DOCKET NO: LND CV-22-6160413-S	:	SUPERIOR COURT
EDWARD PYZNAR, ET AL.	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	
PLANNING AND ZONING COMMISSION TOWN OF WINDSOR LOCKS, ET AL.	: :	LAND USE LITIGATION DOCKET MAY 15, 2024

MEMORANDUM OF DECISION

In this land use appeal by the plaintiffs Edward Pyznar and William (Eric) Marsh, the plaintiffs challenge the approval by the defendant Town of Windsor Locks Planning and Zoning Commission (Commission) of an application for a zone change from Resident A and AA to Multi-Family Special Development (MFSD) zone so that a twenty-four unit senior housing development could be constructed at 64 South Elm Street in Windsor Locks on a three-acre lot next to the Pyznar home and adjacent to the Windsor Locks High School. The applicant defendant M & L Development Corporation filed the application for a zone change on June 8, 2022.[1] Consolidated with this zone change appeal is an appeal by the same plaintiffs of the defendant's application for a special use permit filed at the same time for this parcel of land which permit was subsequently granted by the Commission. The present decision addresses the zone change appeal first as

[1] Return of Record, hereinafter "ROR," Item 1a. Most of the return of record items are found in Docket Entry (D.E.) # 105.00. References to these record items are made to the item numbers and page numbers, where appropriate. Additionally, the regulations originally filed as Item 8 in D.C. # 105.00 are not the applicable regulations. The applicable regulations are found in D.E. # 107.00, which does not have an item number, and the court cites to the docket entry number and the page numbers as printed. Finally, two supplemental return of record items, Items 7u and 7v, are found in D.E. # 116.00.

130.00

plaintiffs raise some issues which, if sustained by this court, would obviate the need to decide the substantive claims in either the zone change or special use permit appeals.

I Jurisdiction

The first issue regarding the court's jurisdiction is whether the sign giving public notice of the Commission's hearing on the application, as required by the Zoning Regulations of the Town of Windsor Locks (regulations), complied with the law. If it did not comply, then this court would have no jurisdiction to proceed to address the merits of either the zone change or the special use permit appeals. Previous appeals on applications for a zone change and special permit were remanded due to a defect in the signage. See *Pyznar* v. *Planning & Zoning Commission of the Town of Windsor Locks*, Superior Court, judicial district of Hartford, Land Use Litigation Docket, Docket Nos. LND CV-20-6126338-S and LND CV-20-6131846-S, 2022 WL 1978679 (February 15, 2022, *Budzik, J.*).

A. Claimed Lack of Jurisdiction Due to the Defective Sign

Two matters are raised with respect to the claimed inadequacy of the sign by the plaintiffs. The first is that when one individual called the telephone number posted on the sign to secure further information, no one answered or then returned her call. Second, although plaintiffs admit the sign was in accordance with the form approved by the Commission, the sign was not removed until four days after the hearing when the regulation requires its removal after three days.

Regulations, § 1105.A.4 provides: "The applicant shall post a sign, available from the Building Official, giving notice of the application, in a conspicuous place on the property for which a zone change is sought, visible from a public street. Said sign shall be posted ten (10) days before

the date of the public hearing, shall remain in place until the hearing, and it shall be removed no later than three days after the public hearing."[2]

The evidentiary basis for the first portion of the claim is that a week prior to the August 8, 2022, hearing, a member of the public, Nancy McSweegan, called the phone number posted on the signage and could not reach the town planner because he was absent. She then sent an email to the town planner discussing her difficulty. In her email, dated August 3, 2022, she spoke of her knowledge of the property and the upcoming hearing which she could not attend. She was also aware of details of the application and the purpose of the zone change.[3]

When a sign is required to be posted, the plaintiffs correctly argue that there must be compliance with the requirements of the regulation and cite to *Wright* v. *Zoning Borad of Appeals*, 174 Conn. 488, 391 A.2d 146 (1978). *Wright* is, however, distinguishable as no sign had been posted. Id., 491.

