CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES
QUARTERLY NEWSLETTER

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OFF-SITE TRAFFIC AND SAFETY ISSUES CANNOT BE BASIS FOR DENIAL OF SITE PLAN

An application to use a parcel of land for a propane storage facility was denied due to concerns over off-site traffic and emergency response issues. The property was located within an industrial zone where propane storage facilities were a permitted use subject to site plan approval. The Commission held a public hearing on the application where residential neighbors stated their opposition to the application. The record showed that the application met all specific requirements contained in the zoning regulations but did not satisfy general standards such as traffic safety and emergency response.

The denial was appealed to court, where it eventually found its way to the State Court of Appeals. Basing its decision on well-established law, the Court of Appeals found that the Commission's decision to deny the application was in error. The court restated this well-established rule: "The designation of a particular use of property as a permitted use establishes a conclusive presumption that such use does not adversely affect the district and precludes further inquiry into its effect on traffic, municipal services, property values or the general harmony of the district." Since a propane storage facility was a permitted use, the Commission was wrong to look into off-site traffic concerns and emergency service capabilities in making its decision to deny the application. *See 2772 BPR LLC v. Planning & Zoning Commission, 207 Conn. App. 377 (2021)*

HEARING REQUIRED FOR AUTO DEALER & REPAIRER LICENSE

The State Supreme Court reversed a ruling of the Appellate Court on the issue of whether Connecticut General Statutes Sec. 14-55 was repealed or still in effect. This state statute required that a public hearing be heard on applications for an automobile dealer and repairer license. For many years, it was commonly understood that this section of the regulations was repealed during the 2003 session of the state legislature. The Appellate Court found otherwise based upon a reading of the legislature's actions on this statute. The legislature had first repealed it, then passed a bill amending it. The Appellate Court found the last action of the legislature controlled, thus keeping Sec. 14-55, as amended in force.

The State Supreme Court reversed this decision based upon the fact that the official state statutes had listed Sec. 14-55 as repealed since 2003 and such publications by the state legislature are entitled to significant weight as to what the statutory law of this state is. With Sec. 14-55 eliminated, the requirement for a public hearing on applications for a certificate of location

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is also eliminated. These applications can now be addressed at a public meeting. *One Elmcroft Stamford LLC v. Zoning Board of Appeals, 337 Conn. 806 (2021).*

COMPLETENESS OF SPECIAL PERMIT APPLICATION IS ISSUE FOR COMMISSION

When a property owner's application for a special exception was rejected by a land use administrator, he appealed the matter to the Superior Court. The appeal was dismissed by the court, and later by the Appellate Court, on the basis that the property owner did not exhaust his administrative remedies. Both the trial court and appeals court viewed the rejection of the application by the land use administrator as a decision by an officer charged with the enforcement of the zoning regulations. This finding was based in part on the fact that the zoning regulations provided this administrator with the authority to review applications and reject those he found to be incomplete. Thus, the courts found that the decision by this official should have been appealed to the zoning board of appeals before an appeal to court was taken.

The State Supreme Court disagreed. This court found that while the zoning regulations provided a general provision authorizing the land use administrator to reject incomplete applications, another zoning regulation addressing special exception applications stated that these applications must be referred to the planning and zoning commission for a decision. This specific regulation is consistent with the state statutory scheme regarding special exceptions which provide that they are to be decided by a planning and zoning commission, among others, and provided a public hearing. The special exception application's completeness was an issue to be decided by the planning and zoning commission and not by its agent. *See Farmington-Girard LLC v. Planning & Zoning Commission, SC 20374 (2021).*

STAFF REVIEW NOT IMPROPER DELEGATION OF AUTHORITY

A special permit application to allow the use of property for a convenience store and gas station was approved with conditions. One of the conditions was that the town engineer confirm that the application complied with certain dimensional requirements in the zoning regulations. An owner of property located across the street from the proposed project appealed claiming that this was an improper delegation of the commission's authority. The court disagreed.

While section 8-2 of the Connecticut General Standards vests the planning and zoning commission with the authority to approve a special permit application, this commission can assign

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ministerial tasks to town staff. Thus, conditioning its approval on the confirmation by the town engineer that certain dimensional standards had been met by the application was proper condition of approval. *See 547 North Avenue Bridgeport RE v. Planning & Zoning Commission, 70 Conn. L. Rptr. 575 (2021).*

ZONING RESTRICTIONS ON TEMPORARY RENTALS CAN CONSTITUTE A TAKING

When a municipality adopted certain ordinances, which imposed restrictions on the short-term rental of residential properties, several owners filed a lawsuit in federal court. The federal lawsuit was based in part on a claim that the ordinances deprived these residential property owners of a private property right without compensation. In their complaint, they alleged that they had purchased their properties with the expectation that they would be able to recoup their investments by renting them on a short-term basis. The municipality filed a motion to dismiss this claim, which was denied by the court, allowing the case to proceed.

Another issue raised by these property owners was that one of the enacted ordinances required, as a condition to apply for a short-term rental permit, that town officials be allowed to inspect their properties. The court found that this could constitute a warrantless search. Hopefully, the final decision on these issues will provide some clarity on how this use can be regulated. *See Calvey v. Town of North Elba, 2021 WL 1146283 (NDNY 3/25/21).*

MEMBERSHIP DUES

Notices for this year's annual membership dues were mailed March 1, 2021. 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. It is important now, more than ever, for the Federation to have the resources to participate in the legislative process and protect your interests.

Increased State oversite of zoning as well as the encroachment of regionalization efforts threaten local control over land use issues. This legislative trend is likely to only increase. Your continued membership is vital if the Federation is to have any success against these continued efforts to take away local authority.

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 to be held at your next meeting. At the price of $180.00 per session for each agency attending, it is an affordable way for your commission or board to keep informed.

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