

AT STAMFORD  
123 HOYT STREET  
STAMFORD, CT 06905

DOCKET NO: FST CV 23-6061224 S

: SUPERIOR COURT

VALENTINE, DAN

2024 MAY 14 P 4: 11

: JUDICIAL DISTRICT OF

V.

: STAMFORD-NORWALK

WILTON INLAND WETLANDS COMMISSION

: AT STAMFORD

: MAY 14, 2024

MEMORANDUM OF DECISION

Plaintiffs Dan Valentine and Makiko Kashida have appealed from that portion of the decision of the Wilton Wetlands Commission (The "Commission") that required them to record in the Wilton Town Land Records notice of its determination that the plaintiffs' proposed activities "are permitted non-regulated uses of a wetland, watercourse or regulated area directly relating to farming activities."<sup>1</sup> For the reasons stated below, the appeal is denied.

The issue raised on this appeal is narrow: whether the Commission has authority to require a successful applicant for an exemption from wetlands regulation under C.G.S. § 22a-40 (a) (1) to record notice of its determination on the land records.<sup>2</sup>

Plaintiffs argue that the portion that required posting notice of its farming exemption determination was "ultra vires" because there is no statutory authorization for such order. Plaintiffs note that the only statute that expressly

---

<sup>1</sup> The parties stipulated to facts that demonstrated Makiko Kashida, as owner of the subject property, was aggrieved by the agency action appealed. See *Rainbow Housing Corporation v. Cromwell*, 340 Conn. 501, 511 (2021).

<sup>2</sup> There is no issue on this appeal that the proposed activities fall within the farming exemption to wetlands regulation. The Inland Wetlands and Watercourses Act ("Act") sets out certain uses of land which are exempt from the requirements of the Act. General Statutes § 22a-40 (a) (1) is the applicable agricultural exemption.

authorizes posting notice on the land records of a wetland agency's determination is found in General Statutes § 22a-44 (a), which provides for the filing of cease and desist orders: "[t]he agency may file a certificate of such order in the office of the town clerk of the town in which the land is located and the town clerk shall record such certificate on the land records of such town. Such certificate shall be released upon compliance with such order." Plaintiffs point out there is no comparable statutory authority for recording exemption determinations.<sup>3</sup>

In *Tilcon Connecticut, Inc. v. Commissioner of Environmental Protection*, 317 Conn. 628, 690 (2015), the Supreme Court reiterated the well-established precept that "'an administrative body must act strictly within its statutory authority' and 'cannot modify, abridge or otherwise change the statutory provisions ... under which it acquires authority unless the statutes expressly grant it that power....'" *Id.* quoting *Celentano v. Rocque*, 282 Conn. 645, 654 (2007).<sup>4</sup>

The agency's enabling statute sets forth in the legislative finding, the purpose of the Act: "the preservation and protection of the wetlands and

---

<sup>3</sup> By statute the Commission must publicize certain decisions. "General Statutes § 22a-42a(d)(1) sets forth the requirements for publication by inland wetlands agencies of their decisions. Section 22a-42a(d)(1) provides that the 'applicant shall be notified of the agency's decision by certified mail within fifteen days of the date of the decision and the agency shall cause notice of their order in issuance, denial, revocation or suspension of a permit to be published in a newspaper having a general circulation in the town wherein the wetland or watercourse lies.' 'The obvious purpose of ... requiring the publication in a newspaper of the decision of a commission, is twofold: (1)[t]o give notice to interested parties of the decision, and (2) to commence the start of the fifteen day appeal period.' *Akin v. Norwalk*, 163 Conn. 68, 73, 301 A.2d 268 (1972)." *Oates v. East Haddam Inland Wetlands & Watercourses Com'n*, 2008 WL 5540470 \*1 (Conn.Super. 2008) (Jones, J.). The statute does not require posting in the land records.

<sup>4</sup> "Administrative agencies ... are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon ... the statutes vesting them with power, and they cannot confer jurisdiction upon themselves.... We have recognized that [i]t is clear that an administrative body must act strictly within its statutory authority, within constitutional limitations and in a lawful manner.... It cannot modify, abridge, or otherwise change the statutory provisions ... under which it acquires authority unless the statutes expressly grant it that power.' (Internal quotation marks omitted.) *Fullerton v. Administrator, Unemployment Compensation Act*, 280 Conn. 745, 755, 911 A.2d 736 (2006)." *Celentano*, 282 Conn. at 654.

watercourses from random, unnecessary, undesirable and unregulated uses,” General Statutes § 22a-36, and establishes the Act to “provid[e] an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology . . .” *Id.* Wetlands agencies have authority to determine whether proposed activities fall within the farming exception under C.G.S. § 22a-40 (a) (1) and to issue a public determination of the application to exempt proposed farming use of a particular property from wetlands regulation. See generally *Red 11, LLC v. Conservation Com'n of Town of Fairfield*, 117 Conn.App. 630, 643 (2009). “Generally, we review the actions of an agency under a deferential standard of review. Specifically, we consider whether, in light of the evidence, the agency acted unreasonably, arbitrarily, illegally or in abuse of its discretion.” *Id.* “An agency which has the authority to enact regulations is vested with a large measure of discretion, and the burden of showing that the agency has acted improperly rests upon the one who asserts it.” *Aaron v. Conservation Commission of Town of Redding*, 183 Conn. 532, 537 (1981). The Commission has established a process for an owner to assert a statutory exemption from wetlands regulation, and for the Commission to hear and render a public determination as to whether the owner is entitled to the statutory exemption for the proposed activity. As a public agency it is within the inherent authority of the Commission to publicize its determination that the farming exception applied to the activities proposed on the subject property.

The Commission imposed the recording of its determination on the land records to provide notice of what was permitted under the granted application. Notice in the land records is another means to publicize the Commission’s determination of the exemption application. “It is the policy of our law to make

every man's title to his real estate, as far as practicable, appear of record, and the land records are constructive notice to all the world of any instruments there recorded.” *Saunders v. KDFBS, LLC*, 206 Conn.App. 92, 106 (2021) (citation omitted). Imposing recordation in the land records does not limit the rights permitted by the Commission’s determination; nor does it extend the Commission’s oversight of the approved use; it merely records and publishes an established fact, that the farming exemption application was granted. Plaintiffs have not borne their burden of proof that the recordation condition was beyond the Commission’s authority.

\_\_\_\_\_436948\_\_\_\_\_

Krumeich, J.T.R.

DEUSO WENT TO  
ACCORDANCE WITH THE  
FOLLOWING ON 5/14/24.  
JDN SENT 5/14/24  
[Signature]