

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Winter 2023

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AMBIGUOUS DECISION IS NOT A VALID DECISION

Once a decision of a land use agency is published, it is a final decision and cannot be changed by the agency. This well-established rule was applied to a situation where a planning and zoning commission considered a draft resolution at its meeting. The resolution concerned an application to modify an existing special permit. This resolution had 100 conditions attached to it. After a lengthy discussion on the proposed draft resolution, the Commission voted to approve the draft resolution with the changes discussed at the meeting. This decision was subsequently published.

At its next regular meeting, the Commission was presented with the same resolution with modifications made by the commission's attorney and planner that incorporated the changes discussed by the Commission at its prior meeting. After some discussion, this modified resolution was approved and published.

An appeal to court followed. In finding that the Commission's decisions were null and void, the court focused first on the Commission's initial decision. Connecticut General Statutes Sec. 8-8(b) requires a local land use agency to publish its decision within 15 days of making it. The purpose of this notification requirement is to provide a reasonable opportunity to any interested party to obtain information required to

form an opinion on whether or not to appeal within the statutory appeal time period. The notice published by the Commission failed to do this as it was unclear as to what modifications were actually made to the draft resolution to modify the special permit. These modifications only became clear at the Commission's next meeting when the modified resolution was presented.

In regard to the Commission's decision to approve a modified resolution, the Court found that this decision was a nullity as it attempted to change a prior published decision of the Commission, something it was without authority to do.

Due to these errors in procedure, neither of the Commission's decisions were valid. *See Markator v. Planning & Zoning Commission, LND-CV-21-6145052 (11/15/22).*

SAVE THE DATE – THE CONFERENCE IS BACK!

The Federation will hold its Annual Conference on March 23, 2023 at the Aqua Turf Country Club in Plantsville CT. The event starts at 5:00 p.m. The program for the Conference will include a presentation on How to Comply with the 2021 and 2022 Legislation that Applies to Planning and Zoning as well as the 2023 Legislative Agenda. Flyers announcing the event will be sent to all members later this month.

Written and Edited by
Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@live.com

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CELL TOWER APPLICATIONS AND MEETING IN GOOD FAITH

The decision by the Connecticut Siting Council to approve the installation of a cell tower was appealed to court by the town wherein the tower was to be located. The town argued that the approval was done in error because the cell tower applicant failed to consult with it as required by state law. Connecticut General Statute Sec. 16-50l(f) provides in part that an applicant seeking approval for a wireless telecommunications facility consult in good faith with the municipality where the facility will be located at least 90 days before an application is filed with the Siting Council. The town argued that such a consultation did not take place.

In reviewing the record before the Siting Council, the court found evidence that a good faith consultation had taken place between the town and the applicant. While the statute requires this consultation, it does not require that the parties reach an agreement. It only requires that the applicant take into consideration the recommendations of the town.

It should be noted that the court found the town to be an aggrieved party and thus could appeal the decision of the Siting Council to court. This aggrievement is based upon the town's interest in enforcing its zoning regulations and controlling the use of

land within its borders as well as protecting the town's natural landscape and scenery. Since the erection of a cell tower can affect these particular interests of the town, it was found to be classically aggrieved. *City of Milford v. Connecticut Siting Council*, HHB-CV-21-6069969 (10/24/22).

COURT FINDS CAMP RUN BY RELIGIOUS GROUP IS NOT A RELIGIOUS LAND USE

A zoning permit application to expand a recreational community center was denied by a zoning office as the desired use was allowed only as a conditional [special permit] use. An application was subsequently filed with the zoning board of appeals for the conditional use permit. The board denied the permit finding that the applicant's proposal to expand its facilities would be detrimental to the surrounding residential properties. An appeal to court followed.

In upholding the Board's decision, the court first found that while the applicant was a religious organization, its recreational community center was not a religious use. The evidence showed that the center offered activities similar to those offered at similar, secular recreational community centers. In addition, the center was operated under a children's camp permit and that the staff were not qualified to instruct in subjects that would be part of

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Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
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a religious school curriculum. Thus, the Board was not required to treat this application any differently than a similar application filed by a nonreligious entity.

The court then determined that there was substantial evidence in the record to support the Board's finding that the proposed expansion to the recreational community center would be detrimental to the residential neighborhood it was located within. The evidence consisted of detailed testimony provided by adjoining property owners based on their personal knowledge. Such testimony amounted to more than just mere speculation and thus could form the basis for the board's decision. *See Sid Jacobson Jewish Community Center v. Zoning Board of Appeals, 144 N.Y.S. 3d 54 (2021).*

NEW LAW REQUIRES CHARGING FACILITIES FOR ELECTRIC CARS IN COMMERCIAL AND RESIDENTIAL DEVELOPMENT

Did you know that Public Act 22-25 requires that, on or after January 1, 2023, all new construction of commercial and multiunit residential developments with 30 or more parking spaces include electric charging stations for electric vehicles? The law requires that at least 10% of the parking spaces provide this charging service and the municipality may require more than the 10% required by this law.

ANNOUNCEMENTS

Lifetime Achievement Award and Length of Service Award

Nomination forms will be sent out later this month for these awards which will be presented to recipients at the Federation's annual conference. You should begin your process of finding eligible nominees now.

Workshops

Connecticut law now requires that every land use agency member receive 4 hours of training every two years. At the price of \$180.00 per session for each agency attending, our workshops are an affordable way for your board to 'stay legal'. Each workshop attendee will receive a booklet which sets forth the 'basics' as well as a booklet on good governance which covers conflict of interest as well as how to run a meeting and a public hearing.

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut. A principal in the law firm of Byrne & Byrne LLC, 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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cfpza@live.com