In the present case, the regulation specifies the actions which must be taken for compliance. The court concludes, and plaintiffs concede, that the sign posted complies with those requirements. The purpose of the sign is to provide notice and the means for any interested member of the public to inform themselves of the details of the hearing. Nonetheless, it cannot reasonably be interpreted to require that an individual must always be available at the Town Hall to answer the phone when a member of the public might call,

[2] ROR, Docket Entry # 107.00, p. 101.
[3] ROR, Item 7u.

otherwise the notice fails. The court finds plaintiffs' reliance on this aspect of the jurisdictional argument fails as there is no legal or logical support for it.

The second issue is that the sign should have been removed three days after the hearing and not four. It is admitted that the sign remained on the property an extra day. How this would invalidate the Commission's action and be a failure of fundamental fairness was not explained in any detail. Clearly, the regulation contemplates that the signage may remain for a period of time after the hearing date as it permits an extra three days. Perhaps, better practice would have been for the sign to be timely removed. Nevertheless, any harm to the public that could result from an extra day's posting after the hearing had been held is difficult to discern. The failure to remove it in a timely fashion does not hinder participation at the hearing—the ultimate purpose of such a sign.

Plaintiffs cite to *Wilson* v. *Planning & Zoning Commission,* 260 Conn. 399, 796 A.2d. 1187 (2002), in support of their argument. In *Wilson,* the commission failed to publish the zone change before its effective date as required by General Statutes § 8-3 (d) and the court held that this failure rendered the zone change invalid. Id., 401, 404-405.

To find this case relevant and on point, hypothetically, if the sign in the instant case had been removed before the date of the Commission's hearing, this may have rendered the action of the board void as the entire period that the notice was required to be posted would not have been observed. But failure to timely remove it after the date of the hearing does not implicate fundamental fairness or any failure of notice to which the public is entitled. See *Grimes* v. *Conservation Commissio*n, 243 Conn. 266, 273, 703 A.2d 101 (1997) (recognizing common-law

right to fundamental fairness in administrative hearings). Plaintiff has not presented any reason, statute or case law requiring such action by the court.

Accordingly, the plaintiffs have not sustained their burden to prove any jurisdictional defects in notice. The court determines it is not deprived of jurisdiction to hear this case based on these unfounded claims.

B. Aggrievement

To maintain the appeals, plaintiffs must first demonstrate that they are aggrieved by the decision of the Commission. The law is well-established that a plaintiff must have standing to maintain a judicial action and the question of standing implicates the court's subject matter jurisdiction. Furthermore, "[i]t is well settled that [p]leading and proof of aggrievement are prerequisites to a trial court's jurisdiction over the subject matter of an administrative appeal. . . . It is [therefore] fundamental that, in order to have standing to bring an administrative appeal, a person must be aggrieved. . . . Aggrievement presents a question of fact for the trial court and the party alleging aggrievement bears the burden of proving it." (Internal quotation marks omitted.) *Wallingford* v. *Zoning Board of Appeals,* 146 Conn. App. 567, 575, 79 A.3d 115, cert. denied, 310 Conn. 964, 83 A.3d 346 (2013).

"In order to prevail on the issue of aggrievement, [t]he trial court must be satisfied, first, that the plaintiff alleges facts which, if proven, would constitute aggrievement as a matter of law, and second, that the plaintiff proves the truth of those factual allegations. . . . The mere statement that the appellant is aggrieved, without supporting allegations as to the particular nature of the

aggrievement, is insufficient." (Internal quotation marks omitted.) *Bongiorno Supermarket, Inc.* v. *Zoning Board of Appeals*, 266 Conn. 531, 542-43, 833 A.2d 883 (2003).

"A party may have standing to appeal by proving either classical aggrievement, which has a two-part test, or statutory aggrievement." R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 32:4, p. 154. In the present action, statutory aggrievement under General Statutes § 8-8 (b) provides that "any person aggrieved by any decision of a board . . . may take an appeal to the superior court for the judicial district in which the municipality is located . . ." In addition, § 8-8 (a) (1), in relevant part, defines "aggrieved person" as "any person owning land in this state that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board."

