CENTRAL CONNECTICUT REGIONAL PLANNING AGENCY

Serving Berlin, Bristol, Burlington, New Britain, Plainville, Plymouth, and Southington

225 North Main Street, Suite 304 Internet: http://ccrpa.org Tel: (860) 589-7820
Bristol, CT 06010-4993 Fax/TDD: (860) 589-6950 or (860) 224-9888

TO: COMPREHENSIVE PLAN COMMITTEE
FROM: Kristin Thomas, PLANNER
DATE: April 26, 2012

RECEIVED BY CCRPA ON: April 4, 2012
REFERRAL NAME: Berlin Zoning Regulation Amendments

INITIATOR: The Metro Realty Group, Ltd.

MUNICIPAL HEARING: May 10, 2012
REFERRED TO: CCRPA

DESCRIPTION: Metro Realty Group, Ltd. has submitted an application for a zone change request for 6 parcels in total as well as the addition of a new Workforce Housing Development ("WHD") zone to Section XI.BB.5 of the regulations. The properties are located at or adjacent to the site of the former Kensington Grammar School at 462 Alling Street. The Metro Realty Group is looking to adaptively re-use this site for housing. This housing would take advantage of the location as transit-oriented due to its close proximity to the Berlin Train Station. Please see the Berlin Patch Article from January 4, 2012 for further information. In order to allow for this type of development, a new Workforce Housing Zone has also been proposed.

COMMENTS: No comments were received from neighboring municipalities.

STAFF RECOMMENDATION: CCRPA recommends that this proposal be found ***Not in Conflict*** with the Regional Plan of Conservation and Development or any other Agency plan. CCRPA recommends that a minimum density be included in Subsection 3.c of the Workforce Housing Development Section to ensure that development is at a density that takes full advantage of future transit-oriented development (TOD). In researching successful "TOD" zoning codes, a minimum density of 15 units per acre is recommended.

PROPOSED AMENDMENT TO BERLIN ZONING REGULATIONS

WORKFORCE HOUSING DEVELOPMENT ("WHD")

(Amends Section XI.BB by adding new section 5)

5. *Second Alternative Eligible Location and Standards involving the Adaptive Re-use of a Historic Structure for Housing for Persons 55 or Older, together with New Workforce Housing Constuction, for Transit Oriented Development.* In addition to the foregoing regulation, a workforce housing development involving the adaptive re-use of an historic structure for housing for persons who are 55 years of age or older, together with the construction of new workforce housing without any age restriction, for "Transit Oriented Development" is also allowed. A Transit Oriented Development site is defined as one (a) located in the Kensington section of Berlin, (b) located within one half mile of the Berlin train station, and (iii) served by existing water, sewer and utility systems. A proposal under this section must integrate a transit oriented development including the new construction of non-age restricted housing with the adaptive re-use of a blighted historic structure limited to use by persons who are 55 years of age or older. The purpose of this section is to maximize previous and future New Haven – Hartford – Springfield rail line investments in infrastructure in Berlin, while preserving, enhancing and re-vitalizing the downtown Berlin area.

When a workforce housing development proposal qualifies under this section 5, the *Zoning requirements* of section 3 shall be applicable except to the extent they are modified below:

- Sub-section 3.a. "*Eligible location"* shall include R-11 zoned parcels in the Kensington section of Berlin of not less than two acres and not more than three acres in total upon which a blighted historic structure is located.

- Sub-section 3.b. "*Density"* shall not exceed twenty-two (22) dwelling units per gross acre.

- Sub-section 3.c. "*Grouping*" shall allow a minimum distance between any two residential structures, excluding decks or patios, of fifteen (15) feet.

- Sub-section 3.f. "*Building size"* shall allow each new, non-historic building to be located on the site to contain no more than 6 dwelling units, to be no more than three stories in height, and to have an interior footprint dimension that does not exceed 2,200 square feet. An historic structure is exempt from the requirements of section 3(f).

- Sub-section 3.g. "*Unit size"* shall allow the living area of each dwelling unit, inclusive of bathroom and exclusive of building corridors, if any, to contain a maximum of 1,600 square feet, provided that at least three quarters of the residential units within the development are one-bedroom units.

- Sub-section 3.h. "*Setbacks from interior roads*" shall allow historic structures to be set back a minimum of six (6) feet from the edge of pavement of interior roads.

- Sub-section 3.i. "*Landscaped buffers*" shall require a plan for landscape buffering within the minimum front, side and rear yards set forth in the section 5. "*Area and bulk requirements"* table below. Compliance with Sections IX.B.9.c, IX.C.3b and 7g of these regulations is not required.

- Sub-section 3.l. "*Parking and circulation requirements*," subsection "1" shall require units to have at least the following number of parking spaces by unit type: studio and one-bedroom – 1.75 spaces and two-bedroom – 2.25 spaces. Subsection "3" shall not apply. A maximum of 15% of the parking spaces provided may be compact (9'x16'). Compliance with IX.B.8.c. is not required for a driveway to be "adequately graded" per subsection "5"

Sub-section 3.m. "*Private Open Space*" shall not require a patio or deck for residential units within the historic structure.

