

J. Byrne

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

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IMPOSSIBILITY TO COMPLY RAISED AS DEFENSE TO ZONING ENFORCEMENT

A judgment of \$125,000 in daily fines plus \$51,674.00 in attorney fees awarded by a trial was reversed by the State Appellate Court. The case concerned the use of a residentially zoned property as a junkyard and processing center for over a period of 5 years. The homeowner used her home in connection with her business, which was to clean out foreclosed properties. She would, under contract with the foreclosing lender, empty a foreclosed home of its contents and then sell or junk these items. Much of this material ended up at her home, where it was first stored indoors and then overflowed into the front and side yards of her property. The award was made under C.G.S. Sec. 8-12, which provides for daily fines as well as an award of attorney fees where the violation is deemed to be willful.

At trial, the homeowner raised the defense that it was impossible for her to comply with the zoning regulations because shortly after the issuance of the operative cease and desist order, her home was destroyed by fire. Due to an investigation regarding the cause of the fire, she was ordered by the police as well as her insurance carrier to not remove anything from the property. The court agreed that these orders did prevent her from complying with the cease and desist order and reversed the

court's decision as to its award of fines and attorney fees on this basis. A new trial was ordered solely on the issue of making a determination as to these issues. In issuing its remand order, the Appellate Court instructed that daily fines in a civil action are limited to a maximum amount of \$100.00 per day. The \$250.00 maximum amount is limited to a criminal conviction for a zoning violation. *See South Windsor v. Lanata, 203 Conn. App. 89 (2021).*

ENFORCEMENT OFFICER CAN MODIFY APPROVED PERMIT *

A wetlands permit that was approved by the Commission was later modified by the wetlands enforcement officer. The permit as approved allowed for the construction of a single-family dwelling and an accessory structure as well as the creation of a yard adjacent to some wetlands.

[CONT. ON NEXT PAGE]

CONFERENCE WEBINAR

Please join us on April 21, 2021 at 3:30 pm for a webinar. The topic of discussion will focus on the many pending bills before the state legislature which negatively affect local zoning authority. An invitation to this webinar will be emailed to all members on our email list. A notice will also be posted on the Federation's website www.cfpza. We will also take time to recognize those members who received length of service awards and lifetime achievement awards.

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When the applicant wanted to add additional fill so as to create a more level yard, the WEO approved the change. An abutting neighbor appealed this decision to the Commission, which affirmed the decision. An appeal to court followed.

The court found that the WEO acted properly as Connecticut General Statute Sec. 22a-42a(c)(2) provides the Commission with the authority to delegate a decision to approve or extend an activity not within a wetland or watercourse to its duly authorized agent.

The Commission's regulations contained a provision delegating the authority and there was evidence in the record that the WEO possessed the necessary training as required by the state statute. See *Zahid v. Inland Wetlands and Watercourses Agency*, 70 Conn. L. Rptr. 245 (2020).

TIME LIMIT CAN BE PLACED ON SPECIAL PERMITS

While it is well established that a special permit, once it is recorded on the land records, 'runs with the land', can zoning regulations place a time limit on the duration of the permit? The State Appellate Court says yes.

In this case, the commission approved a special permit to construct a retail center. A condition of the approval was that the proposed use must be completed within two years of the approval. The regulations also provided

for renewal of the special permit to allow additional time for completion. When the Commission approved such a renewal application, an abutting property owner appealed claiming that the approval had expired.

The State Appellate Court's review focused on the defense raised by the special permit holder that the permit ran with the land and thus could not expire. In reaching its decision that the permit could expire, the court focused on Connecticut General Statute Sec. 8-2 which provides the Commission with the authority to attach conditions to a special permit "necessary to protect the public health, safety, convenience and property values." The Court found that this statutory language empowers a zoning authority to impose a temporal condition on a special permit such as by requiring the completion of a development attendant to the permitted use within a set time frame. See *International Investors v. Town Plan & Zoning Commission*, 202 Conn. App. 582 (2021).

FAILURE OF A COMMISSION TO ACT IS NOT APPEALABLE TO COURT

When a planning & zoning commission refused to accept a site plan application, an appeal of this action by the commission was appealed to court. The applicant argued that since the commission had failed to render a

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