1. Edward Pyznar's Aggrievement Claim

It is without contest that the plaintiff Edward Pyznar owns property within one hundred feet of the subject parcel. He, as owner, was competent to and did testify as to his ownership at the hearing. The deeds establishing his title came into evidence. None of the opposing parties contested his testimony. The court takes his ownership as established fact. This court finds therefore that Pyznar owns land that is within one hundred feet of that of defendant's property and that he is aggrieved by the action of the Commission. General Statutes § 8-8 (a) (1) and (b).

Second, both plaintiffs claim they are classically aggrieved by the actions of the Commission. It is unnecessary to determine if Pyznar is classically aggrieved as one established form of aggrievement is adequate to secure his standing.

2. William Marsh's Claim to Aggrievement

Plaintiff William Marsh would not have standing to prosecute this appeal unless the court determines he is classically aggrieved by the action of the Commission. He pled and testified in detail about why he is classically aggrieved. He owns property that is one hundred and sixty (160) feet from the property in question. He testified that the contemplated twenty-four-unit, age restricted, multifamily housing complex would alter his views and residents would be able to see his property while walking in the neighborhood. There would be additional traffic on the street. Further, he believes that the use of one of his two driveways would be restricted as there is not much visibility and it would be more difficult to back his truck out onto the main road with the increased traffic on the road. He would hear more cars go by. There would likely be litter to clean up on the edge of his property since the town requires it to be cleaned within twenty-four hours. In addition, as both his lot and the subject property are presently mostly wooded and the subject property would be cleared, there would be more noise from both the proposed development and the adjacent high school with broadcast school announcements when the trees are cleared.

Turning now to the law on classical aggrievement, "It is a well-established principle that mere generalizations and fears . . . do not establish aggrievement." *Walls* v. *Planning & Zoning Commission*, 176 Conn. 475, 478, 408 A.2d 252 (1979). "Although one may establish aggrievement by establishing the possibility of harm, mere speculation that harm may ensue is not an adequate basis for finding aggrievement." (Internal quotation marks omitted.) *Wallingford* v. *Zoning Board of Appeals*, supra, 146 Conn. App. 576. Classical aggrievement involves a two-part determination: "[F]irst, the party claiming aggrievement must successfully demonstrate a specific

personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all the members of the community as a whole. Second, the party claiming aggrievement must successfully establish that the specific personal and legal interest has been specially and injuriously affected by the decision." (Internal quotation marks omitted.) *Bongiorno Supermarket, Inc.* v. *Zoning Board of Appeals*, supra, 266 Conn. 539.

"[A]s to the quality and quantum of evidence required to establish aggrievement, [the plaintiff] need not establish his or her interest and harm with certainty, but rather, may satisfy the requirement of aggrievement by credible proof that the subject activity has resulted in the possibility of harm to his or her specific personal and legal interest." (Citation omitted; internal quotation marks omitted.) *Wallingford v. Zoning Board of Appeals*, supra, 146 Conn. App. 557. It is well established that, in determining whether a court has subject matter jurisdiction every presumption favoring jurisdiction should be indulged. *Town of Woodbury Historical District Commission* v. *Arras*, Superior Court, judicial district of Litchfield, Docket No. CV-16-6014531-S, 2019 WL 3406775 (June 28, 2019, *Shaban, J.*).

Two areas of concern raised by plaintiff Marsh are worthy of closer consideration as they are not, in the court's opinion, general to all homeowners in the area but more specific to the unique characteristics of his property and his personal and legal interests. The first of those is the increased noise that would impact his use and enjoyment of his property. There would be the noise generated by the occupants of the elderly housing and their use of outside areas of the facility in good weather. In addition, the plaintiff Marsh points out that the property will be cleared of a good deal of its tree cover and not only will there be noise from the elderly housing, but there will also be

