DOCKET NO: FBT-CV23-6123139-S	:	SUPERIOR COURT
ARMANDO BRAUN	:	J. D. OF BRIDGEPORT
V.	:	AT BRIDGEPORT
PLANNING & ZONING COMMISSION, TOWN	:	
OF MONROE, ET. AL.	:	MAY 15, 2024

FACTS

The Defendant, Hague, LLC, submitted an application for a special exception to the Monroe Planning and Zoning Commission dated February 22, 2022 (ROR 1a) concerning 126 Main Street, Monroe. The application sought approval to renovate an existing 4,800 square foot building for use as a retail gasoline station and a convenience store (ROR 1a; ROR 16).

126 Main Street, which is owned by an entity known as South Main Street Newtown Associates, LLC (ROR 1a) consists of approximately 0.96 acres, with frontage along Main Street, Monroe. The property is situated in a Business District 2 (B-2) Zone, in which retail gasoline stations with a convenience store are a permitted use. It is situated on the easterly side of Main Street, a state highway designated Route 25.

The property is subject to wetlands regulations, and 0.72 acres, or seventy-two (72) percent of the site is within one hundred (100) feet of the wetlands area. Because construction and regulation would occur within the upland review area, an application for permission to conduct a regulated activity was filed with the Monroe Inland Wetlands Commission. The Commission approved all regulated activities (ROR 23, p. 1).

The site is served by city water, and the plans submitted along with the special exception proposal call for a new subsurface disposal system. Since the parcel has frontage on a state

highway, Route 25, approval was obtained from the State of Connecticut Department of Transportation (DOT) for improvements within the state right of way (ROR 23, p. 12-14).

During the February 16, 2023 public hearing, most of the discussion centered around ingress and egress to the property, as well as the movement of vehicles within the site. Considerable testimony involved deliveries of gasoline by fuel suppliers, while the gasoline station and the convenience store were open for business (ROR 21, p. 6-8).

The plans submitted showed the southern access to Route 25 as an entrance only area, while the northern exit would be restricted to right turn only, for vehicles exiting the site.

During the March 2, 2023 continued hearing, the proposed layout showing the pumps was discussed. Members of the Planning and Zoning Commission continued to express concerns involving the delivery of fuel, and movement of vehicles on the site (ROR 22, p. 8-13).

The Commission determined not to call for a vote on the application during the March 2 meeting. Instead, it was determined that a vote on the special exception application would take place at the March 16 meeting (ROR 23). The delay allowed Commission staff time to prepare a resolution of approval (ROR 22, p. 27-29).

Following the March 2 meeting, a revised site plan was prepared, and was available prior to the Commission's March 16 meeting. The site plan repositioned the pumps, from perpendicular to Route 25, to a location parallel to the state highway. The site plan was consistent with a proposed resolution of approval which was prepared by the Commission's staff, prior to the March 16 meeting (ROR 26).

At the March 19 meeting, the Commission heard a presentation from Monroe Planning Director Rick Shultz (ROR 23, p. 1-3). Shultz reviewed the widening of Route 25 at the location, and the applicant's agreement to install decorative bollards near the sidewalk area and the pumps. He also explained that the repositioning of the pumps would improve safety and the circulation of vehicles on the site.

The Commission voted to approve the special exception, and the resolution supporting that decision, as drafted by its staff (ROR 23, p. 7-9; ROR 26), included specific conditions of approval. The requested special exception was determined to be consistent with Monroe's Plan of Conservation and Development (POCD), and fifteen (15) specific findings were included (ROR 26, p. 2). The approval included:

> "The Commission requested, and the applicant agreed to reposition the pump islands from perpendicular to parallel to Route 25 to improve overall safety and circulation."

These conditions of approval were consistent with the revised site plan prepared in advance of the March 16 meeting.

The vote to approve the requested special exception was four (4) in favor, with one (1) commissioner opposed (ROR 26, p. 3; ROR 16).

Notice of the decision was published (ROR 19) as required by law, and this timely appeal followed.

The appeal cited three (3) reasons for challenging the approval of the special exception:

1. The Commission failed to make requisite findings of fact, identify sufficient or adequate reasons for approving the Application, or determine the

Application's conformity with the applicable conditions and standards of approval set forth in the Regulations.

