

2009-2010 Connecticut Land Use Law Developments

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WETLANDS

Unistar Properties, LLC v. Conservation & Inland Wetlands Commission of the Town of Putnam, 293 Conn. 93 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR293/293CR123.pdf> or
<http://tinyurl.com/2a4uwgr>

Wetlands application properly denied as incomplete when applicant fails to submit a detailed wildlife and plant inventory to allow commission to determine possible impacts on wetlands.

Red 11, LLC v. Conservation Commission of the Town of Fairfield, 117 Conn. App. 630, *cert. denied*, 294 Conn. 918 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP117/117AP497.pdf> or
<http://tinyurl.com/2fp5qqm>

Commission properly upheld cease and desist orders prohibiting activities that did not meet statutory exemption for farming activities in wetlands. Earlier declaratory ruling by commission that certain activities satisfied farming exemption did not preclude jurisdiction over activities not part of original ruling.

Conservation Commission of the Town of Fairfield v. Red 11, LLC, 119 Conn. App. 377, *cert. denied*, 295 Conn. 924 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP119/119AP156.pdf> or
<http://tinyurl.com/25t4bu8>

Trial court properly issued permanent injunction and imposition of civil penalty for violation of wetlands statutes and regulations. Trial court did not abuse discretion in ordering more costly remediation plan.

Conservation Commission of the Town of Fairfield v. Dimaria, 119 Conn. App. 763 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP119/119AP185.pdf> or
<http://tinyurl.com/2ds278t>

Construction of barn was covered by wetlands exemption for farming activities, although placement of fill in conservation easement area was not. Appeal was moot because fill was already removed.

Fanotto v. Inland Wetlands Commission of the Town of Seymour, 293 Conn. 745 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR293/293CR2.pdf> or
<http://tinyurl.com/25xszs8>

After certification was granted, appeal was dismissed as “improvidently granted.” Appellate Court decision stands.

River Sound Development, LLC v. Inland Wetlands and Watercourses Commission of the Town of Old Saybrook, AC 30042, July 27, 2010

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP122/122ap325.pdf> or
<http://tinyurl.com/2beh364>

Denial of wetlands permit upheld as within the jurisdiction of the agency, supported by substantial evidence and consistent with statutory requirements.

Weinstein v. Inland Wetlands Agency of the Town of Madison; 107 Longshore Lane, LLC v. Inland Wetlands Agency of the Town of Madison, AC 30850, 30851, Sept. 21, 2010

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP124/124AP499.pdf> or
<http://tinyurl.com/2f2d4c9>

Requirement to file “the decision and report” within 15 days is directory only and does not invalidate the decision of the wetlands agency.

CONDEMNATION

City of Milford v. Maykut, 117 Conn. App. 237, *cert. denied*, 294 Conn. 906 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP117/117AP468.pdf> or
<http://tinyurl.com/2555qth>

For purposes of determining value of condemnation award, a trial court can find that highest and best use of vacant land is residential development; however, without sufficient evidence of development costs, the court should not award damages based on the diminished value of a hypothetical lot in an unapproved subdivision.

Town of Branford v. Santa Barbara, 294 Conn. 785 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR294/294CR160.pdf> or
<http://tinyurl.com/2a9no2j>

Trial court properly found highest and best use of land is residential development and that proposed development would occur even though it had not yet obtained all necessary approvals.

Town of Branford v. Santa Barbara, 294 Conn. 803 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR294/294CR165.pdf> or
<http://tinyurl.com/24857t2>

Offer of Judgment Statute did not apply to condemnation cases prior to passage of P.A. 07-141.

New England Estates, LLC v. Town of Branford, 294 Conn. 817 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR294/294CR164.pdf> or
<http://tinyurl.com/2g354rx>

Unrecorded, unexercised option to purchase land subject of condemnation action is not sufficient property interest under Connecticut state law to support federal takings claim.

