

# CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Fall 2023

Volume XXVII, Issue 4

## COURT OF APPEALS DECIDES HOW TO MEASURE THE LENGTH OF A DEAD-END ROAD

An application to develop a subdivision adjacent to an existing subdivision presented the court with an opportunity to determine whether the length of a proposed dead-end road that was to provide access to the new subdivision lots exceeded the length permitted by the subdivision regulations. If the length was measured from an existing road in the adjacent subdivision, it would comply. However, if measured from a public road that the existing subdivision road connected to, then the length would be too long.

In making this determination, the court focused on the language of the applicable subdivision regulations. The regulation in question referred to a dead-end road as well as a dead-end road system. From this language, the intent of the regulation was clear. The dead-end road regulation was written so that the length of any dead-end road, or a series of such roads connected together, could not exceed the length permitted in the regulations. Thus, if a proposed dead-end road was to connect to an existing dead-end road, the total length of the two roads could not exceed the length permitted by the subdivision regulations unless a waiver was approved by the commission. *Drewnowski v. Planning & Zoning Commission*, 220 Conn. App. 430 (2023).

## EXPERT OPINION ON TRAFFIC DOES NOT HAVE TO BE ACCEPTED BY COMMISSION

A special permit application to add a convenience store to an existing gasoline station was denied by a Commission due to concerns over increased traffic. The applicant presented the only expert testimony on the issue of traffic. This expert evidence was subjected to questions from Commission members who then stated their own opinions on the issue.

The decision was appealed to court based in part on the applicant's contention that, since the only expert evidence on traffic supported the application, the Commission could not deny it based upon its own concerns over traffic. The court ruled in favor of the Commission and dismissed the appeal finding that facts bearing upon the effect of a proposed use on traffic safety do not require the testimony of an expert for the enlightenment of the Commission. Thus, the Commission could rely on its members' personal knowledge on traffic safety and congestion. *547 N. Ave. Bridgeport Realty LLC v. Planning & Zoning Commission*, FBT-CV-22-6115017.

## SUBSTANTIAL COMPLIANCE

A zoning permit was issued regarding the construction of a garage for a residential property. The plan that accompanied the permit application

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showed a building 60' long and 40' wide. As for the height of the building, the wall height was 20' with no height given for the roof line. However, there was a scale on the plan that could be used to determine or verify these measurements. When construction of the garage commenced, a neighbor alerted the zoning enforcement officer that the height of the garage appeared to be exceeding the 20' shown on the plan. A stop work order was issued while the decision to approve the zoning permit was appealed to the zoning board of appeals.

The Board affirmed the decision to issue the zoning permit as the height of the garage would not exceed the height of buildings as stated in the zoning regulations, which was 35'. This decision was appealed to court.

In affirming the decision of the Board, the court found that the plan as submitted substantially complied with the zoning regulations. While the absence of a stated measurement for the height of the garage was missing, the inclusion of the scale allowed for the plan to substantially comply with the zoning requirements that all building dimensions be shown on the plan. *Thomas v. Zoning Board of Appeals, TTD-CV-21-5014873 (10/26/22).*

## GIS MAPPING NOT ALWAYS RELIABLE EVIDENCE

Connecticut General Statutes Sec. 22a-43 provides in part that an

appeal to Superior Court can be taken by any person owning or occupying land abutting or within a radius of 90 feet of a wetland or watercourse involved in a decision by a municipal wetlands agency. A question regarding the type of evidence that is needed to prove whether the appealing party's land is within 90 feet or abuts such a wetland came into question where the party relied on a GIS map.

In finding the GIS map insufficient, the court noted certain deficiencies with GIS technology. The determination of wetlands in Connecticut is determined by soil type, which requires soil testing. GIS mapping sometimes relies on other factors, such as vegetation type and proximity to bodies of water. Without the offering of additional evidence to verify the GIS mapping, the map itself amounts to speculation.

While the GIS map suggested that the wetlands on the applicant's property continued through an intervening lot and onto the appellant's property, no other supporting evidence was offered to support the accuracy of the GIS map. Without this additional evidence, the GIS map could not, on its own, support the necessary finding that the appellant's property abutted or was within 90' of a wetlands involved in the Commission's decision. *Aldin Associates Limited Partnership v. Inland Wetlands and Watercourses Commission, LND-CV-21-6160730 (4/5/23).*

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## COURT AFFIRMS WPCA DECISION TO DECLINE EXTENDING SEWER LINE TO 8-30g DEVELOPMENT

A developer planned to build a 102-unit affordable housing complex pursuant to Connecticut General Statutes Sec. 8-30g. The property was located in a single-family district and was connected to the municipal sewer system by a private easement that crossed an abutting residential property. The developer filed an application with the WPCA so that the sewer connection could connect to the municipal sewer system by an alternative plan. The developer proposed that the existing public sewer line be extended to reach his property directly and this avoid using the private easement connection.

The WPCA saw this as not an application to connect to the municipal sewer line but as an application to extend this public sewer line. Since the property was already connected to the municipal sewer system and not wanting the town to incur unnecessary expense, the WPCA declined the application. An appeal to court followed.

The court first found that the Connecticut General Statutes Sec. 8-30g does not apply to appeals of decisions of water pollution control agencies. Thus, the court would defer to the WPCA's decision unless it was not supported by substantial evidence in the record. The evidence supporting the WPCA's decision came largely from the town engineer who provided her opinion that

the applicant's request was not for a connection but for an extension of the existing sewer system. The distinction was important because the WPCA had little discretion when considering an application for a connection but had wide discretion when deciding whether to approve an extension. In making its decision, the court also looked to the common meaning of the term 'extension' and agreed with the town engineer's opinion that a physical lengthening of a municipal sewer line would qualify as an extension. *751 Weed Street LLC v. WPCA, LND-CV-22-6160099 (8/30/23)*

## ANNOUNCEMENTS

### **Membership Dues**

Notices for this year's annual membership dues were mailed March 1, 2022. The Federation is a nonprofit organization which operates solely on the funds provided by its members. So that we can continue to offer the services you enjoy, please pay promptly.

### **Workshops**

State law requires that every land use agency member must complete four hours of training this year. 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 as well as a certificate stating compliance with this training requirement.

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