wolf hill

AGENDA 2-A

DATE 11-29-2023

Copy ar ıste the following string into an email to link to the current map view:

50m
200ft

Close

Size:

Scale: 1" = ft. Title:

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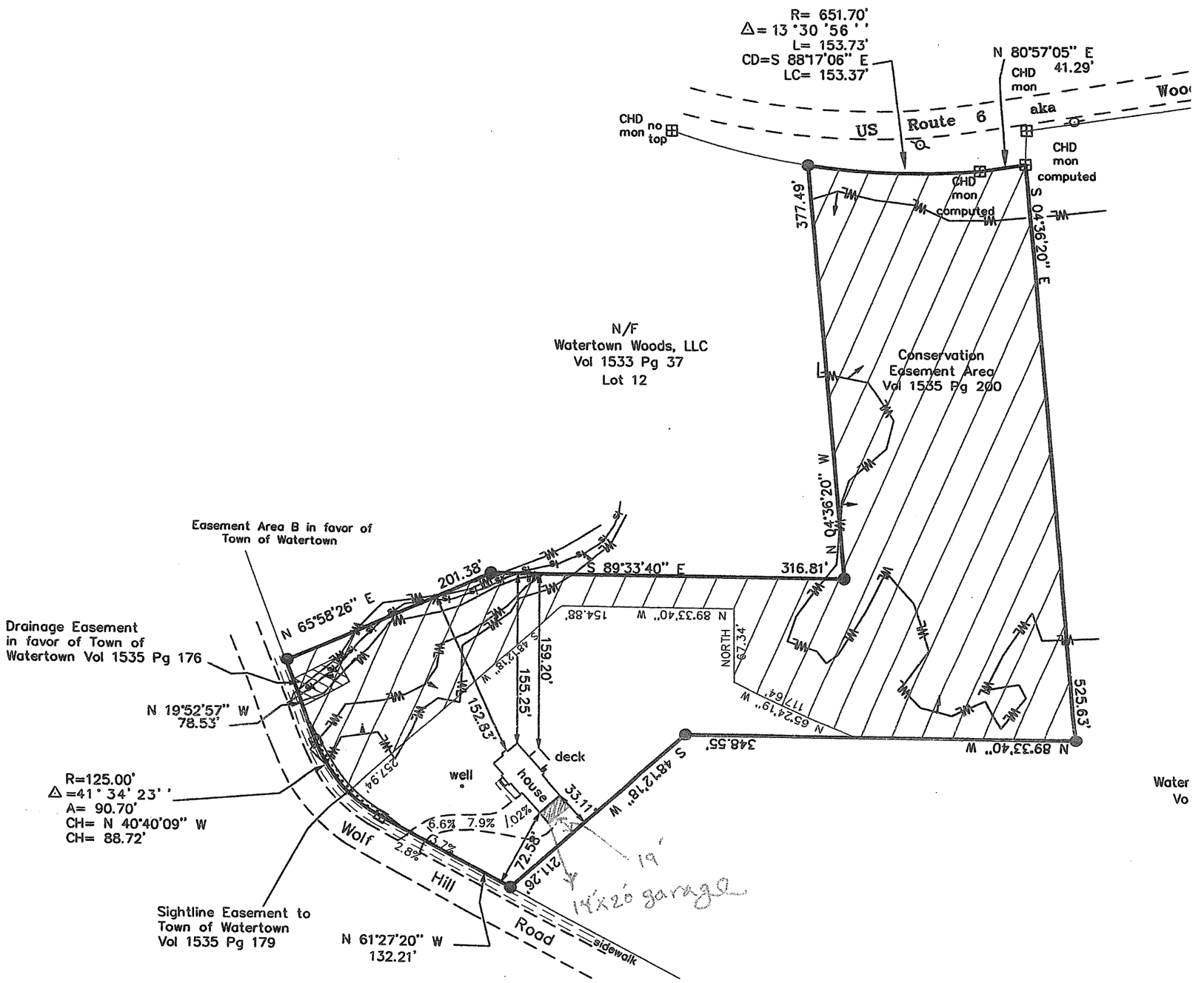

Notes

1) This map and survey have been prepared in accordance with section 20–300b through section 20–300b–20 of the Regulations of Connecticut State Agencies "Minimum Standards for Surveys and Maps" effective June 21, 1996 conforming to Class A–2 Standards for a Property Survey categorized as a Dependant Resurvey for boundary and Zoning Location Survey for improvements.
2) Refer to maps by Cascio, Bechir & Associates, Inc., H.W. Hart, Meyers Associates PC, B.E. Smith, H.B. Covill, J.L. Bennett, the Connecticut Highway Department and R.V. Cheney.
3) Wetland shown as designated in the field by Soil Resource Consultants. David H. Lord Soil Scientist.
4) Parcel is located in Zone R–70.
5) Lot 10 has the right to discharge footing drains over Lot 11 Vol 1535 Pg 195.