OPEN SPACE PROPERTY TAXES

Aspetuck Country Club, Inc. v. Town of Weston, 292 Conn. 817 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR292/292cr121.pdf> or
<http://tinyurl.com/2fo77v3>

Regardless of inclusion in town's plan of conservation and development, failure to have a majority of the town's legislative body vote to approve the designation of land as open space precludes the assessor's classification of the land as open space for tax assessment purposes.

Goodspeed Airport, LLC v. Town of East Haddam, 115 Conn. App. 438, cert. granted, 294 Conn. 907 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP115/115ap353.pdf> or <http://tinyurl.com/24mllns>

Assessor's wrongful decision not to classify land as open space does not alone merit relief if the landowner does not prove that the land was otherwise overvalued by assessor. Listing of general types of lands in plan of conservation and development alone does not establish that all such lands are designated as open space for tax assessment purposes.

ZONING AS CONSTITUTIONAL VIOLATION

Hespeler v. Town of Ledyard, No. 3:07-cv-801 (CFD) (D. Conn. Sept. 28, 2009)

<http://docs.justia.com/cases/federal/district-courts/connecticut/ctdce/3:2007cv00801/77887/83/> or <http://tinyurl.com/2avgj92>

Town is not liable to property owners who bought land in subdivision close to gun club because zoning of land as residential (after club was in existence) is not a "state-created danger" triggering due process protections, nor does the town have a special relationship with homebuyers that implicates constitutional protections.

CERTIFICATE OF ZONING COMPLIANCE

Smith Brothers Woodland Mgmt, LLC v. Zoning Bd. of Appeals of Brookfield, 293 Conn. 778 (2009) (Smith Brothers Woodland Mgmt, LLC v. Zoning Bd. of Appeals of Brookfield, 108 Conn. App. 621 (2008))

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR293/293CR4.pdf> or
<http://tinyurl.com/24pcuks>

Conditions accepted as part of certificate of zoning compliance constitute abandonment of preexisting, nonconforming use.

Ross v. Zoning Bd. of Appeals of Westport, 118 Conn. App. 90 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP118/118AP504.pdf> or
<http://tinyurl.com/28lmzb7>

Under 8-26a(b), towns cannot enforce zoning regulations enacted after subdivision approval and recording of same and, therefore, certificate of zoning compliance must consider regulations in place at time of subdivision approval and recording.

SUBDIVISION

William J. Newman et al. v. Planning & Zoning Comm'n of Avon et al., 293 Conn. 209 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR293/293CR148.pdf> or
<http://tinyurl.com/26vhofq>

Commission's reasonable time-tested interpretation of regulation and Conn. Gen. Stat. § 8-18 directs attention to parent parcel when calculating allowable density.

Buttermilk Farms, LLC v. Planning & Zoning Comm'n of Plymouth, 292 Conn. 317 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR292/292CR99.pdf> or
<http://tinyurl.com/27a6hfx>

The grant of authority under § 8-25 (a), clearly and unambiguously, is restricted to “the land to be subdivided.” The health and safety provision of § 8-25 does not authorize a commission, as a condition of its subdivision approval, to require a developer to improve existing roads or other areas outside the boundaries of a proposed subdivision.

Jackson, Inc. v. Planning & Zoning Comm'n of Avon, 118 Conn. App. 202 (2009), *cert. denied*, 294 Conn. 931 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP118/118AP45.pdf> or
<http://tinyurl.com/2comny5>

Where criteria for determining the suitability of the land is set forth in the regulation, it is “as reasonably precise as the subject matter requires and [is] reasonably adequate and sufficient to guide the commission and to enable those affected to know their rights and obligations.”

STANDING

Abel v. Planning and Zoning Commission of the Town of New Canaan, SC 18333 and 18418, July 13, 2010

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR297/297CR81.pdf> or
<http://tinyurl.com/2erseaq>

Abutters in another state can appeal.

