

MEMO: INLAND WETLANDS COMMISSION

FROM: CORPORATION COUNSEL

RE: TDF – GREENBRIAR APPEAL

DATE: SEPTEMBER 23, 2021

This concerns the appeal that was taken by the Association at Greenbriar, Inc., from the Commission's May 28th, 2019 decision approving TDF Enterprises, LLC's (TDF) application for a permit to conduct regulated activities on property located at Wimbledon Gate North. After the Wetland Commission's approval in May of 2019, TDF's application for a Special Exception to allow an over fifty-five community on the property was denied on September 12, 2020, by the Planning and Zoning Commission thereby making wetland approval somewhat moot. As a result the wetlands appeal has been pending in Superior Court for some time with no activity. TDF's lawyer has withdrawn from the case and has not been replaced. The City is now the lone Defendant in the case.

Under normal circumstances, the defense of this kind of case is taken up by the applicant, in this case, TDF, not the City. Corporation Counsel's office does not have the expertise required for these kind of appeals; usually the applicant hires an attorney who specializes in such matters. TDF has notified my office it no longer has any interest in pursuing any activity at Wimbledon Gate and certainly no interest in defending the appeal in Court. The City has no interest in the project itself either but does not want to "lose" the case thereby establishing that the Commission was wrong in granting the application. So I believe it's important to resolve the matter in a way which addresses the interests of all parties.

With that said I recommend the approval of the Stipulated Judgement attached hereto. You will note that the Stipulation "vacates" the Commission's decision rather than declare it improper and goes on to say that none of the issues in the appeal have been addressed by the Court. Furthermore it makes clear that the Judgment does not "demonstrate the propriety or impropriety of the Commission's decision". In other words it brings the parties back to the status quo ante; like the application had never been filed or ruled upon.

In order to complete this process there are a few steps that must be taken by the Commission if it agrees with my recommendation. The Commission must place its consideration of this settlement on a regular meeting agenda (not a special meeting). It is not a public hearing but just another agenda item the discussion and vote of which must be held in public. Once approval is granted by Commission I and the attorney representing Greenbriar will do whatever is necessary to follow up in Court. I believe there is a Wetlands Commission meeting on October 19th, 2021 so it would be helpful if this could be on the agenda for that meeting. I will be happy to attend if necessary.

DOCKET NO.: LLI CV 19 6022896 S

SUPERIOR COURT

THE ASSOCIATION AT GREENBRIAR, INC.
ET AL.

J.D. OF LITCHFIELD

VS.

AT TORRINGTON

INLAND WETLANDS COMMISSION OF THE
CITY OF TORRINGTON, ET AL.

OCTOBER ____, 2021

PROPOSED ORDER ON JOINT MOTION FOR JUDGMENT BY STIPULATION

The joint motion of the parties to enter a Stipulated Judgment having been heard by the Court, the Court hereby enters the following Order of Judgment:

1. This administrative appeal (the "Appeal") was brought by The Association at Greenbriar, Inc. and Catherine D. Mollica, owners of real property abutting land located at (a) Wimbledon Gate North, Assessor's Map 219, Block 001 and Lot 085, (b) Notting Hill Gate, Assessor's Map 219, Block 001 and Lot 048 (collectively, the "Property") and owned by the non-appearing defendant TDF Enterprises, LLC ("TDF").
2. This Appeal concerns a decision of the defendant Inland Wetlands Commission of the City of Torrington, Inc. (the "Commission") dated May 28, 2019 (the "Decision") to grant a permit to conduct regulated activities to TDF.
3. The Decision is hereby vacated, with the agreement of the parties.
4. None of the issues addressed in this Appeal are addressed by the Court in entering this Stipulated Judgment.
5. The entering of this Stipulated Judgment shall not be used to demonstrate the propriety or impropriety of the Commission's Decision or actions in reaching said decision in any form, nor shall the plaintiffs' claims be waived or released.
6. The Court has held a hearing pursuant to the terms of Practice Book § 14-7B, and finds that it is

appropriate to enter this Order of Judgment in resolution of this Appeal.

7. The Court has inquired of the parties, and finds that the Commission has complied with the provisions of Practice Book § 14-7B.

8. Each party shall bear their own fees and costs.

THE COURT (_____, J.)

By _____