

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Spring 2012

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64th ANNUAL CONFERENCE

How to best address the changes to a land use agency's bonding authority for subdivisions and site plans was the topic addressed at this year's conference. With the passage of Public Act 11-79, the State legislature and the Governor changed long established rules as to when and what type of performance bond needed to be posted by a developer. Many planning, zoning and planning & zoning commissions have been left with uncertainty as to what they could require of a developer. Those members in attendance at the Aqua Turf were offered information and some possible solutions.

Chris Wood of Wood Planning Associates presented an informative and entertaining program on the implications of Public Act 11-79 and what some municipal land use agencies have addressed it and what we can expect in the next legislative session as to possible amendments to the public act. Chris was particularly well suited to make this presentation as he is also the government relations chair and legislative liaison for the Connecticut Chapter of the American Planning Association.

The Federation's sincere appreciation and thanks to Chris for providing a well received and informative presentation. If you were unable to attend the conference and would like to obtain a copy of the presentation materials, please send a message to us at cfpza@live.com and we will get them to you.

In addition, the 64th Annual Conference featured the presentation of 18 length of service awards by the meeting's moderator, Tom McGowan, planning consultant to numerous towns, land trusts and organizations. He is also a past Executive Director of the Northwest Connecticut Council of Governments. In addition, he presented the following devoted public servants with the Lifetime Achievement Award which is awarded to individuals with 25 or more years of service to member agencies. They were: Duane Starr of the Avon Planning and Zoning Commission, James L. Sennett of the East Hampton Planning and Zoning Commission, Alicia Wayland of the Lebanon Zoning Board of Appeals, Ann Keating of the City of New London Zoning Board of Appeals and Barclay Prindle of the Sharon Planning and Zoning Commission.

COURT ORDER NEEDED TO INSPECT PRIVATE PROPERTY

Alerted to a possible zoning violation, a zoning enforcement officer attempted to inspect a parcel of property. The property owner refused entry to the zoning official to her property. No evidence of a zoning violation was visible as a fence had been erected shielding from view portions of the property. The zoning official then consulted with the town attorney, who filed a request for a temporary and permanent injunction with the court. The purpose of the injunction would be

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to obtain a court order against the property owner that she not interfere with the zoning official's inspection of her property. The court granted the request, leading to an appeal by the property owner that ended up at the State Supreme Court.

The trial court approved the injunction because both the town zoning regulations and state law provide a zoning official with the right to inspect and remedy any zoning violation. The court was not concerned that the only evidence of a zoning violation was a telephone call to the zoning official asking that he inspect the property for a possible violation. The Supreme Court was troubled with this decision as it would authorize a search of private property without the normal safeguards afforded by the federal constitution that citizens be free from unreasonable searches and seizures. As with other searches of private property by government officials, an investigation for zoning violations by a zoning official, if not consented to by the property owner, requires judicial authorization – a search warrant.

In obtaining a search warrant, probable cause that a zoning violation has occurred will need to be presented to a court. Only then will a warrant be issued and a search of private property for zoning violations allowed. However, if the property owner consents to the search, then no warrant is needed. While this process can be burdensome, it does provide protection to zoning enforcement officers from being sent off

on wild goose chases, inspecting properties on the basis of little more than an anonymous tip. See Bozrah v. Chmurynski, 303 Conn. 676 (2012).

CHANGE TO ZONING REGUALTIONS CAN CHANGE TAX STATUS OF LAND

A planning and zoning commission had amended its zoning regulations, redefining what could be considered open space. The Plaintiff owned an undeveloped parcel of land within an industrial zone. For over 30 years it was assessed as open space. Due to the zoning amendment, the tax assessor reclassified the plaintiff's property from open space to industrial. The plaintiff appealed claiming he had a vested right to the open space classification which should not be effected by a change in the zoning regulations.

The sole basis for the change in tax classification was the change to the zoning regulations. The court ruled that this is a valid basis for the tax assessor to change the tax classification of the property. One reason for this is that the statutory scheme for planning and zoning, such as section 8-23 of the General Statutes, specifically provide that the plan of conservation and development be amended every ten years and that the amendment may include changing what areas are designated as open space. In addition, the zoning regulations themselves provide that they will be amended from

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time to time in order to address changes to the community.

Finally, the court looked to CGS sec. 12-207e(a) which provides that open space designation for a parcel can be lost if the property owner sells the property or puts the land to a different use. Thus, the open space designation is not static and can be affected by an amendment to the zoning regulations. It should be noted that an appeal of the tax assessment can be made to the municipality's Board of Assessment Appeals which would provide due process protection to the affected property owner. See Machholz v. Town of Bloomfield, 53 Conn. L. Rptr. 32 (2012)

ACTUAL CHANGE TO A PERMITTED USE NEEDED TO EXTINGUISH NONCONFORMING USE

A parcel of property located in a residential use district had been used historically as a rooming house and later as a bed and breakfast establishment. This use predated zoning. Sometime after zoning was in effect, the bed and breakfast building burned down. For a period of 2 to 3 years, the town owned the property and contemplated various uses for it, such as a public library. The town subsequently sold the parcel to a private owner who re-opened the bed and breakfast business. Abutting owners complained to the zoning enforcement officer about noise and traffic coming from this business. A cease and desist

order was issued which was appealed to the Zoning Board of Appeals.

The Board found that the cease and desist order had been issued in error as the bed and breakfast use was a nonconforming use and had not been abandoned. On appeal to court, the Board's decision was affirmed as the record supported the finding of no abandonment of the nonconforming bed and breakfast use. While the use had been suspended due to the fire, no other actual use had been made of the parcel. The mere contemplation of other uses was not enough to extinguish the nonconforming use. See Barton v. Zoning Board of Appeals, 52 Conn. L. Rptr. 553 (2011).

ANNOUNCEMENTS

Membership Dues

Notices for this year's annual membership dues were mailed March 1, 2012. 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.

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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