increased noise audible from the high school due to the lack of the present tree cover. There are some cases which have found classical aggrievement based on increased noise and impacts which are more specific to the individual claiming aggrievement than to the public at large or others similarly situated. For example, in *Berlani* v. *Zoning Board of Appeals*, 160 Conn. 166, 168-69, 276 A.2d 780 (1970), the court upheld the trial court's determination that aggrievement was established through evidence that the plaintiff as owner of property in close proximity to the defendant's parcel, was specifically and injuriously affected by the noise from the defendant's property where a variance had been granted to use a machine for baling junked automobiles. In *Krejpcio* v. *Zoning Board of Appeals*, 152 Conn. 657, 659, 211 A.2d 687 (1965), the plaintiff's residential property was adjacent to property on which the applicant was permitted to construct a gas station. The Supreme Court upheld the trial court's decision that the plaintiff was aggrieved, as the plaintiff would be directly affected by the noise that would be generated by the permitted use. Id., 660-61. In the present case, although plaintiff Marsh's property does not abut the applicant's property, it is relatively close to it and the noise generated is not speculative in nature, but specific to his property in large part created by the removal of the noise protection otherwise provided by the tree cover which would have been removed.

Under certain circumstances, classical aggrievement can also be based on problems caused by an increase in traffic. However, to prevail on such an argument the plaintiff must show that the problems caused by the contested conduct reflect particularized, individual interests different from those of the general public. See *Bongiorno Supermarket, Inc.* v. *Zoning Board of Appeals*, supra, 266 Conn. 543-44.

Plaintiff Marsh testified that the proposed development would increase traffic in the area and that it would cause specific injury to the plaintiff's use of his property. Specifically, such injury would be due to his inability to use one of the driveways on his property as he has historically enjoyed it, by backing his truck out onto the more heavily traveled road. The two facts in conjunction, rather than simply the increased traffic, demonstrate that the harm is unique to his property and not to others in the neighborhood in general. For all the foregoing reasons, the court concludes that Marsh has standing as he is classically aggrieved by both the zone change and the special use permit under consideration.

C. Conclusion

Both plaintiffs are aggrieved by the Commission's decision, and each has standing to prosecute these appeals: Pyznar is statutorily aggrieved, and Marsh is classically aggrieved. The court also finds from the record that the decision was duly noticed and published, and the appeal timely taken and served in accordance with the law. Thus, the court has jurisdiction to hear this appeal.

III Further Facts and Discussion

The court has carefully considered the arguments of counsel, the detailed record of the proceedings before the Commission, the testimony of the plaintiffs, as well as the briefs filed in this case. As noted, the real property which is the subject of this appeal of a zone change from Resident A and AA to Multi-Family Special Development District (MFSD) zone is located at 64 South Elm Street in Windsor Locks on a three-acre lot next to the Pyznar home and adjacent to the

Windsor Locks High School. The property has 397 feet of frontage along South Elm Street and, except for its westerly boundary on South Elm Street, is surrounded by the Windsor Locks High School property.[4] The high school property has a driveway to the north, sports fields and the high school building to the east and a path to the south.[5] Pyznar's property is located at 78 South Elm Street, improved with a home, and is within 100 feet of the subject property and by the school path.[6] Marsh's property at 94 South Elm Street is also improved with a home next to a crosswalk that connects Veterans Park and the South Elm Street sidewalk, which runs along the easterly side of South Elm Street.[7] This property is located 160 feet from the property for which the zone change was proposed.

After the plaintiffs' appeals of the commission's granting of the defendant's first set of applications were remanded to the Commission for further proceedings; *Pyznar* v. *Planning & Zoning Commission of the Town of Windsor Locks*, supra, Superior Court, Docket Nos. LND CV-20-6126338-S and LND CV-20-6131846-S, the defendant filed a revised application for a zone change on June 8, 2022, to develop a twenty-four unit, age-restricted residential development on the site.[8] The public hearing began on July 11, 2022, and was continued and closed on August 8, 2022.[9] Attending the hearings were five commissioners, the applicant, its lawyer, and other associates as well as members of the public. Five commissioners attended as a protest petition had