AGENDA 5-B

DATE 11-29-2023

Town of Watertown Connecticut

Planning and Zoning, Zoning Board of Appeals,
Conservation Commission/Inland Wetland Agency
Watertown Municipal Center
61 Echo Lake Road
Watertown, CT 06795
Telephone: (860) 945-5266 Fax: (860) 945-4706
Website: www.watertownct.org

To: Zoning Board of Appeals
From: Moosa Rafey, Assistant Administrator for Lane Use/ZEO
Date: November 29, 2023
Subject: Zoning Board of Appeals Meeting Dates for Calendar Year 2024

The following are proposed ZBA meeting dates for the calendar year 2024.
Meeting location to be determined.

January 24, 2024
February 28, 2024
March 27, 2024
April 24, 2024
May 22, 2024
June 26, 2024
July 24, 2024
August 28, 2024
September 25, 2024
October 23, 2024
November 20, 2024

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES
QUARTERLY NEWSLETTER

Summer 2023 Volume XXVII, Issue 3

HOW TO DETERMINE THE NEED FOR AFFORDABLE HOUSING

A denial of a zone change application to permit the construction of a 109-unit affordable housing set-aside development on a 59-acre parcel was appealed to court pursuant to Connecticut General Statutes Sec. 8-30g. The language of this state law requires the commission, not the applicant, to demonstrate that the evidence presented during the public hearing on the application supports its denial. Basically, the commission needs to show that its decision is supported by evidence in the record that the denial is necessary to protect a substantial public interest in health, safety or other matters it can legally consider and that such interest clearly outweighs the need for affordable housing.

In sustaining the appeal and reversing the commission's decision, the court addressed how to determine what is the need for affordable housing. First, the need for affordable housing is to be addressed on a local, not a state wide basis. Second, in making this determination, a municipality's progress in meeting its need for affordable housing is a factor to be considered by the court. In determining progress, the court would consider such positive actions by a municipality as adopting affordable housing regulations, amending its plan of conservation and development to encourage such housing and approving affordable housing projects. In this case, the town in question had done almost nothing to address its affordable housing needs, with only 2.5% of its housing qualified as affordable. Thus, any safety concerns over access, and road width were insufficient as they did not clearly outweigh the need for affordable housing in this town. *Hopp Brook Developers LLC v. Beacon Falls Planning & Zoning Commission, HHD-CV-22-6152301 (4.17.23).*

DISTRICT COURT ISSUES REMINDER TO TREAT RELIGIOUS AND SECULAR USES THE SAME

A religious group applied for a special permit so that they could use an existing building located within a planned industrial zone as their house of worship. The zone in question was known as the M-4 planned industrial zone whose purpose was to encourage well-planned integrated developments of industrial and office use with supportive commercial uses. Permitted uses included offices, hotels, convention centers, shops, restaurants and theaters. When their special exception application was denied, the group appealed the decision to the U.S. District Court for Connecticut alleging violations under RLUIPA, CFRA and the U.S Constitution.

The Court found that the Commission's decision violated RLUIPA as well as the Equal Protection and Free Exercise of Religion clauses of

Written and Edited by
Attorney Steven E. Byrne
P.O. Box 1065, Farmington CT 06032
Tel. (860) 677-7355
attysbyrne@gmail.com
contact.cfpza@gmail.com

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the U.S. Constitution's First Amendment, because the Commission's regulations treated houses of worship less favorably than similar secular uses without a showing that such disparate treatment furthers a government interest of the highest order and was the least restrictive means for doing so.

While it was possible for the religious group to obtain a special permit for its use of the building as their house of worship, requiring them to go through the special permit process while other similar, secular uses such as a theater, are allowed as of right, was clear evidence of the unfavorable disparate treatment.

