CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

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STATE SUPREME COURT CONFIRMS APPEAL PERIOD FOR ZEO DECISION

A zoning enforcement officer issued zoning permits to a property owner so that renovations and additions could be made to an existing residential dwelling. Notices that these permits were issued were published in a local newspaper. Approximately 6 months after the publication of the notice, a neighbor sent a letter to the land use administrator claiming that the permits had been issued in error as the proposed construction and the permits did not comply with numerous sections of the zoning regulations and state statutes. No response was given.

Several months later, the neighbor filed an appeal with the Zoning Board of Appeals seeking review of the zoning enforcement officer's lack of action on her claims that the zoning permits were issued in error. The zoning board of appeals dismissed the appeal finding it did not have jurisdiction. In so doing, it decided that the operative act was the issuance of the zoning permits and more than 30 days had passed since their issuance. An appeal to court followed, which found its way to the State Supreme Court.

The State Supreme Court agreed with the zoning board of appeals that the neighbor's letter was nothing more than an appeal of the issuance of the zoning permits. Simply asking a zoning enforcement officer to re-visit an earlier decision does not amount to an additional decision that would give rise to another 30 day period to take an appeal. To rule otherwise would allow for an indefinite period of time to challenge a zoning permit and lead to uncertainty, something the court found unacceptable.

See Reardon v. ZBA, 311 Conn. 356 (2014).

DOES A ZONING BOARD OF APPEALS HAVE WETLANDS JURISDICTION

After obtaining approval from the inland wetlands commission, a property owner proposing a 4 lot subdivision sought a variance from the zoning board of appeals. Several of the proposed lots would be served by a common driveway which would abut a wetlands area. Having a wetlands permit in hand, the property owner sought a variance from a zoning regulation which prohibited, among other things, the location of a driveway within 50 feet of a wetland or watercourse. The property owners also stated to the Board that it did not have jurisdiction as this proposed use was already approved by the inland wetlands commission. Nonetheless, the board denied the application.

The reviewing court addressed first the jurisdictional issue. While jurisdiction over regulating activities in wetlands and watercourses is statutorily given to an inland wetlands commission, the court stated that this jurisdiction is not exclusive. Thus, it was proper for

Written and Edited by
Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com

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the zoning commission to adopt the regulation prohibiting certain activities within 50 feet of a wetland or watercourse. One reason for this is the different purposes of the regulations. While the inland wetlands regulations serve to protect these areas from harm, the zoning regulations served to protect uses and structures from being harmed by flooding. Once it was established that the zoning regulation in question was valid, it was clear that the board had jurisdiction over whether to issue a variance for this regulation. *See Frances Erica Lane Inc. v. ZBA, 149 Conn. App. 115 (2014).*

PENDING ZONING APPEAL EXTENDS DURATION OF COMPANION WETLAND PERMIT

Among other issues addressed by the State Appellate Court in this appeal of the issuance of a wetlands permit, was the extension of said permit by the wetlands commission. The permit at issue was approved by the commission so that the applicant could construct a home located partially within a regulated area. The applicant had also sought two variances from the zoning board of appeals related to the same project. The variance applications were denied, leading to an appeal of this denial to court. While these zoning appeals were pending, the applicant's attorney sent a letter requesting that the wetlands permit be extended by operation of law because the related zoning appeals stayed the running of time on the wetlands permit.

The wetlands commission, without a hearing and without any notice, agreed to extend the wetlands permits.

A neighbor complained of this process and appealed this decision to the court. In denying this appeal, the court found that the Commission's actions were valid. No hearing was needed to extend the period of time that the wetlands permit was valid as this extension was done by operation of law. It is now well settled that, where a wetlands permit application is accompanied with a zoning application, the duration of the wetlands permit is automatically extended when the accompanying zoning permit application is involved in an appeal to court.
See Bochanis v. Sweeney, 148 Conn. App. 616 (2014)

WHAT MAKES A STORAGE SHED A BUILDING

This question was addressed in a tax appeal involving movable storage hangers for airplanes that for several years, the town assessed as personal property. When the assessment of these hangers was switched to the real property grand list, the owners protested. The town brought the matter to court for a declaratory ruling as to whether these movable hangers were personal property or real property.

The resolution of this issue centered on whether these hangers were a movable trailer or whether they were more akin to a storage shed or building.

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Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com

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A site review by the court showed that the hangers were anchored to the ground and had electricity service and that they could only be moved with difficulty, such as partial deconstruction. Not being readily movable, they were more like a shed or storage building and thus part of the real property.

This case provides some guidance as to whether a portable storage unit is really a building or is more akin to a movable structure and not protected by Connecticut General Statute Section 8-13a and its 3 year statute of limitations. *See Town of Stratford v. Jacobelli, 57 Conn. L. Rptr. 1 (2014).*

CO-OP HORSE BARN ESCAPES ENFORCEMENT AS IT IS DEEMED NOT COMMERCIAL

Just what constitutes the commercial boarding of horses was addressed at length by a trial court. A cease and desist order had been issued to the owner of a 6 acre parcel of land. The land had a barn, paddocks and a riding circle. Initially, only the owner's 2 horses were kept on the property. However, this use expanded to include an additional 6 horses that were owned by friends of the property owner. While no fees were charged, the expenses of keeping and feeding the horses were shared. In addition, several of the horse owners took riding lessons on the property from another person.

The zoning regulations prohibited the use of a lot of less than 10 acres in size from being used as a commercial horse boarding facility. Thus, if this use could be characterized as commercial, it was not permitted and the issuance of the cease and desist order was correct. Since the term 'commercial' was not defined in the zoning regulations, the court followed the well established principle of looking to other sources for a commonly accepted definition. This was done by looking to dictionaries as well as other zoning regulations.

The court eventually decided that in order for a use to be considered commercial, it must be undertaken for a profit motive. It is not important that a profit be made, only that the business owner intended to make a profit from his activities. In this case, the intent of the property owner was not to make a profit. Instead, it was a cost sharing arrangement with others for the primary purpose of the recreational keeping and riding of horses. Thus, the cease and desist order should not have been issued. *See Brady v. ZBA, 56 Conn. L. Rptr. 763 (2013.*

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut. A principle in the firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.

Written and Edited by
Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
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