[4] ROR, Item 5a, pp. 5-6.
[5] ROR, Item 5a, p. 6.
[6] ROR, Item 1a, 500 foot Abutter Map.
[7] ROR, Item 1a, 500 foot Abutter Map.
[8] ROR, Item 1a.
[9] ROR, Items 3a, 3b, 5a, and 5b.

been filed pursuant to General Statutes § 8-3 (b). The protest petition required a vote of four or five commissioners rather than a simple majority of those commissioners attending. Marsh attended both hearings and Pyznar was present at the first hearing in July. Members of the public spoke for and against the zone change application. At the conclusion of the hearing, all five commissioners voted unanimously to approve the zone change from Residential A and AA to MFSD.[10]

A. Standard of Review

Before addressing the issues on appeal, the court turns first to the scope of its judicial review of the legislative decision by the Commission approving the zone change. The standard of review according to which courts must analyze challenges to legislative decisions of local zoning authorities is well settled. There are many cases discussing the standard, and the Connecticut Supreme Court case of *Konigsberg* v. *Board of Alderman,* 283 Conn. 553, 582-586, 930 A.2d 1 (2007), is instructive as it involves both a town zoning agency and a zone change adoption. It addressed many of the issues raised by the plaintiffs in this appeal. The *Konigsberg* court held: "In such circumstances, it is not the function of the court to retry the case. Conclusions reached by the [zoning authority] must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the agency. . . . The question is not whether the trial court would have reached the same conclusion, but whether the record before the agency supports the decision reached. . . .

[10] ROR, Item 3b, p. 6; Item 5b, pp. 81-82.

"[T]he courts allow zoning authorities this discretion in determining the public need and the means of meeting it, because the local authority lives close to the circumstances and conditions [that] create the problem and shape the solution." (Citations omitted; internal quotation marks omitted.) Id., 582.

In addition, the *Konigsberg* court noted: "[A]cting in such legislative capacity, the local board is free to amend its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for a change. . . . The discretion of a legislative body, because of its constituted role as formulator of public policy, is much broader than that of an administrative board, which serves a quasi-judicial function. . . . This legislative discretion is wide and liberal and must not be disturbed by the courts unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally. . . . Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment . . . . The responsibility for meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission. Courts will not interfere with these local legislative decisions unless the action taken is clearly contrary to law or in abuse of discretion. . . . Within these broad parameters, [t]he test of the [legislative] action of the commission is twofold: (1) The zone change must be in accord with a comprehensive plan . . . and (2) it must be reasonably related to the normal police power purposes enumerated in ... [the enabling legislation]. . . . In addition, the plaintiffs bear the burden of establishing that [commission] acted improperly." (Citation omitted; internal

citations omitted.) Id., 582-84. Bearing the standard in mind, the court will review the issues raised on appeal and any further facts necessary to its findings.

B. Issues Raised on Appeal

Plaintiffs raise multiple issues on appeal which consist primarily of several procedural issues which they assert invalidate the action of the Commission regarding the requested zone change as they constitute a denial of "due process" in their opinion. Their claims begin with the unexplained half-hour delay in the start of the July 11, 2022, public hearing. The second claimed error was the continuation of the public hearing to August 8, 2022, due to inadequate input from the Town Planner who previously resigned on August 5, 2022. They further argue that the application was incomplete as it did not include the preliminary grading and drainage plans on the site plan. In addition, the applicant's preliminary grading and drainage plan was not submitted to the Town Clerk for public inspection prior to the continuation of the public hearing on August 8, 2022. Next, the public hearing was held open to the August date to receive additional comments provided to the Town Planner that were not available to be read into the record earlier. Those comments included the email from Nancy McSweegan previously reviewed and several others. Further, one commissioner reviewed non-record evidence about a similar board action in another board on which he sits regarding the need for age restricted housing. He also referenced a study called the Connecticut Housing Assessment and the public never had an opportunity to respond to such information. Next, plaintiffs claimed that the commissioners treated the hearing as a mere

formality and did not carefully consider all of the public input available to them. In addition, the Commissioners failed to provide a collective reason for their decision.

