CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Fall 2012 Volume XVI, Issue 4

CHALLENGE WHETHER APPLICATION IS 'AFFORDABLE HOUSING' MUST BE RAISED BEFORE COMMISSION

An application was filed to construct 12 residential units on a one acre parcel. The parcel was being used for a single family residence. The application called for rezoning the parcel to a housing opportunity zone. Then, in two proposed buildings, 12 residences would be housed, four of which would be for affordable housing.

During the public hearing process, neighbors raised concerns over traffic and drainage. Experts hired by the applicant attempted to address these concerns. After the hearing closed, the application was denied for these reasons.

Only on appeal to court did the commission raise the issue that the application did not qualify as an affordable housing application. Defects in the affordable housing application were pointed out that disqualified it from being an affordable housing application.

The court refused to hear this argument, claiming that since the issue was not raised at the public hearing and was not a reason for decision, it could not be addresses by the court. The court was particularly concerned about due process and fairness to the applicant. If there were deficiencies in the plan, they should have been raised during the public hearing so that the applicant could respond to them. *See Landco Housing LLC v. Fairfield PZC, 53 Conn. L. Rptr. 836 (2012).*

ZONING VIOLATION ESCAPES ENFORCEMENT DUE TO MUNICIPAL ESTOPPEL

After a property owner had been issued a zoning permit and commenced construction of a sizable detached garage, a cease and desist order was issued. The basis for the order was that the structure being built exceeded the size of the building allowed by the zoning permit. An appeal to the zoning board of appeals by the property owner was unsuccessful. However, his appeal to court was successful. The cease and desist order was found by the court to be unenforceable due to the doctrine of municipal estoppel.

The doctrine of municipal estoppel can prevent the enforcement of zoning regulations when a municipal official, acting in his official capacity, induces another to act and that party does indeed act and substantial harm would occur if said official action was undone.

In this case, the property owner had sought a zoning permit from the proper town official, who then issued the permit which induced the property owner to act and start construction of a garage. When the cease and desist order was issued, the court found that substantial harm would result if the regulations were enforced as the order would require that the garage under construction be removed. It was of no importance to the court that part of the garage could remain and many of the expenditures made as of the time the

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cease and desist order was issued, such as installing a septic system and a well, would serve an existing cabin on the property. *See Crisman v. Zoning Board of Appeals, 137 Conn. App. 61, (2012).*

FAILURE TO RECORD HEARING DOES NOT INVALIDATE BOARD DECISION

A decision of a zoning board of appeals was appealed to court. When the administrative record was being prepared for its return to court, it was discovered that a transcript of the public hearing could not be fully prepared due to a mechanical problem with the recording equipment. The court ruled that the appropriate remedy is not to remand the matter back to the Board for a new hearing. Instead, the General Statutes sec. 8-8(k) provides that a hearing is to be held in Court where evidence can be taken to complete the record. *See Edwards v. Zoning Board of Appeals, 53 Conn. L. Rptr. 473 (2012).*

APPOINTMENT OF ENFORCEMENT OFFICER MUST COMPLY WITH TOWN CHARTER

Where a town charter provided for only one wetlands enforcement officer, the appointment of a second, independent officer, was found by the State Supreme Court to be null and void. In this case, the town, in attempting to respond to the complaints of a developer regarding the town wetlands director's supervision of his project, appointed a second inland wetlands enforcement officer who would supervise his project for compliance with the wetland regulations. This new officer would operate independently of the wetlands director.

The terms of the town charter provided for only one wetlands enforcement officer, who was the wetlands director. The court found that the appointment of a second wetlands officer was beyond the terms of the charter and thus illegal. It was beyond the authority of the town and its wetlands agency to appoint a second enforcement officer. *See Bateson v. Weddle, 306 Conn. 1 (2012).*

SUPREME COURT INSTRUCTS ON HOW TO MEASURE THE LENGTH OF CUL-DE-SAC

An application for subdivision approval was denied for the reason that if the plan was approved, the resulting road would exceed the permitted length for a dead end street. In denying the application, the Commission determined that the new road would be an extension of an existing subdivision road. When the lengths of these roads were added together, they exceeded the allowable limit as provided in the regulations. An appeal to court was taken. While the trial court and the court of appeals agreed with the Commission's interpretation of its regulations, the Supreme Court ruled otherwise.

In finding that the Commission was incorrect in its decision, the Court

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found that under the definition of street found in the regulations, these two streets were separate and distinct and should not be viewed as one continuous road. For instance, the intersection of these streets would be at 90 degrees in compliance with requirements in the regulations for street intersections. Furthermore, the existing street was a loop or lollipop road which did not meet the definition contained in the regulations for a dead end street. Thus, the proposed road, which was a dead end street, should not include the length of the existing road in determining whether it complied with the length requirement for dead end streets found within the regulations.

It should be noted that in reaching its erroneous decision, the Commission ignored the advise of its professional planner, something the Court pointed out as further evidence that the Commission's decision did not follow its own regulations. *See Kraiza v. Planning & Zoning Commission, 304 Conn. 447 (2012).*

LEGISLATIVE UPDATE

Public Act 12-151 has amended Connecticut General Statutes Sec. 22-42a by: 1) By allowing an inland wetland and watercourses commission to attach a condition of approval to an application for a regulated activity the terms of which restrict the time of year when the regulated activity can take place. Thus, activity could be limited to when the area is drier or when wildlife are least likely to be impacted by the proposed development; and 2) limiting the validity of a permit to 10 years or to when a companion planning or zoning permit expires, whichever is earlier.

ANNOUNCEMENTS

Membership Dues

If you have not paid your membership dues for this year, please do so as our organization operates solely on the funds provided by its members. So that we can continue to offer the services you enjoy, please pay promptly.

Workshops

If your land use agency recently had an influx of new members or could use a refresher course in land use law, contact us to arrange for a workshop. At the price of $175.00 per session for each agency attending, it is an affordable way for your commission or board to keep informed.

Workshop Booklets

Copies of the booklets handed out at workshops are now available to members at the price of $6.00 each and to non-members for $9.00 each.

ABOUT THE EDITOR

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