CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

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WETLANDS COMMISSION REVIEW OF FARM ROAD REQUIRED

The owner of 6 acres of land sought to develop the parcel as a farm and nursery. The property contained wetlands. Part of the development plan called for the construction of 3 roads. Because the roads would be needed to operate the farm and nursery and that no wetlands or watercourses with continual flow would be filled in or relocated during the construction the roads, the property owner claimed that the activities were 'of right' requiring no wetlands review or permits. The Commission disagreed, leading to an appeal to court.

While the wetland statutory scheme calls for exempt uses, such as farming and roads associated with farming, it also clearly states that such exempt uses shall not include "the filling of wetlands to construct roads, irrespective of whether the roads are directly related to the farming operation." *See Taylor v. Conservation Commission, 302 Conn. 60 (2011).*

IS A DAY CARE CENTER A SCHOOL?

A special permit and site plan application was approved for a package store. The zoning regulations required, among other things, that a package store be located at least 500' from any school. The commission's decision to approve the application was appealed to court based on the claim that this requirement in the zoning regulations was not met because a day care center was located within 500' of the proposed package store location.

The zoning regulations did not define the terms school or day care. Following well established rules of statutory interpretation for when regulations or statutes do not define a term, the court looked to common definitions of said terms. After referring to definitions for these terms in a common dictionary, the court found that these terms are not synonymous but apply to distinct uses.

Whereas a school is principally a place of instruction for children, a day care center is a place for child supervision. Just because some amount of instruction takes place at a day care facility does not make it a school. Thus, the court found that the commission was correct in its interpretation of its regulations when it allowed the package store to locate within 500' of a day care center as it was not a school. *See Frank's Package Store v. Planning & Zoning Commission, 52 Conn. L. Rptr. 363 (2011).*

MINIMAL ENCROACHMENT NOT A PROPER BASIS FOR GRANTING A ZONING VARIANCE

A home was built in a location that violated front and side yard setback requirements in the zoning regulations. The errors were discovered during construction of the home and applications for the needed variances

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were made. Since the encroachments were considered minimal by the Board, the variances were granted.

On appeal, the court reversed the Board's decision. In Connecticut, a variance can be granted only upon a showing of hardship, and no hardship was proven. The Board's decision was based upon the improper basis that the zoning violation was of a minimal or de minimus nature, something this state does not recognize as a basis for the granting of a variance. *See Long Shore LLC v. Zoning Board of Appeals, 52 Conn. L. Rptr. 359 (2011).*

PLANNING COMMISSION'S REJECTION OF A STIPULATED JUDGMENT NOT APPEALABLE

When a planning commission denied a special permit application for a water storage tank, the applicant took an appeal to the State Department of Public Utility Control. While the appeal was pending, the staff for the planning commission and the applicant discussed revisions to the special permit application. The matter came before the commission [a second time] as a stipulated agreement, which the commission rejected. This decision to not accept the stipulated agreement was appealed to court by the applicant. The commission filed a motion to dismiss claiming that there is no statutory right to appeal a commission's rejection of a stipulated agreement. The court agreed with the commission.

An appeal of a land use agency's decision is a statutory right, controlled by Connecticut General Statute 8-8(b). An appeal of a decision to not settle pending litigation does not come within a decision that can be appealed under this statute. This decision follows *Brookridge District Assoc. v. Planning and Zoning Commission,* 259 Conn. 607, (2002). *See Bethel v. Planning Commission, 52 Conn. L. Rptr. 379 (2011).*

COURT EXPANDS AGGREIVEMENT TO INCLUDE ALL PROPERTY OWNERS WITHIN DISTRICT

A zoning commission adopted an amendment to its zoning regulations which created a definition for the term 'buildable lot". In order to meet this definitions, a lot would need to contain a one acre area free of wetlands, steep slopes and easements. Another amendment to the regulations applied this definition to the country residential zone, which is a residential district requiring two acre lots.

An owner of property appealed this decision, alleging only that he owned property in this zone and that the amendment applied to this zone. At court, the Commission argued that this pleading was insufficient to allege aggrievement. The court agreed, dismissing the appeal because the property owner failed to plead sufficient facts proving that this amendment applied to his property or property

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within 100 feet of his own, as required by Connecticut General Statute Sec. 8-8(a). An appeal to the Appellate Court followed.

On review, the Appellate Court reversed the trial court, finding that all that is needed for a property owner to plead aggrievement is that he own land within a zoning district that is affected by an amendment to the zoning regulations.

This decision by the Appellate Court, allows anyone owning property within a district affected by a zone amendment, or within 100 feet of the affected district, to take an appeal. In this case, the country residential district comprises 80 percent of the town, meaning nearly every property owner could have taken an appeal. *Lucas v. Zoning Commission, 130 Conn. App. 587 (2011).*

ANNOUNCEMENTS

64th Annual Conference

Set aside the evening of March 15, 2012 so that your land use agency can attend this year's annual conference. This conference will be held at the Aqua Turf Country Club where a fine dinner will be served, conversations with other land use agency members will take place and an interesting presentation and discussion offered. In addition, this is an opportunity to satisfy any training requirements that municipalities may have for their commission and board members. This year, we will discuss Public Act 11-79, a new state law which restricts the timing for when land use agencies can require the posting of bonds from subdivision and site plan applicants. A flyer and registration form will be mailed to all member agencies with the price per person to attend set at $42.00.

Length of Service Award

Nomination forms for this award will be sent out soon to all member agencies. In order to be eligible for the award, a person must have served 12 continuous years as a member of a zoning agency. Please return all nomination forms by March 5, 2012.

Lifetime Achievement Award

This award is available to any person who has served at least 25 years in the area of land use, either as a member of a zoning agency or as staff or advisor to a zoning agency. Nomination forms will be sent to all members. In order to receive proper consideration, a nomination must be submitted by March 5, 2011.

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut. A principal in the firm of Byrne & Byrne, 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.

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