Finally, plaintiffs argue that the zone change is prohibited spot zoning and, as such, is not a valid exercise of the Commission's power. Plaintiffs premise this claim on their assertion that the zone change is not in accordance with the comprehensive plan for the town. The court will address each of the claims in turn in view of the scope of its review when the matter involves a Commission acting in its legislative capacity.

1. Procedural Defect Claims

Plaintiffs' first two procedural claims concern the thirty-minute delay in the start of the public hearing in July and the failure to attach the preliminary grading and drainage plan to the application for a zone change. The court will review these claims mindful of the significant burden of proof that the plaintiffs bear.

The record reflects that the start of the hearing in July 2022 was delayed by approximately thirty minutes.[11] The court concludes that this was harmless error of the sort that occurs with some regularity in such proceedings. If the hearing had started thirty minutes *prior* to the announced and published start, then there could be some fundamental fairness issues raised as the public would not have received proper notice of the hearing's start. Nevertheless, a short delay could not have any harmful impact on those who wished

[11] ROR, Items 2b and 3a.

to be heard at the hearing. This claim is without merit and the court does not consider it further.

The next issue is the failure to include a grading and drainage plan as part of the preliminary site plan filed at the time of the commencement of the application. Section 1105.A.3 of. the regulations require that preliminary site plans show preliminary grading information.[12] The defendant asserts that the preliminary site plan, dated June 6, 2022, showed this information.[13] Nevertheless, at the first public hearing session, one of the commissioners opined that more detail was required. Plaintiffs claim that, because the plan was not timely filed with the Town Clerk in advance of the continued hearing for members of the public to review, that failure invalidates the action taken by the board.

The newly provided grading and drainage plan to clarify the original site plan was presented and discussed at the August hearing.[14] While plaintiffs assert no member of the public had the opportunity to review it, plaintiffs could have requested a continuance of the public hearing to review it as was the case for the missing communications to the Town Planner for which the hearing was continued to the August date. In addition, the transcript of that hearing reveals no objection by plaintiffs to the late addition and its consideration at the August 2022 public hearing.

Plaintiffs cite no cases on point that such an irregularity should void the Commission's entire action in approving the zone change but premise their claim on general and generic "due process"

---

[12] ROR, D.E. # 107.00, p. 101.
[13] ROR, Item 1b, Preliminary Site Plan.
[14] ROR, Item 5b, p. 4. The applicant notes that the plan late submitted was in large measure similar to the preliminary grading lines shown on the plan submitted at the start of the application process in June 2022.

assertions. Again, no due process rights attach for plaintiffs in this case. See *Grimes* v. *Conservation Commission*, supra, 243 Conn. 273. Further, there appear to be no fundamental fairness violations as each plaintiff could have had the opportunity to review the plan and request a delay during the course of the continued public hearing.

The defendant applicant, joined by the Commission, cites some instructive case law on this point. In *Timber Trails Associated* v. *Planning & Zoning Commission*, 99 Conn. App. 768, 778-79, 916 A.2d 99 (2007), the court had before it a similar issue, in which the plaintiffs had alleged that certain information in the record of that case had not been available prior to the public hearing. The *Timber Trails* court noted "the plaintiffs never supplied any facts or example of an attempt or a request to acquire the special materials. . . . Even if the plaintiffs had made a request, the [trial] court concluded there was no evidence suggesting that such request would have been refused by the Commission." (Internal quotation marks omitted.) Id.

In the present case, there is also no indication that the Commission, having continued the public hearing once already, would not have done so again upon a request to do so. Further, the original site plan included contour lines showing existing grading on the site.[15] The court, having reviewed the site plan and the regulations, agrees with the defendants' contention that the original plans submitted comply with § 1105.A.3 of the regulations, despite the fact that one of the commissioners thought additional information was required.[16] The court concludes plaintiffs' claims on this point do not comport with the law and finds them unpersuasive.

---

[15] ROR, Item 1b, Preliminary Site Plan dated June 6, 2022.