SUBJECT MATTER JURISDICTION

Ross v. Planning & Zoning Comm'n of Westport, 118 Conn. App. 55 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP118/118AP439.pdf> or
<http://tinyurl.com/2br38hl>

Filing of application does not waive defects to subject matter jurisdiction.

Concerned Citizens for the Pres. of Watertown, Inc. v. Planning & Zoning Comm'n of Watertown, 118 Conn. App. 337 (2009), *cert. denied*, 294 Conn. 934 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP118/118ap56.pdf> or
<http://tinyurl.com/2czk37r>

The right to petition is not a specific legal right for purposes of establishing classical aggrievement.

JZ, Inc. v. Planning & Zoning Comm'n of East Hartford, 119 Conn. App. 243 (2010),
cert. denied, 296 Conn. 905 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP119/119AP141.pdf> or
<http://tinyurl.com/25k5bvf>

Applicant buyer is not aggrieved when purchase and sale agreement controlling subject property had expired. Having an interest in the property sufficient to establish aggrievement at the time of application is not enough to establish standing to maintain appeal.

SITE PLANS

Vine v. Planning and Zoning Commission of the Town of Wallingford, AC 30921,
June 22, 2010

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP122/122AP355.pdf> or
<http://tinyurl.com/2fy5ptc>

Site plan approval is administrative and commission has limited discretion, and reviewing court is limited to determining whether the decision was “illegal, arbitrary or in abuse of [its] discretion....”

SPECIAL PERMIT

Hayes Family Ltd. P'ship v. Town Plan & Zoning Comm'n of Glastonbury, 115 Conn. App. 655 (2009), *cert. denied*, 293 Conn. 919 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP115/115AP369.pdf> or
<http://tinyurl.com/2b8gls3>

Where regulations grant discretion to the commission to consider safety, health and environment, and overall design, commission has discretion to deny special permit application based on these factors, even if the application complies with all other zoning regulations.

ACCESSORY USE – RIPENESS

Piquet v. Chester, AC 30440, October 19, 2010

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP124/124AP535.pdf> or

<http://tinyurl.com/2bv4ez9>

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP124/124AP535A.pdf> or

<http://tinyurl.com/28hd7cu>

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP124/124AP535E.pdf> or

<http://tinyurl.com/2fjjuv5>

Claim that backyard burial is an accessory use is dead on arrival because plaintiff did not exhaust her administrative remedies.

ZONING ENFORCEMENT

Bonington v. Town of Westport, SC 18514, July 6, 2010

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR297/297CR78.pdf> or

<http://tinyurl.com/2ckxjr9>

Zoning enforcement is discretionary and as such local officials involved in zoning enforcement have governmental immunity from liability in performing their duties.

Greenfield v. Reynolds, AC 30914, July 13, 2010

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP122/122ap390.pdf> or

<http://tinyurl.com/2bbq5zg>

Zoning enforcement is discretionary and not subject to a writ of mandamus.

Gravius v. Klein, AC 30828, Sept. 14, 2010

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP123/123ap487.pdf> or
<http://tinyurl.com/23lje19>

Sufficient evidence of willful violation of the terms of a stipulated judgment on most of the days claimed.

PUBLIC NOTICE

Cassidy v. Zoning Comm'n of the Town of Woodbury et al., 116 Conn. App. 542 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP116/116ap424.pdf> or
<http://tinyurl.com/26hscuq>

Advisory in public notice that additional information is available on file in the planning office does not cure notice defects.

Warner v. Planning & Zoning Comm'n of Salisbury et al., 120 Conn. App. 50 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP120/120AP194.pdf> or
<http://tinyurl.com/244k2af>

Even where a commission fails to notify a landowner, an appeal from an action of the commission is governed by the one-year statute of limitation set forth at Conn. Gen. Stat. § 8-8(r).

