

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Winter 2024

Volume XXVIII, Issue 1

ROAD WIDTH REGULATION CAN BE SATISFIED BY DEDICATION OF UNSUITABLE LAND

When can land that is totally unsuitable for use as a roadway be utilized to satisfy a road width requirement. It can where the requirement is not just to meet public highway needs but also to insure spacing of buildings. The zoning regulation in question stated that new streets must be fifty feet wide and that front yard and side yard requirements are measured from the edge of the fifty-foot street. The regulation stated further that for every one foot less that a street does not meet this requirement, one-half foot shall be added to each side yard requirement.

A decision by the Commission to approve a 2-lot subdivision was appealed to court because the dedicated road, while meeting the fifty-foot width requirement, would actually only be the same width as the existing twelve-foot-wide paved accessway. To comply with the road width requirement in the regulations, the dedicated road would incorporate wetlands areas. It was agreed by all parties that the existing paved road would not be widened and that the inclusion of the wetland areas was done solely to meet the fifty-foot road width requirement.

In dismissing the appeal, the court agreed with the Commission that the purpose of the regulation was not

SAVE THE DATE – 2024 ANNUAL CONFERENCE

The Federation will hold its Annual Conference on March 28, 2024 at the Aqua Turf Country Club in Plantsville CT. The event starts at 5:00 p.m. The program for the Conference will include a presentation on Air BnB Regulation as well as the 2024 Land Use Legislative Agenda. Flyers announcing the event will be sent to all members later this month. Attendees will be entitled to receive credit for One Hour of Training as well as enjoy a wonderful dinner.

focused only on establishing the travel width of a road but also to establish a point where front yard and side yards could be measured for the purpose of establishing a more uniform setback for buildings. This equally important purpose provided a basis for the Commission to find compliance with its road width requirement. *Kerlin v. Planning & Zoning Commission, 222 Conn. App. 216 (2023).*

RESIDENCY REQUIREMENT FOR AIR BnB UNCONSTITUTIONAL

Concerned about the growth of the short-term vacation rental business in its single-family neighborhoods, a city passed a land use ordinance that would limit who could engage in this business. The concern was based upon the belief that short-term vacation home rentals

Written and Edited by
Attorney Steven E. Byrne
270 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@live.com

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Winter 2024

Volume XXVIII, Issue 1

were negatively affecting the character and livability of the city's residential neighborhoods and limiting the availability of workforce housing. The ordinance sought to limit this business activity to those single-family homes that were the primary residence of the property's owner. Many of the short-term vacation rental properties were owned by out-of-state people who rented their property when they weren't using it themselves as a vacation home. These out-of-state owners formed the South Lake Tahoe Property Owners Group and challenged the ordinance on the basis it was unconstitutional.

The constitutional argument was that the ordinance violated the dormant commerce clause of the federal constitution in that it discriminated against out-of-state property owners in favor of resident property owners. By doing this, the ordinance placed an undue burden on interstate commerce, something which the federal constitution prohibits unless it can be demonstrated that the ordinance serves a legitimate government purpose and this could not be done in a nondiscriminatory way. The court viewed the residency requirement as discriminatory on its face as it mandated differential treatment of in-state and out-of-state interests that benefited the former and burdened the later. *See South Lake Tahoe Property Owners Group v. City of South Lake Tahoe, 92 Cal. App. 735 (2023).*

SOLID WASTE FACILITIES CANNOT BE PROHIBITED

Connecticut General Statutes Sec. 22a-208b provides in relevant part that no municipal zoning regulation shall have the effect of prohibiting the construction, alteration or operation of solid waste facilities within the limits of the municipality. When a city's planning and zoning agency denied a site plan application to construct and operate a solid waste transfer station, the applicant appealed to court on the basis that this denial violated this state statute.

The planning and zoning commission stated that its denial was based on the fact that the requested use was not permitted by the zoning regulations but that this was not a violation of the state statute as the Commission allowed two similar uses to continue as nonconforming uses and the zoning regulations allowed wood waste processing, which it claimed is a type of solid waste facility.

The court rejected both of these arguments. Allowing nonconforming uses to continue is not the same as not prohibiting the same uses in the zoning regulations. Nonconforming uses are allowed to continue due to Connecticut General Statutes Sec. 8-2 and not by operation of municipal zoning regulations. The zoning regulations as written clearly prohibited solid waste facilities within the city except for one particular type. The court found this to

Written and Edited by
Attorney Steven E. Byrne
270 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@live.com

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Winter 2024

Volume XXVIII, Issue 1

be a clear violation of Connecticut General Statutes Sec. 22a-208b which allows for the regulation, but not the prohibition of solid waste facilities by municipal zoning agencies. *See MSW Associates LLC v. Planning & Zoning Department, 202 Conn. App. 707 (2021).*

HARM TO SCENIC VIEWS AND NATURAL ENVIRONMENT OUTWEIGHED BY NEED FOR ADEQUATE CELL COVERAGE.

An application to erect a 140-foot-tall telecommunications tower was submitted to the Connecticut Siting Council. The proposed tower would be located in a scenic rural area with a residential neighborhood located nearby. In reviewing the application, the Siting Council was required to decide whether fulfilling the public need for adequate wireless service outweighed the adverse impact the tower would have on the scenic and natural environment around the site.

In this case, the evidence before the Council demonstrated that the need to provide adequate uniform cell coverage in this rural area outweighed the need to preserve the scenic area and natural environment as well as concerns over harm to a nearby residential neighborhood. Therefore, it was proper for the Council to approve the application. *See Woodbridge Newton Neighborhood Trust v. Siting Council, HHB-CV-22-6070603.*

ANNOUNCEMENTS

Lifetime Achievement Award and Length of Service Award

Nomination forms will be sent out later this month for these awards which will be presented to recipients at the Federation's annual conference. You should begin your process of finding eligible nominees now.

Workshops

Connecticut law now requires that every land use agency member receive 4 hours of training every two years. At the price of \$200.00 per session for each agency attending, our workshops are an affordable way for your board to 'stay legal'. Each workshop attendee will receive a booklet which sets forth the 'basics' as well as a booklet on good governance which covers conflict of interest as well as how to run a meeting and a public hearing.

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut. A principal in the law firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.

Written and Edited by
Attorney Steven E. Byrne
270 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@live.com

SAVE THE DATE!

CFPZA Annual Conference – March 28, 2024

This year's Annual Conference will take place on Thursday, March 28, 2024 at the Aqua Turf, Southington, CT. Please consider attending this year's Annual Conference of the Connecticut Federation of Planning and Zoning Agencies. The night is sure to be both enjoyable and informative. Our speaker will be presenting information on how the short-term rental of single family residences is impacting municipalities and how this use can be regulated. In addition, discussion of a recent Appellate Court decision will provide insight into what can be done legally.

Public Act 21-29 now requires an educational component for all land use commission members. At a cost of only \$70.00 per individual, this conference is a cost-effective way to complete one hour of education while providing an opportunity to socialize with commission members from other towns.

In addition, Length of Service awards will be presented to commission members who have served in any capacity for 12 or 25 years. If you have a commission member who is eligible for this recognition, please submit his or her name. Nomination forms will be included in the registration packet that will be sent to your commission in the coming weeks.

I hope to see you and members of your commission at this worthwhile event!