

SUPERIOR COURT  
STAMFORD-NORWALK  
JUDICIAL DISTRICT

DOCKET NO: FST CV 18 6064119 S : SUPERIOR COURT  
2024 MAY -6 P 3: 29

HIGH RIDGE REAL ESTATE OWNER, LLC : JUDICIAL DISTRICT OF

V. : STAMFORD/NORWALK

BOARD OF REPRESENTATIVES OF : AT STAMFORD  
THE CITY OF STAMFORD

: May 6, 2024

### MEMORANDUM OF DECISION

This is a land use appeal brought by High Ridge Real Estate Owner, LLC (“High Ridge”) against the Board of Representatives of the City of Stamford (the “Board”) concerning the Board’s rejection of a zoning text amendment that had been previously approved by the Stamford Zoning Board. The amendment would have added fitness centers (subject to a number of requirements) as a special permit use within “C-D Designed Commercial District” zones under the Stamford zoning code. High Ridge owns an office park near the Merritt Parkway in Stamford that is within such a zone and wanted to open a Life Time Fitness facility on the property as an adaptive reuse of a vacant and obsolete office building. High Ridge has moved to supplement the record on appeal. For the reasons stated below, the motion is granted and the record on appeal may be supplemented.

High Ridge argued that the record must be supplemented to include evidence adduced in discovery,<sup>1</sup> not in the administrative record, that pertain to

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<sup>1</sup> High Ridge was permitted to take discovery outside the administrative record by Judges Budzik and Lee.

the following the issues to be decided on this appeal: whether the Board's rejection of the zoning amendments was predetermined, biased and politically-motivated; was affected by conflicts of interest; and was not based on the principles of zoning required by Charter section C6-40-1.

High Ridge seeks to supplement the record with the following evidence:

1. Board of Representatives document production.
2. Excerpts from Board of Representatives FOIA production.
3. Lindsey Miller-Nina Sherwood text messages and transcription.
4. Transcript of deposition of Hank Cuthbertson dated December 20, 2023.
5. Transcript of deposition of Nina Sherwood dated January 8, 2024.
6. Video of deposition of Nina Sherwood dated January 8, 2024.

Connecticut General Statutes § 8-8(k) provides that “[t]he court shall review the proceedings of the board and shall allow any party to introduce evidence in addition to the contents of the record if (1) the record does not contain a complete transcript of the entire proceedings before the board, including all evidence presented to it, pursuant to section 8-7a, or (2) it appears to the court that additional testimony is necessary for the equitable disposition of the appeal. . .” Conn. Gen. Stat. § 8-8(k); see also R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice § 27:28 (4th Ed.) (“the trial court may allow additional evidence if it is necessary for the equitable disposition of the appeal”). In *Parslow v. Zoning Board of Appeals*, 110 Conn. App. 349, 356 (2008), the Appellate Court instructed “before allowing additional evidence the court should (1) determine that the additional evidence is material and (2) that there

was good reason for the failure to present the evidence in the original proceeding.”

Here, the supplemental evidence is material to the issues presented<sup>2</sup> and there was good reason for the failure to present the evidence in the original proceeding because these materials and information were not known or available to High Ridge at the time of the hearing.<sup>3</sup> It appears to the Court pursuant to C.G.S. § 8-8(k) (2) “additional testimony is necessary for the equitable disposition of the appeal.”

DECISION ENTERED IN ACCORDANCE  
WITH THE REMAND TO 5/6/24.  
DND SENT 5/6/24  
[Signature]

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Krumeich, J. T. R.

<sup>2</sup> “The materiality of evidence turns upon what is at issue in the case, which generally will be determined by the pleadings and the applicable substantive law.” *Mead Point, LLC v. Planning and Zoning Commission of Town of Greenwich*, 2023 WL 2582701 \*1 (Conn.Super. 2023) (Kavanewsky, J.). See also *Mimms v. Planning & Zoning Com'n of Town of Westport*, 1993 WL 213723 \*4 (Conn.Super. 1993) (Levin, J.) (“Materiality looks to the relation between the propositions for which the evidence is offered and the issues in the case.” McCormick on Evidence (3d Ed.1984) § 185; see also Ballentine's Law Dictionary, p. 782”). Although not every page of the proffered evidence would be material, the materiality of the exhibits as a whole to the issues presented is apparent and meets the relatively low threshold of materiality.

<sup>3</sup> “Under § 8-8(k)(2), there are certain areas in which it is almost obligatory that the trial court allow evidence to supplement the record before the board. These areas are set forth in great detail in § 32.8 of volume 9A of Robert A. Fuller's text on Connecticut land use law and practice. Some of the instances in which supplemental evidence is almost always allowed occur when there are claims of confiscation, improper receipt of evidence after the public hearing, conflicts of interest by members of the land use board, predetermination and former applications to the agency, among others.” *Parslow*, 110 Conn. App. at 355-356 (footnote omitted). See *MJM Land Development v. Madison Inland Wetland Assn.*, 2004 WL 2094755 \*2 (Conn.Super. 2004) (Corradino, J.) (“when ex parte communications are alleged to have taken place between members of local zoning bodies and interested parties, the taking of additional evidence would have to be allowed”), and *Harrison v. Board of Zoning Appeals*, 2004 WL 1966962 \* (Conn.Super. 2004) (Corradino, J.) (“where there is a claim on appeal of personal or financial bias on the part of a member of a zoning authority”). In *MJM* Judge Corradino discussed “as of right” supplementation of the record: “What characterizes the just discussed types of cases—claims of constitutional violations, ex parte communications, procedural irregularities, including claims of bias—is the fact that by their very nature these types of claims would not have been addressed or only obliquely so, in the administrative body's record. Thus if the party making a request to supplement the record has a right to raise the issue on appeal, that party has the right to present evidence going beyond the record to support such a claim.” 2004 WL 2094755 \*2. Accord, *Michalski v. Planning and Zoning Commission of Town of Darien*, 2023 WL 3717399 \*3 (Conn.Super. 2023) (Lee, J.T.R.) (supplement record for ex parte communications or predisposition may be as of right in appropriate case). The standard for supplementing the record is stricter for not “as of right” reasons offered to supplement an administrative record. See e.g., *Cirillo v. Zoning Board of Appeals of the Town of Fairfield*, 2020 WL 4333830 \*3 (Conn.Super. 2020) (Stevens, J.).