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MEMORANDUM

TO: DAVID E. COX, TOWN MANAGER
DEAN MARKHAM, TOWN COUNCIL
KEVIN KUHR, CHAIR PZC
JOSH WILSON, CHAIR IWWA
FROM: ATTORNEY RICHARD D. CARELLA,
TOWN ATTORNEY
RE: MORATORIA
DATE: APRIL 16, 2024

You have asked for a review of the authority of the Town Planning and Zoning Commission and the Town Inland Wetlands and Watercourses Agency to enact a moratorium for applications on all “multi-structure development, clear cut, or forest harvest activity” within the Lake Pocotopaug Watershed area. For the reasons outlined below, the Town Zoning Commission may enact a reasonable moratorium on such applications, but the Inland Wetlands and Watercourses Agency does not possess the statutory authority to enact such a moratorium.

The authority of a zoning commission to adopt a moratorium on zoning applications has been considered in several cases, and its use was specifically upheld as being a permissible exercise of the zoning commission powers under state law General Statute § 8-2 in *Arnold Bernhard and Co., Inc. v. Planning and Zoning Com'n of Town of Westport* 194 Conn. 152, 479 A.2d 801 (1984)

The purpose of a moratorium is to stop the filing of applications in the municipality for a limited time in order to allow a zoning commission to evaluate the needs of the community, to evaluate future land use and growth, and to pass suitable regulations to implement solutions to these concerns. The *Bernhard* case was distinguished from prior caselaw and concluded that General Statute § 8-2 did provide statutory authority for a zoning moratorium. The decision relied upon *Town of Lebanon v. Woods*, 153 Conn. 182 (1965) where interim or temporary zoning regulations limited to minimum lot sizes, frontage requirements and minimum living areas were found to be authorized under General Statutes § 8-2 for the purpose of maintaining the status quo while more comprehensive zoning regulations were considered and the town formulated a comprehensive plan.

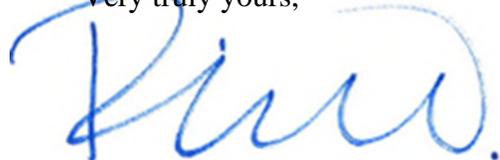
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It also relied on cases from other states on temporary zoning and moratoriums and concluded that a moratorium which was limited in time to nine months, and which did not prevent all development, but applied only to business uses, was within the power delegated to a zoning commission under General Statutes § 8-2. The opinion suggests that moratoriums which are in effect for an unreasonable length of time, which are too broad in their scope, or which are vaguely worded may be invalid.

Further caselaw and subsequent legislation under General Statutes § 8-2h now prevents the moratorium or subsequent changes in the regulations from applying to zoning applications filed before it went into effect. For example, where a building permit application was filed before but not acted upon prior to a moratorium, General Statutes § 8-2h(b) prevented the application from being affected by changes in the zoning regulations during the moratorium, and the building permit had to be reviewed based upon the zoning regulations in effect when the application was filed.

However, unlike the authority of the Zoning Commission to enact a moratorium, the Inland Wetland and Watercourse Agency, as well as the Planning Commission, have only the powers expressly delegated to them by state statute, so they cannot impose moratoria on wetland applications or subdivision applications because there are no statutory provisions for such moratoria. General Statutes §§ 22a-42e, 8-2h, 8-28a and 8-28b, protecting pending inland wetland applications and subdivisions from changes in wetland regulations, as well as changes to zoning and subdivision regulations, also support that result.

Very truly yours,



Richard D Carella
Town Attorney

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