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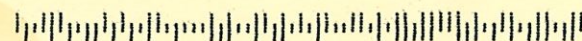
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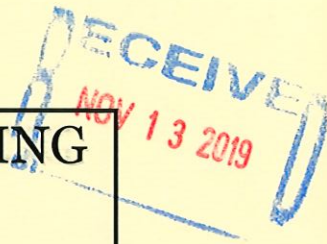


East Hampton Planning & Zoning Commission
Town Hall
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**CONNECTICUT FEDERATION OF PLANNING
AND ZONING AGENCIES
QUARTERLY NEWSLETTER**



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SPECULATION OVER FIRE SAFETY
NO REASON TO DENY
AFFORDABLE HOUSING

An application to construct 95 apartments on 3 acres of land was submitted as an affordable housing application. The application was denied by the Commission due to concerns over access to the proposed development for firefighting equipment. The apartment complex would be served by one access road only 20 feet wide and this road had an inadequate turnaround where it ended at the complex. In response to the concerns over the inadequate turnaround area, the developer submitted an improved plan which provided additional travel space by eliminating several parking spaces.

The commission denied the plan without considering the proposed modifications. This denial was appealed to court, whereupon it remanded the matter back to the commission to consider the modified plan. The commission denied this plan as well, leading to a second appeal.

The court again ruled in favor of the developer. In sustaining the appeal, the court found the commission's reasons to be speculative in nature. Regarding the concerns over the width of the access road as well as the turnaround, since these features met the design minimums as required by national fire protection standards, the commission's concerns were merely speculative. Another factor weighing against the commission's decision was

the dire need for affordable housing which outweighed any of the commission's reasons for denial. *Garden Homes Management Corp. v. Plan & Zoning Commission*, 191 Conn. App. 736 (2019).

A GATHERING OF PUBLIC
OFFICIALS IS NOT ALWAYS
A MEETING

In this decision, the State Appellate Court clarified what is a public meeting subject to the Freedom of Information Act by explaining what is a gathering versus what is a hearing or proceeding. In this case, the City of Meriden challenged whether a gathering of its leadership group was a meeting and thus subject to the Freedom of Information Act. The leadership group consisted of the mayor, the town manager, and 4 members of the 9-member town council. Because a quorum of the town council was not present, the city argued that no meeting had taken place and this was instead just a gathering of public officials. The Freedom of Information Commission disagreed, finding that this was a meeting because the leadership group actually was a hearing and thus no quorum was necessary for this to be a meeting.

The distinction between a gathering of public officials and a hearing involving them is important. The reason is that for a gathering to be a meeting, a quorum of the government body must be present,

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while for a hearing, it is still a meeting even without a quorum of members present.

In reaching its decision, the court set forth what constitutes a hearing or other proceeding. A hearing refers to a process of adjudication, such as where evidence is taken and issues of fact and law are decided. In this case, the court found that the activities of the leadership group did not encompass these characteristics, and thus was a gathering. Since a quorum of the town council was not present, it was not a meeting under the Freedom of Information Act. *City of Meriden v. Freedom of Information Commission*, 191 Conn. App. 648 (2019).

PUBLIC HEARING REQUIRED FOR
AUTO REPAIR FACILITY
APPROVAL OF LOCATION

An application was filed with a zoning board of appeals seeking approval of a certificate of location for an automobile repair facility. In processing the application, no public hearing was held and the Board applied the standards applicable for a variance application. An appeal of the approval of the application was taken by an abutting property owner.

In regard to whether a public hearing was required, the court analyzed the legislative history of Connecticut General Statutes Sec. 14-55. In 2003, the State legislature approved three bills which applied to this state law. The first bill that was passed repealed Sec. 14-55.

The next two bills revised it. Following long established rules of statutory construction, the court found that the last bill to be approved was the one that controlled – thus, Connecticut General Statutes Sec. 14-55 is not repealed. Because Sec. 14-55 remains in effect, a zoning board of appeals must hold a public hearing on an application for approval of location of an automobile repair facility.

As for what standards to apply to such an application, a board should not apply a hardship analysis. Instead, the board must apply the suitability factors stated in Sec. 14-55, such as the proximity of the proposed location to schools, churches and theaters. Since this was not done, the matter was remanded back to the board for a proper hearing in accordance with this state law.

It should be noted that the Court addressed the issue of who is a proper applicant. In this case, the applicant was an individual owner of the business while the certificate of location application listed a business name. In finding that the business had standing, the court noted that in land use applications, a relaxed standard for standing is followed. *One Elmcroft Stamford LLC v. Zoning Board of Appeals*, 192 Conn. App. 275 (2019).

PERSONAL INTEREST REQUIRES
RECUSAL

A court sustained an appeal of a planning and zoning commission's decision to approve an application to

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amend the zoning regulations. The proposed amendment would change requirements in the regulations which applied to contractor storage yards in a particular zone. An alternate member on the commission owned property where he operated a contracting business. The alternate member's daughter was a partner in this business and helped draft the proposed amendment.

During the public hearing on the proposed amendment, the alternate member spoke in favor of the amendment and spoke against those who were opposed. Despite requests to do so, this member did not recuse himself.

On appeal to the Superior Court, the issue was raised as to whether this member should have recused himself. Referencing the obvious personal and financial interest of this member in the application, the court found his refusal to recuse troubling and in direct violation of long-established rules regarding conflict of interest. This member's private interest in the approval of the amendment violated the public trust placed in him to perform his duty as an impartial member of a public body. As such, the decision of the Commission was found to be tainted, and the appeal sustained.

It made little difference that this involved an alternate member of the commission and not a regular member. *MJM Self Storage of Clinton LLC v. Planning & Zoning Commission*, 68 Conn. L. Rptr. 519 (2019).

ANNOUNCEMENTS

Membership Dues

The second invoice for members' annual dues will be sent out soon. While many of you have paid, some have not. The Federation is a nonprofit organization which operates solely on the funds provided by its membership. By being a member, you get:

- This newsletter 4 times each year
- Discounts on our publications *Planning and Zoning in Connecticut* and *Connecticut Zoning Boards of Appeal*.
- Discounted Workshops for land use agencies
- Length of Service Awards for qualifying individuals serving in member agencies.

It should be noted that a membership cannot be shared among land use agencies in the same municipality.

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. The price for these workshops includes a booklet for each agency member.

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