CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

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REFUSAL TO LIFT A CEASE AND DESIST ORDER IS NOT AN APPEALABLE DECISION

A cease and desist order was issued by a ZEO to a property owner stating that the riding of dirt bikes on a residential property was not permitted by the zoning regulations. The zoning regulations provided for a 30 day period during which a cease and desist order could be appealed to the zoning board of appeals. No appeal was taken during this period. After the 30 day appeal period had run, the property owner requested in writing to the ZEO that he rescind the cease and desist order. The ZEO's refusal to do so was appealed to the zoning board of appeals.

The zoning board of appeals heard the appeal and ruled in favor of the ZEO to not rescind his order. An appeal to court followed.

The court found that the time period established by the zoning regulations is mandatory and could not be waived by the ZBA by holding a hearing on the matter. The court then considered when the appeal period began to run – when the cease and desist order was issued or when the ZEO decided to not rescind the order. In making its decision, the court determined what the 'operative event' was. The operative even was the final determinative action of the ZEO as to what was a permitted use for the property. In this case, it was the cease and desist order. The fact that the ZEO refused to change his mind on the validity of the order did not reset the appeal period. If it did, then no order of the ZEO would ever be final and always subject to an appeal. *See Cardwell v. ZBA, 53 Conn. L. Rptr. 291 (2012).*

COURT CAN NOT DECIDE AN ISSUE NOT DECIDED BY THE LAND USE AGENCY

A cease and desist order was issued to the owner of a parcel of land which lay partly within a business zone and partly within a residential zone. The property owner used the entire parcel to operate his garbage hauling and recycling business. The current zoning regulations prohibited recycling and junkyards in both the residential and business zones. The issuance of the cease and desist order was appealed to the Board. Evidence was offered on whether the business use of the property was nonconforming as well as whether the current use of the property violated the zoning regulations. The Board affirmed the issuance of the cease and desist order, finding that the ZEO was correct to issue it as the current use of the property violated the zoning regulations. The issue of whether the use was nonconforming was not decided by the board.

The trial court dismissed the appeal, finding that the use did violate the zoning regulations and also that said use was not nonconforming. An appeal to the Appellate Court followed. The Appeals court found that the matter regarding whether the property owner

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had a valid nonconforming use should have been remanded to the Board as the Board had not decided the issue. While evidence had been presented and discussed during the public hearing, the issue of whether or not a valid nonconforming use was present was not part of the discussion which took place at the Board's public meeting. Thus, it was not a reason for its decision. As such, the trial court was incorrect to decide the issue as it is for the Board to decide first. *See Malone v. ZBA, 134 Conn. App. 716 (2012).*

MERGER OF NONCONFORMING LOTS DEPENDANT ON LOCAL REGULATIONS

Two adjacent nonconforming lots were owned by the same person. A single family home was located on one lot, while the other lot was vacant. The lots were nonconforming as they did not meet the minimum lot size requirement. Upon the death of the owner, a prospective purchaser of the lot with the home on it inquired of the ZEO as to whether the lots could be purchased separately. The ZEO stated that purchasing only one lot would not violate the zoning regulations. The lot with the home on it was duly purchased, with the purchase of the vacant lot by another party taking place later. When a zoning permit was issued to build a home on the vacant lot, the purchaser of the other lot appealed to the ZBA claiming that the lots had merged.

In reaching its decision, the Zoning Board of Appeals had followed long established precedent in town that no merger had taken place because the lots were separately owned, although by the same person. The person taking the appeal, citing case law, claimed that the lots had merged because there was no separate ownership as the same person owned the two adjoining nonconforming lots at the same time. An appeal to court followed.

The court sustained the Board's decision. There was substantial evidence in the record that the term 'separate ownership' meant that lots were separately recorded in the land records with no relevance to whether the lots were owned by the same person and that this had been the consistent interpretation applied by the board of the merger provision in the zoning regulations. *See Cockerham v. ZBA, 52 Conn. L. Rptr. 562 (2011).*

RIGHT TO APPEAL CONSERVATION COMMISSION DECISION IS EXTENDED

A property owner appealed a decision of a conservation commission which approved a permit to conduct a regulated activity on an abutting parcel of property. The wetlands involved did not abut the appellant's property. The question was raised whether the person taking the appeal was aggrieved by this decision as his property did not abut the wetlands involved.

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Connecticut General Statutes sec. 22a-43(a) provides that an appeal can be taken by any person owning or occupying land which abuts lor is within 90 feet of the wetlands involved in the application. The court interpreted this provision to mean that a person who abuts property which contains a regulated area is aggrieved, even if his property does not abut or is within 90 feet of the regulated area itself. *See Civitano v. Conservatio Commission, 52 Conn. L. Rptr. 677 (2011).*

AUTHORITY TO REGULATE SOLID WASTE FACILITIES RESTORED

In a case reported in an earlier issue of this newsletter, a Superior Court ruled that only the State has the authority to regulate solid waste facilities. This past legislative session saw a new law passed which provides that a municipality, through its zoning powers, can regulate this type of land use. The law goes on to provide that this does not include prohibiting solid waste facilities. The law can be accessed at www.ct.gov under its designation as PA 12-2.

LEGISLATIVE UPDATE

Thanks to Public Act 12-27, planning commissions can now satisfy the notice requirement to regional planning agencies found in Connecticut General Statute sec. 8-26b by using e-mail.

Some local authority over the siting of telecommunications towers has been restored by Public Act 12-165 which requires local approval if the tower is to be located within 250 feet of a school or daycare center.

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.

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

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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