CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

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VALID NONCONFORMING USE MUST BE LEGAL

A property owner received a cease and desist order which asserted that she was operating a junkyard in violation of the zoning regulations. Her defense was that her junkyard predated the adoption of zoning regulations and was thus a protected nonconforming use.

The trial court focused on what constituted a lawful use. To be lawful, the use must be in compliance with all state laws. Since this junkyard was not licensed by the state, it was not a lawful use and thus not nonconforming.

One wonders whether noncompliance with federal and/or municipal ordinances could also deny nonconforming status to a use of land. *see Tillinghast v. ZBA, 55 Conn. L. Rptr. 812 (2013).*

AFFORDABLE HOUSING FLOATING ZONE NOT A SECTION 8-30g APPLICATION

The owner of a parcel of property appealed the decision of the State Department of Economic and Community Development because it issued a town a moratorium from the requirements of the Affordable Housing Act, CGS sec. 8-30g. The property owner had an application pending before the town's planning and zoning commission to amend the zoning regulations by adding an affordable housing floating zone which would apply to the whole town. The court dismissed the appeal, finding that the property owner was not aggrieved because he did not have an affordable housing application pending before the planning and zoning commission.

While an application to amend zoning regulations to allow affordable housing has been found to be an affordable housing application as defined by 8-30g, this floating zone application was not. The court reasoned that unlike earlier cases which found an application to change zoning regulations to allow affordable housing to an affordable housing application, this application did not apply to a specific parcel of property and thus was not an affordable housing proposal.

The Appellate Court stated that "In order for the floating zone application to be an affordable housing application, it must, in accordance with 8-30g(a)(2), be in connection with an affordable housing development as defined" by the act. Without applying to a specific parcel of land and with no development plan associated with it, this property owner's zone change application was not an affordable housing application. *See Stefanoni v. Department of Economic & Community Dev., 142 Conn. App. 300 (2013).*

THREE YEAR PERIOD TO ENFORCE ZONING REGULATIONS STARTS WHEN BUILDING STARTS

A homeowner constructed a single family dwelling on a lot. She obtained all necessary zoning and

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building permits and received a certificate of occupancy in 2003. After receiving a final CO in 2008, she moved into her home. One year later, a neighbor filed a complaint with the ZEO seeking that he issue a cease and desist order because the home in question and the lot it was on did not meet zoning requirements as to lot frontage, size and setbacks. The ZEO declined to issue a cease and desist order. This decision was subsequently reviewed by the ZBA, which found it did not have jurisdiction as more than 3 years had passed since the home was constructed.

The reviewing court agreed with the ZBA. Connecticut General Statute Sec. 8-13a acts as a statute of limitations, allowing a 3 year period for an enforcement action to be brought against a homeowner whose building violates the zoning regulations in regard to lot size and setback requirements. Of particular interest was the court's finding that the 3 year time limit begins to run when construction on a building commences – not when the building is completed. *see Rinaldi v. ZBA, 56 Conn. L. Rptr. 43 (2013).*

INTERVENORS HAVE DUTY TO PRESENT EVIDENCE

A developer submitted an application for site plan approval. When a decision on the application was allegedly not timely made, the developer filed a mandamus action seeking a court order to have the commission approve its site plan application. The developer had submitted a renewed site plan application, which was denied, resulting in an appeal of that decision. During the pendancy of these actions, an intervenor sought to be made a party so that environmental issues could be raised. Eventually, this request was granted.

At a hearing to consider a settlement of the appeal, the intervenor appeared but did not raise or argue any environmental issues. The agreement was approved without the consent of the intervenor. The decision to approve the agreement was appealed to the Appellate Court.

While Connecticut General Statute Sec. 22a-19 provides intervenors the right to participate as a party to raise environmental concerns in a land use appeal, this right comes with the responsibility to actually raise these issues and present evidence to the court. Failure to do so results in an abdication of this right, allowing for the approval of a settlement of a land use appeal without the consent of the intervenor. *see Batchelder v. PZC, 133 Conn. App. 173 (2012).*

NURSING HOME FOR STATE PRISONERS BEYOND REACH OF ZONING

This case concerned whether local zoning approval was needed before a recently closed nursing home could be re-opened as a nursing home for inmates for the State Department of Corrections. The State would neither own nor operate the facility. However, it would be the

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sole source of patients as well as provide primary funding for the facility.

The Town objected to being bypassed. However, the Court found that the company owning and operating the facility was effectively an 'arm of the state' and was thus beyond the reach of local governmental controls, including zoning regulations. An appeal of this decision can be expected. *See Town of Rocky Hill v. Securecare Realty LLC, 56 Conn. L. Rptr. 61 (2013).*

FIREWOOD BUSINESS NOT A FARM

The owner of a 50 acre wooded lot in a residential zone ran a firewood business form this property. In addition to harvesting trees from this lot, he also imported logs which he split into firewood and then sold. When a cease and desist order arrived, the property owner took an appeal to the zoning board of appeals. In defense of his activity, he claimed that he was operating a farm. The zoning board of appeals disagreed, leading to an appeal to court.

The court found that while the operation of harvesting trees from the property was a farming activity, importing logs onto the site and processing this into firewood for sale was not. *See Kawa v. Hartland ZBA, 56 Conn. L. Rptr. 101 (2013).*

ANNOUNCEMENTS

Membership Dues

Notices for this year's annual membership dues were mailed March 1, 2013. The Federation is a nonprofit organization which 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 WRITER

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