MERGER

Goulet v. Zoning Bd. of Appeals of Cheshire, 117 Conn. App. 333 (2009), *cert. denied*, 294 Conn. 909 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP117/117AP476.pdf> or
<http://tinyurl.com/26euodx>

As provided in the Cheshire regulations, merger of nonconforming lots under common ownership occurs at the time of amendment to regulations.

HARDSHIP

Hugh R. Curran, Executor v. Zoning Bd. of Appeals of Milford et al., 117 Conn. App. 458 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP117/117AP479.pdf> or
<http://tinyurl.com/23f4hks>

Variance is improper where there is no finding of hardship and claimed hardship is not unique to parcel.

Cimino v. Zoning Bd. of Appeals of Woodbridge, 117 Conn. App. 569 (2009), *cert. denied*, 294 Conn. 914 (2009)

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP117/117AP491.pdf> or
<http://tinyurl.com/24t6quo>

A variance cannot convert a property that was never a buildable lot into an approved lot.

Michler v. Planning and Zoning Board of Appeals of the Town of Greenwich, AC 30925, Aug. 10, 2010

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP123/123ap444.pdf> or
<http://tinyurl.com/25z2w6o>

No “exceptional difficulty or unusual hardship” from regulation effectively reducing lot are from 1.2 to 0.7 acres where new regulation affects all rear lots.

SERVICE OF PROCESS

Tayco Corp. et al. v. Planning & Zoning Comm'n of Wallingford, 294 Conn. 673 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROCR/CR294/294CR26.pdf> or
<http://tinyurl.com/2bnthw7>

Savings clause of Conn. Gen. Stat. § 52-593a “intended to prevent a party from losing the right to a cause of action because of untimely service on the part of the marshal [not the litigant] by giving the marshal additional time in which to effect proper service on the party in question.” To come under the savings clause, process must be delivered to the marshal and the marshal must be instructed to effectuate service within the statutory appeal period.

EXTENT OF REVIEW AUTHORITY OF ZONING BOARD OF APPEALS

Hasychak v. Zoning Bd. of Appeals, 296 Conn. 434 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR296/296CR52.pdf> or
<http://tinyurl.com/2ga3xdd>

Plain language of § 8-6(a) authorizes a zoning board of appeal to review *any* order, requirement, or decision of ZEO, including an order, requirement, or decision concerning compliance with a stipulated judgment.

CEASE AND DESIST

Lallier v. Zoning Bd. of Appeals of Stafford, 119 Conn. App. 71 (2010), *cert. denied*, 295 Conn. 914 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROp/AP119/119ap85.pdf> or
<http://tinyurl.com/2588c5h>

“[L]itigation about the merits of a cease and desist order does not permit a collateral attack on the validity of the underlying zoning decision that was not challenged at the time that it was made” even if the collateral attack is on jurisdictional grounds or on grounds that the agency issuing the underlying zoning decision exceeded its authority.

ROADS

Wellswood Columbia, LLC v. Town of Hebron, 295 Conn. 802 (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR295/295CR47.pdf> or
<http://tinyurl.com/26jtsjz>

Disputes between municipalities stemming from traffic impacts resulting from a subdivision approval in a neighboring town should be resolved in accordance with the procedures provided in the land use statutes, and not by exercise of a municipality's powers under § 7-148 (c) (6) (C) (i) and (7) (B) (i) to control streets and regulate traffic.

Harry Kraiza, Jr. v. Planning & Zoning Comm'n of Hartland, __ Conn. App. __ (2010)

<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP121/121AP304.pdf> or
<http://tinyurl.com/28rvhpb>
<http://www.jud.ct.gov/external/supapp/Cases/AROap/AP121/121AP304E.pdf> or
<http://tinyurl.com/2339r2b>

Interpreting regulations controlling dead-end streets to apply only to new streets would lead to an unworkable result and allow individual sections measuring less than 1,200 feet to be continuously added to an existing dead-end street.