proper protest petition is filed--a protest petition changes the required vote to a 2/3 supermajority. Protest petitions must be filed by either "(a) The owners of 20 percent of the area of the lots included in such proposed change; or (b) The owners of 20 percent of the area within 100 feet immediately adjacent to the area affected by the change or across a street from such area." RSA 675:5:II.

The Hooksett planning board had proposed a change one of the town's zoning districts, which abutted the municipal boundary with Allenstown. A timely protest petition using qualification option (b) based on the town's tax maps was filed with the selectmen, who did not act to certify the petition until after the town meeting had voted (this practice makes sense, because if the measure failed to get a simple majority, or got more than a 2/3 supermajority, then the petition would be moot). At town meeting, 58% of the voters supported the amendment. After town meeting, the town disqualified some of the parcels, including those in Allenstown, the owners of which had signed the protest petition. In determining whether or not the requisite 20% of area within 100 feet had been met, the town also contradicted its own tax map data with independent survey information and deed research to demonstrate that the tax maps were incorrect. These two actions--disqualification of property in an abutting municipality, and use of other information to supplement/contradict the tax maps--were the points of appeal (the superior court found in favor of the town).

The Supreme Court found that property in neighboring municipalities must be included in the calculus, and that the owners of that property may sign protest petitions. In support of this conclusion, the Court cited *Britton v. Chester* (case not online), in which it had dealt with the extra-jurisdictional impacts of exclusionary municipal zoning practices. Although this citation didn't surprise me, I thought that the better support for the same conclusion would have been found in the statutory definition of abutter, which has consistently been understood to include owners of land in other municipalities (but not other states, and I think this portion of the question remains open regarding protest petitions, whether viewed from the *Britton* or the abutter angle). The Court's holding makes sense to me, because residency is not the standard for a protest petition (which the Court observed clearly). So the same situation would apply for the non-resident owner of a parcel in the town that is proposing the change. That owner can't vote at town meeting (as s/he is not a resident), but obviously can sign a protest petition.

The Court also found that the town's tax maps were the only proper measure for assessing what area is impacted by a zoning change, and hence for determining the validity of a zoning protest petition. The Court concluded that this is publicly available information, and that to require petitioners to independently verify the validity of the tax maps to ascertain the status of their protest petition would be an onerous burden. This is the situation, regardless of any disclaimers towns might include on their tax maps.

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