2. The Commission did not ensure that the size of the use, intensity of the operation, traffic involved in or connected to the use, and the capacity of streets are such that the proposed use will be in harmony with the appropriate and orderly development of the area.
3. The Commission ignored and acted in a manner that is inconsistent with and violates the procedural and substantive requirements and provisions of the Regulations, the Connecticut General Statutes and the common law of Connecticut.

However, at trial and in briefs submitted in support of his appeal, the Plaintiff confined his challenge to the special exception approval to the claim that the revised site plan was submitted and completed following the close of the public hearing. He claims that the Commission's decision was based upon the site plan, and that the site plan constituted an illegal *ex-parte* communication following the close of the public hearing.

The Plaintiff, Armando Braum, claims that the revised site plan might have had an impact upon the Commission's decision to approve the requested special exception.

However, at trial, he conceded that the approved special exception and the revised site plan comply with the applicable provisions of the Monroe Zoning Regulations.

AGGRIEVEMENT

The Plaintiff, Armando Braun, is the owner of real property known as 521 Purdy Hill Road, Monroe. He took title to the real estate along with Cintia Araujo De Freitas Braun, in survivorship, via a quitclaim deed dated August 2, 2021, recorded in the Monroe Land Records, Volume 2176, Pages 149-150 (Exhibit 1).

He testified and provided documentary evidence (Exhibit 2) that 512 Purdy Hill Road is within one hundred (100) feet of 126 Main Street, the property which is the subject of the special exception application.

Armondo Braun has been an owner of 521 Purdy Hill Road throughout the time this appeal has been pending.

Pleading and proof of aggrievement are prerequisites to a trial court's jurisdiction over the subject matter of an appeal. *Stauton v. Planning & Zoning Commission*, 271 Conn. 153, 157 (2004); *Jolly, Inc. v Zoning Board of Appeals*, 237 Conn. 184, 192 (1996). The question of aggrievement is one of fact, to be determined by the trial court. *Primerica v. Planning & Zoning Commission*, 211 Conn. 85, 93 (1989). The burden of proving aggrievement rests with the party claiming to be aggrieved. *Harris v. Zoning Commission*, 259 Conn. 402, 410 (2002). One claiming aggrievement must sustain his interest in the property throughout the course of an appeal. *Goldfield v. Planning & Zoning Commission*, 3 Conn. App. 172, 177 (1985).

Aggrievement falls into two (2) basic categories – statutory aggrievement, and classical aggrievement.

Statutory aggrievement exists by virtue of legislative fiat, and is a legislative recognition of a right to institute an appeal without regard to an analysis of the facts of a particular case. *Moutinho v. Planning & Zoning Commission*, 278 Conn. 660, 665 (2006); *Weill v. Lieberman*, 195 Conn. 123, 124-25 (1989). One claiming statutory aggrievement must show that a particular statute grants to a party the right to pursue an appeal, without the necessity of demonstrating actual injury based upon the particular facts at hand. *Pond View, LLC v. Planning & Zoning Commission*, 288 Conn. 143, 156 (2005); *Fort Trumbull Conservancy v. Alves*, 262 Conn. 480, 485-87 (2003).

Classical aggrievement, on the other hand, requires a party to satisfy a well-established two-fold test: 1) the party claiming aggrievement must demonstrate a personal and legal interest

in the decision appealed from, as distinct from a general interest, such as concern of all members of the community as a whole, and 2) the party must prove that the specific personal and legal interest has been specifically and injuriously affected by the decision which generated the appeal. *Cannavo Enterprises v. Burns*, 194 Conn. 43, 47 (1984); *Hall v. Planning Commission*, 181 Conn. 442, 444 (1980).

Section 8-8 (1) of the General Statutes defines "Aggrieved person" to include:

> "... any person owning land that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board..."

The Plaintiff, Armando Braun, is an owner of 521 Purdy Hill Road, Monroe. His property is located within one hundred (100) feet of 126 Main Street, Monroe.