The religious group also brought its appeal under the Connecticut Religious Freedom Act. However, under this state law, the use of a building as a house of worship is not included as a religious act and thus not covered by this state law. *Omar Islamic Center Inc. v. Meriden Planning Commission, 3:19-CV-00488 (SVN) (9/30/22) D. Conn.*

CERTIFICATES OF LOCATION TO BE APPROVED BY ZEOs

Public Act No. 23-40 amended, among other things, Connecticut General Statutes Sec. 14-54. This state law governed the approval process for certificates of approval for the location of an automobile dealer or repairer's license. No longer will planning and zoning commissions or zoning board of appeals be bothered with these applications. Instead, the application will go to the municipal zoning official for his or her approval. The Federation wonders if this will start a trend of transferring decision making from zoning agencies to staff. Past issues of this letter reveal prior bills seeking to transfer site plan and subdivision approvals to staff.

OFF PREMISES SIGNS CAN BE REGULATED DIFFERENTLY THAN ON PREMISES SIGNS

A city zoning ordinance was challenged on First Amendment grounds because it treated off-premises advertising signs differently from advertising signs located on the same property as the business it advertised. The basis for the appeal was that the ordinance did not treat all signs the same. Instead, based upon the content of the sign, it subjected off-premises signs with more regulatory burdens than on-premises signs.

The court disagreed. Following the U.S. Supreme Court's decision in *City of Austin v. Reagan National Advertising, 142 S. Ct. 1464 (2022),* the court ruled that the City's ordinance was not content based as it did not target speech based upon its 'communicative content'. The rule that if you need to read a sign in order to apply a law, it is not content neutral was found to be too broad an interpretation of the free speech doctrine. By regulating offsite signs differently from onsite signs, the

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Attorney Steven E. Byrne
P.O. Box 1065, Farmington CT 06032
Tel. (860) 677-7355
attysbyrne@gmail.com
contact.cfpza@gmail.com

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ordinance was simply imposing place restrictions on billboards and that doing so served a legitimate government interest of promoting traffic safety by limiting the distractions caused by billboards. *No. 20-1670 5th Cir. Appellate Court (1/4/23).*

MINIMAL IMPACT IS NOT THE SAME AS A SIGNIFICANT IMPACT

When does an inland wetlands and watercourses commission need to make a finding of no feasible and prudent alternative when approving an application? When it makes a finding that the proposed regulated activity will have a significant impact. A finding of minimal impact does not rise to the level of a significant impact. Thus, it was proper for a commission to approve an application to construct a home in an upland review area without making a finding of 'no feasible and prudent alternative' because the proposed activity would only have a minimal impact on a wetland. *Marlowe v. Sharon IWWC, LLI-CV-22-6031205 (6/7/23).*

FAIR SHARE HOUSING

Public Act No. 23-207 has, among other things, expanded the authority of the State Office of Policy and Management to determine each planning region of this State's affordable housing needs and then develop a methodology for allocating this need to every municipality. Certain cities are exempt. We should expect in the near future an attempt for this state imposed allocation of need to become an actual mandate. The Federation will consider what actions to take to protect local control over zoning.

ANNOUNCEMENTS

Membership Dues

Notices for this year's annual membership dues were mailed March 1, 2023. 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

Four hours of Commissioner training must be complete by the end of this year. At the price of $185.00 per session for each agency attending, our workshops are an affordable way for your board to 'stay legal'. **Email us at contact.cfpza@gmail.com to schedule a workshop.**

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
P.O. Box 1065, Farmington CT 06032
Tel. (860) 677-7355
attysbyrne@gmail.com
contact.cfpza@gmail.com

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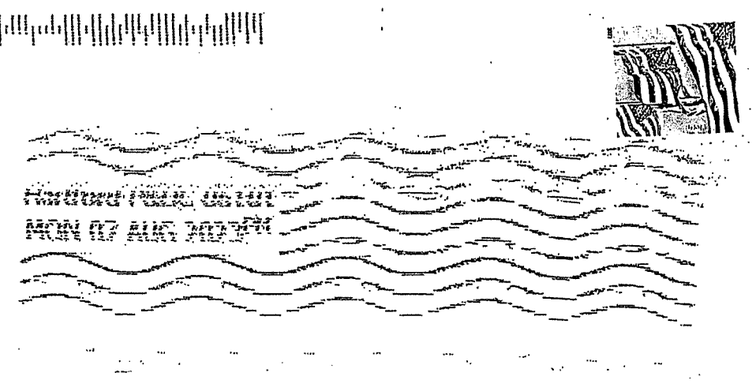

Watertown Zoning Board of Appeals
61 Echo Lake Road
Watertown, CT 06795

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AGENDA 6-B
DATE 11-29-2023

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

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

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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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270 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
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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)*

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Attorney Steven E. Byrne
270 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
attysbyrne@gmail.com
contact.cfpza@live.com

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