[16] ROR, D.E. # 107.00, p. 101 ("[Applicants] requesting an amendment to the zoning map shall provide a preliminary site plan for property to be developed under the proposed zone. Said plan shall show proposed buildings and uses,

2. Communications Not Read into the Record

Plaintiffs next argue irregularity concerning three communications[17] sent to the Town Planner, two of which were not read into the record or considered at the public hearing or by the Commissioners. The first of these was the email from Nancy McSweegan previously mentioned and one from Jacob LaValley about the loss of trees. Plaintiffs provide no case law on point as to why two such oversights should invalidate the entire process.

In such cases, the court reviews the record to determine if the oversight was harmless error or whether it was vital and central to the process. See, e.g., *Crabtree Realty Co. v. Planning Zoning Commission*, 82 Conn. App. 559, 571, 845 A.2d 447, cert. denied, 269 Conn. 911, 852 A.2d 741 (2004)[18]; *Dram Associates v. Planning & Zoning Commission*, 21 Conn. App. 538, 543, 574 A.2d 1317 (1990); see also *Wadell* v. *Board of Zoning Appeals*, 136 Conn. 1, 10, 68 A.2d 152 (1949). On this point as well as the earlier issues, the plaintiffs bear the burden of proof which they have not met. They need to show the harm which resulted from such omission. In Nancy McSweegan's case, others raised objections to the MPSD district proposal including a letter from Jon McSweegan,[19] whose address is identical to hers, as well as other individuals objecting at the hearing for the same reason.[20] As to the loss of tree cover and that other areas of town were better

parking and loading, preliminary grading, driveway locations and other proposed features that will aid the Commission in its deliberation." The supplemental plan submitted included very similar grading details to the original plans. ROR Item 1b, Preliminary Grading and Drainage Plan, dated August 5, 2022.

[17] ROR, Item 7u (Nancy McSweegan); Item 7v (Lavalley). Item 7c, a letter from Dennis Gragnolati, was read into the record at the August 2022 hearing by one of the commissioners.

[18] Distinguished on other grounds, *Pfister* v. *Madison Beach Hotel, LLC,* 341 Conn. 7o2, 267 A.3d 811 (2022).

[19] ROR, Item 5a, pp. 60-61.

[20] ROR, Item 5a, pp 34-54.

suited to senior housing, again other members of the public objected on the record for the same reasons.[21] As members of the public attending and speaking at the hearing objected to both the MSRD district being located where it was proposed and the loss of tree cover, the court concludes that the two communications were at best cumulative to that which was already before the Commission.

Whether or not certain evidence is cumulative of evidence in the record is part of the test of what comprises harmless error. See *State* v. *Eleck*, 314 Conn 123, 129-31, 314 A.3d 123 (2014). *Eleck* also requires the plaintiffs prove that the oversight was harmful. Plaintiffs have not met their required burden of proof on this issue, and these claims are invalid as grounds on which to overturn the Commissions' action.

3. Evidence Outside the Record

The next claim is that one of the commissioners, Commissioner Gannuscio, in providing his reasons for his support of the application prior to the vote, made reference to action taken by another board on which he sits on the need for housing as well as a State Housing report, which did not come into the record and about which he had personal knowledge. This, plaintiffs urge, constitutes improper evidence.

However, plaintiffs are not correct in their claims and the court cannot agree. Board members are not required to park their own personal knowledge of general land use issues in their

[21] ROR, Item 7v (LaValley email); Item 5a, pp.59-60 (Pyznar about trees), p. 64 (Tiffany Tisler about preserving trees), and pp. 40, 46, 47, 49 (Marsh about tree canopy).