It is therefore found that Armondo Braun has proven that he is statutorily aggrieved by the decision of the Monroe Planning and Zoning Commission, which is the subject of this appeal.

STANDARD OF REVIEW – SPECIAL PERMIT (SPECIAL EXCEPTION)

A special permit or special exception allows a property owner to use property in a manner which is expressly permitted by the municipal zoning regulations, subject to certain conditions necessary to protect the public health, safety, convenience and surrounding property values. *Whisper Wind Development Corp. v. Planning & Zoning Commission*, 229 Conn. 176, 177 (1994); *High Watch Recovery Center, Inc. v. Planning & Zoning Commission*, 223 Conn. App. 424, 439 (2024); *St. Joseph's High School, Inc. v. Planning & Zoning Commission*, 176 Conn. App. 570, 585-86 (2017). The terms "special permit" and "special exception" are

interchangeable. *City of Meriden v. Planning & Zoning Commission*, 146 Conn. App. 240, 244-45 (2013).

The basic rationale for requiring a special exception is that while certain uses of land are permitted as of right in a particular zone, the nature of the use is such that its precise location and mode of operation must be regulated because of topography, traffic, neighborhood uses, etc. *McLaughlin v. Planning & Zoning Commission*, 342 Conn. 737, 745 (2022); *Barbarino Realty & Development Corporation v. Planning & Zoning Commission*, 222 Conn. 607, 612 (1992).

When considering a special permit or special exception application, a planning and zoning commission sits in an administrative capacity, rather than in a legislative or quasi-judicial capacity. *Irwin v. Planning & Zoning Commission*, 244 Conn. 619, 627 (1998). The commission's role is to determine whether the application as presented satisfies standards contained in the regulations. *Quality Sand & Gravel, Inc. v. Planning & Zoning Commission*, 55 Conn. App. 533, 527 (1999).

In applying the law to the facts of a particular case, the municipal zoning authority is endowed with liberal discretion, and its actions are subject to review by a court only to determine whether the challenged action was unreasonable, arbitrary or illegal. *Schwartz v. Planning & Zoning Commission*, 208 Conn. 146, 152 (1980). The exercise of that discretion is inherently fact specific and requires an examination of the particular circumstances of the precise site for which the special exception is sought. On factual questions, a reviewing court cannot substitute its judgement for that of the municipal agency. *Timber Trails Corp. v. Planning & Zoning Commission*, 222 Conn. 380, 401 (1992).

Conclusions reached by the commission must be upheld, if they are supported by substantial evidence in the record. The substantial evidence standard is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard. *Sams v. Department of Environmental Protection*, 308 Conn. 359, 374 (2013). Substantial evidence is enough evidence to justify, if the trial were to a jury, the refusal to direct a verdict where the conclusion to be drawn is one of fact. *Huck v. Inland Wetlands & Watercourses Agency*, 203 Conn. 525, 541 (1987). The possibility of drawing two inconsistent conclusions does not prevent a decision from being supported by substantial evidence. *Sampieri v. Inland Wetlands Agency*, 226 Conn. 579, 588 (1993). The burden of demonstrating that a commission's decision should be overturned rests with the party challenging the decision. *Verney v. Zoning Board of Appeals*, 151 Conn. 578, 580 (1964).

REVISED SITE PLAN WAS NOT AN ILLEGAL EX-PARTE COMMUNICATION TO THE COMMISSION FOLLOWING THE CLOSE OF THE PUBLIC HEARING

The Plaintiff claims that the revised site plan constituted an improper *ex-parte* communication, which the Monroe Planning and Zoning Commission received after the close of the public hearing. He maintains that prejudice resulted as a consequence of the improper communication, and that the process lacked fundamental fairness.

Proceedings before zoning boards and commissions are informal and are conducted without regard to strict rules of evidence. However, they cannot be conducted in violation of fundamental rules of natural justice. *Megin v. Zoning Board of Appeals*, 106 Conn. App. 602, 609 (2008). A land use commission can not properly consider additional evidence submitted by an applicant after the close of a public hearing, without providing opponents and the public with

a fair opportunity to cross examine witnesses, inspect documents and offer rebuttal evidence. *Balaker v. Planning & Zoning Commission*, 212 Conn. 471, 477-78 (1989).

