



STATE OF CONNECTICUT

**SUPREME COURT
APPELLATE COURT**

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August 29, 2023

THE SUPREME COURT IS SOLICITING AMICUS CURIAE BRIEFS IN:

SC 20838

9 Pettipaug, LLC, et al.

v.

Planning and Zoning Commission of the Borough of Fenwick

The Court invites amici curiae to file briefs in the above-captioned matter that address the following two questions:

1. Did the Appellate Court correctly conclude that General Statutes § 8-3 (d), which requires notices of zoning amendments to be published in a "newspaper having a substantial circulation in the municipality," may be satisfied by evidence of the specific number of newspapers physically sold or distributed within that municipality?
2. Did the Appellate Court correctly conclude that the ready availability of a newspaper to residents of a municipality within that newspaper's area of coverage, where the newspaper has a history of being used for the municipality's notices, was insufficient to satisfy the "substantial circulation" requirement of § 8-3 (d)?

As this is a Court-initiated request, an application for permission to file as amicus curiae is not required. If you accept the Court's invitation, you must file the amicus brief limited to 4000 words on or before September 26, 2023, in compliance with Practice Book § 67-7, including the disclosure required in the first footnote on the first page of text. No extensions of time or argument will be permitted for amicus curiae, and responsive briefs by the parties will not be allowed.

Please find the case summary that was prepared for the general public by court staff attached to this invitation. It does not represent the Court's view of this case.

If you have any questions, please call 860-757-2200.

**9 PETTIPAUG, LLC et al. v. PLANNING & ZONING COMMISSION OF THE
BOROUGH OF FENWICK, SC 20838**
Judicial District of Hartford

Administrative Appeal; Whether Appellate Court Correctly Concluded (1) That General Statutes § 8-3 (d) "Substantial Circulation" Criterion May Be Satisfied by Evidence of Number of Newspapers Sold or Distributed Within Municipality and (2) That "Substantial Circulation" Criterion Not Satisfied by Availability of Newspaper to Residents Where Newspaper Has History of Use for Public Notices.

On July 20, 2019, the defendant, the Planning and Zoning Commission of the borough of Fenwick (commission), amended Fenwick's zoning regulations to allow property owners to rent their premises subject to certain conditions. Notice of the decision was published in The Middletown Press on July 25, 2019. In October 2019, the plaintiffs, owners of real property in Fenwick, appealed to the Superior Court, claiming that the commission had failed to comply with General Statutes § 8-3 (d), which requires notice of zoning amendments be published in a newspaper having "substantial circulation" in Fenwick. The commission moved to dismiss, arguing that the appeal was untimely as it had not been filed within fifteen days of publication of the notice as required by General Statutes § 8-8 (b). The trial court found that timeliness was not governed by § 8-8 (b) because the commission had failed to comply with the "substantial circulation" requirement of § 8-3 (d) and that timeliness was instead governed by General Statutes § 8-8 (r), which provides for a one-year appeal period. Specifically, the court found that no households in Fenwick subscribe to The Middletown Press and that no facts were presented to support whether any of the single copy sales in Old Saybrook, the town where the borough of Fenwick is located, were made to Fenwick residents. The court thus denied the motion to dismiss. Thereafter, the plaintiffs moved for summary judgment, arguing that, because the court had already determined that the commission had failed to comply with § 8-3 (d), they were entitled to a declaratory judgment that the amendment was not lawfully enacted. The court agreed and granted the plaintiff's motion for summary judgment based on its prior determination that the published notice was defective. On appeal to the Appellate Court, the commission claimed that its published notice satisfied the "substantial circulation" requirement of § 8-3 (d). The Appellate Court (217 Conn. App. 714) disagreed and held that "substantial circulation" of a newspaper requires more than general online availability and, instead, requires substantial dissemination or distribution of printed material among readers and/or substantial distribution of online information to readers. The court further held that there was nothing in § 8-3 (d) or case law with respect thereto to suggest that the past use of a newspaper to publish notices and some residents' awareness of such past use satisfies the "substantial circulation" requirement of § 8-3 (d). In this certified appeal by the commission, the Supreme Court will decide whether the Appellate Court properly concluded (1) that General Statutes § 8-3 (d), which requires notices of zoning amendments be published in a "newspaper having a substantial circulation in the municipality," may be satisfied by evidence of the specific number of newspapers physically sold or distributed within that municipality and (2) that the ready availability of a newspaper to residents of a municipality within that newspaper's area of coverage, where the newspaper has a history of being used for the municipality's notices, was insufficient to satisfy the "substantial circulation" requirement of § 8-3 (d).