communities or within this state by the door as they enter town facilities to deliberate on applications before them. In fact, they are bound to consider broad goals, see General Statutes § 8-2, and to bring their own knowledge to the table. There are many cases including those cited by the defendants: *Dram Associates* v. *Planning & Zoning Commission,* supra, 21 Conn. App. 542, and *Central Bank for Saving* v. *Planning & Zoning Commission*, 13 Conn. App. 448, 454, 537 A.2d 510 (1988), which so hold. "[L]ay commission members properly may rely on their personal knowledge of traffic patterns and real estate development needs to make zoning changes. . . . Pursuant to General Statutes § 8-2, a zoning authority shall consider various goals in making a zone change, including the reduction of street congestion, the prevention of undue population concentrations and the encouragement of the most appropriate land use. Commission members' personal knowledge and observations relevant to these factors may be relied on to the same extent as if they were in evidence." (Citation omitted.) *Dram Associates* v. *Planning & Zoning Commission,* supra, 542. Therefore, Commissioner Gannuscio's reference to another board's consideration of similar issues and a State Housing report are not improper evidence, but based on his own personal knowledge and interest in land use issues and are to be considered in the same fashion as evidence under Connecticut law. Plaintiffs' claims on this point also fail.

4. Commissioners Treated the Hearing as a Mere Formality

The plaintiffs further argue that the commissioners treated the hearing as a mere formality and did not carefully consider all the public input available to them. The court has read the transcripts of the public hearings several times and finds no such cavalier treatment evident in the record. The

court concludes that the plaintiffs have latched onto comments which can be read in several ways and searched hard to find a basis for their claim. But any public hearing is comprised of all its parts which are to be considered together and as a whole. Emphasizing only a small part of an exchange between the commissioners is not a fair reading of what took place. Plaintiffs' opposition to the zone change has blinded them to what is before them in total. The court finds the plaintiffs' cited examples of "proof" of the Commission's claimed callousness to the seriousness of the issues before them unpersuasive both on the facts and the law. The Commissioners were engaged with the details of the application, the presentations for and against the zone change and carefully considered the considerable information before it.

5. No Collective Reasons for the Decision Given

There were no reasons outlined by the commissioners on the record for their unanimous decision to approve the zone change. Plaintiffs argue strenuously that this failure invalidates their action in approving the change. Plaintiffs duly acknowledge that when a commission, as a collective body, does not give a reason for its action on the record, the court must search the entire record to find the basis for the action taken. See, e.g., *Harris* v. *Zoning Commission*, 259 Conn. 402, 423-24, 788 A.2d 1239 (2002. The requirement of a statement of reasons is directory rather than mandatory. Such failure to state the reasons for a decision on the record is often the case in actions taken by zoning boards. Given that a zone change is a legislative determination by this Commission, the record need only supply reasonable support for the Commission's actions. *Konigsberg* v. *Board of Alderman,* supra, 283 Conn. 582. A zone change must be reasonably related to the general purposes recited in General Statutes § 8-2 and a town's comprehensive plan.

Id., 583. The general purposes of zoning are very broad. The concept of a comprehensive plan of development has also been described broadly by the courts. "A comprehensive plan has been defined as a general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential use of the properties. . . . The requirement of a comprehensive plan is generally satisfied when the zoning authority acts with the intention of promoting the best interests of the entire community." (Citation omitted; internal quotation marks omitted.) *First Hartford Realty Corp. v. Plan & Zoning Commission*, 165 Conn. 533, 541, 338 A.2d 490 (1973). "[T]he comprehensive plan is to be found in the zoning regulations themselves and the zoning map, which are primarily concerned with the use of property." (Internal quotation marks omitted.) *Konigsberg* v. *Board of Alderman,* supra, 585. Adding support for the deference to be given a zoning agency if the interpretation is reasonable, our courts have found that "[a] local board or commission are in the best position to interpret their own regulations and to apply them." (Internal quotation marks omitted.) *Balf Co.* v. *Planning & Zoning Commission*, 79 Conn. App. 626, 635, 830 A.2d 836, cert. denied, 266 Conn. 927, 835 A.2d 474 (2003).

Turning first to the purposes and powers set forth in General Statutes § 8-2, the statute includes, among other things, "promoting housing choice and economic diversity in housing . . ."; General Statutes § 8-2 (b) (5); as well as specifically providing "for the development of housing opportunities . . . for multifamily dwellings . . . . " General Statutes § 8-2 (b) (4). Having reviewed the record, the court concludes that the record contains many references to the need for senior housing in Windsor Locks, for which extension of the MFSD district is reported to be particularly