A land use agency may not use information which has been supplied to it by a party to a contested hearing on an *ex-parte* basis. *Pizzola v. Planning & Zoning Commission*, 167 Conn. 202, 208 (1974); *Norooz v. Inland Wetlands Agency*, 26 Conn. App. 564, 569 (1992). However, information supplied by an agency's own professional staff outside the confines of a hearing may be received. *McCrann v. Town Plan & Zoning Commission*, 161 Conn. 65, 77-78 (1971). Because a municipal land use commission is composed of laymen, it is entitled to obtain technical assistance from staff and persons possessing technical expertise. *Yurdin v. Town Plan & Zoning Commission*, 145 Conn. 416, 421 (1958).

However, even if a review of the record reveals that a prohibited *ex-parte* communication has occurred, that does not mean that a decision is automatically invalid. Once it has been demonstrated that an *ex-parte* communication has been received, a rebuttable presumption of prejudice arises. The burden of showing that the prohibited communication has not prejudiced a party is placed upon the party seeking to uphold the decision. *Balaker v. Planning & Zoning Commission, supra*, 479.

Determining whether an improper *ex-parte* communication has occurred, necessarily involves a case-by-case analysis. Here, the public hearing process produced extensive testimony and information concerning the proposed ingress and egress to 126 Main Street, and the movement of motor vehicles within the site while accessing fuel or using the proposed convenience store. Members of the Commission repeatedly raised questions concerning the proposed layout, including the timing of fuel deliveries.

The Resolution prepared by the Monroe Town Planner and ultimately approved by the Commission reflected those discussions, and the revised site plan was in accord with the special exception approval voted by the Commission.

The revised site plan did not contain any new information or technical data which had not been discussed and analyzed during the public hearing process, and the Commission's deliberations which followed. Therefore, the Plaintiff has failed to show that an improper *ex-parte* communication occurred.

Assuming, arguendo, that the revised site plan could be considered an improper *ex-parte* communication, that conclusion would not avail the Plaintiff.

During the public hearing, information concerning the movement of vehicles on the site, the hours when fuel deliveries would be permitted, and access to Route 25 (Main Street) was the subject of debate and discussion.

Nothing contained in the revised site plan, or the approval voted by the Commission, constituted new information which had not been fully explored as part of the public hearing. Furthermore, the record does not reflect that the Commission relied upon the site plan, in approving the requested special exception.

At trial, counsel for the Plaintiff acknowledged that the special exception approved by the Commission and the revised site plan complied with all of the applicable Monroe Zoning Regulations. The only prejudice claimed was that members of the Commission might have voted differently, had the site plan not been available. Any such rank speculation finds no support in the record.

When conducting a site plan review, a planning and zoning commission acts administratively. *Carr v. Bridgewater*. 224 Conn. 44, 54 (1992); *Norwich v. Wilbert Vault Co.*, 208 Conn. 1, 12 (1988). In reviewing a site plan, the commission has no independent discretion beyond determining whether the plan complies with the applicable regulations. *Kosinski v. Lawlor*, 177 Conn. 420, 427 (1979); *Allied Plywood, Inc. v. Planning & Zoning Commission*, 2 Conn. App. 506, 512 (1984). A site plan may be modified or denied only if it fails to comply with the requirements set forth in the regulations. *Connecticut Resource Recovery Authority v. Planning & Zoning Commission*, 46 Conn. App. 566, 570 (1997); *SMS Associates, Ltd. Partnership v. Planning & Zoning Commission*, 15 Conn. App. 561, 566-67 (1988).

The Plaintiff does not allege that the revised site plan violates any provision of the Monroe Zoning Regulations, or that the Monroe Planning and Zoning Commission did not properly apply those Regulations when it approved the special exception application for 126 Main Street.

A review of the record fails to disclose any evidence of prejudice, the Plaintiff's speculation notwithstanding. Therefore, any presumption of prejudice is easily refuted.

CONCLUSION

The appeal of the Plaintiff, Armando Braun, is DISMISSED.

Radcliffe, J.T.R.

RADCLIFFE, JTR