- Sub-section 3.n. "*Recreation*" shall permit adjacent Town-owned open space consisting of not less than 17,000 square feet to satisfy the minimum requirement for lawn or other passive recreation area.

- Sub-section 3.p. "*Area and bulk requirements"* The following area and bulk requirements shall apply to a workforce housing development involving the adaptive re-use of a historic structure for transit oriented development:

1.	Minimum front yard, excluding patio	10 feet
2.	Minimum side yard	10 feet
3.	Minimum rear yard	10 feet
4.	Minimum parking space setback from property line	2 feet in front yard, 15 feet in side and rear yards
5.	Maximum building height	36 feet (47 feet for historic structure)
6.	Maximum building stories	3.0 (historic structure, 4.0)
7.	Minimum building-to-building separation	15 feet

8.	Maximum building coverage	25 percent
9.	Maximum impervious coverage	70 percent
10.	Minimum street frontage	500 feet
11.	Minimum lot size	2.0 acres
12.	Maximum lot size	3 acres

Editor Robert Mayer robert.mayer@patch.com

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Update: Get stories about Berlin delivered right to your inbox or smartphone every day with our free newsletter. Scroll to Patch Newsletter below.

Government, The Neighborhood Files

Update: KGS Site To Be Restored For Senior Housing

Metro Realty Group LTD proposes re-use of long vacant structure.

By Robert Mayer | Email the author | January 4, 2012

Recommend 5 Email Print 3 Comments

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Related Topics: KGS, Kensington Grammer School, and Senior Housing

Who remembers the drop-ins and the Youth Council at the old community center? Tell us in the comments.

The Metro Realty Group LTD., of Farmington has submitted a proposal to the Town of Berlin to consider approval of the adaptive re-use of the former Kensington Grammar School located on Alling Street in Berlin. Metro envisions an elaborate restoration to senior rental housing in this historic structure. They are working their way through the State of Connecticut's permitting process to receive approval of the former school as a certified historic structure recognized on both the State and Federal registers of historic places.

Metro has already secured listing of Kensington Grammar School on the Connecticut Register of Historic Places and it is in the process of seeking listing on the National Historic registry. The developer is proposing to preserve the important historic qualities of the building and to renovate it in conformance with the rigorous U. S. Department of Interior standards.

"The building is a blight on the neighborhood," Mayor Adam Salina said. "I remember using the building when I was in high school when it was the community center and that's probably the last time it was used. To walk through and see what has become of the building is sad."

The issue was discussed in executive session at the Town Council meeting Tuesday night.

"After the executive session we had to come back and take action on the matter," Salina said. "We voted on it and it was passed unanimously by a 6-0 vote. There was unified support to go forward."

Councilor Eric Buhrendorf was absent from the meeting.

Building plans are not final for this as–of–yet unnamed development, but thoughts are that the building would contain thirty-three units of senior rental housing. Metro is the owner and developer of Orchard Ridge senior housing on Webster Street and Stonebridge senior housing just of Deming Road in the area of Wethersfield Road, both in Berlin and they pay significant real estate taxes to the Town.

A number of developers have attempted to plan and implement the redevelopment of the school site but none has succeeded. The neighborhood is anchored by St. Paul's Church and School and by well kept residences. The vacant Kensington School building has long been a blight on that neighborhood. Recent physical inspections of the premises indicate that the rate of building deterioration is accelerating, for a myriad of reasons including water infiltration.

A second component proposed by Metro on the same site is 34 market rate apartments in nine small buildings that are intended to take advantage of the location as "Transit Oriented" due to close proximity to the Berlin Train Station. The project attempts to reinforce the Town's initiative to redevelop the area of the Train Station to create a mixed use Village that will attract young people and other members of the workforce who can use the planned commuter rail service on the New Haven, Hartford, Springfield line.

To attract this younger demographic, Metro's plans call for 18 one bedroom units and 16 two bedroom / two bathroom units. Metro hopes that young, "twenty – something" Berlin residents will consider living in town upon completion of their studies. The State's plan is to start the new commuter and intercity rail service in 2016. The site is within easy walking distance of the train station and is close to banking, restaurants, stores and other services. Sidewalks connecting to downtown are already in place.

In order for the development proposal to move forward it will require a partnership with the Town of Berlin involving sale of four small parcels of Town land to the developer at appraised fair market value. In addition, a portion of the bird sanctuary will be re-located. The developer proposes to work with the Town to assist the process of improving the remaining area of the sanctuary or establishing a new sanctuary location. The Town Council discussed the proposed property sales in Executive Session and has referred the matter to the Planning and Zoning Commission as required under section 8-24 of the Connecticut General Statutes. The project will also require amendments to the Town's Zoning Regulations. Metro Realty plans to prepare proposed zoning changes and submit them to the Planning and Zoning Commission for consideration.

"The adaptive re-use of the former Kensington School would be one of the town's most significant redevelopment projects and would significantly boost the taxes the town receives from the property." said Berlin Mayor Adam Salina. "It is similar to the Lofts at Sherwood Falls in that it proposes to renovate an endangered historic architectural structure. If action is not taken soon, the building is likely to deteriorate beyond repair due to the leaking roof and other defects.

"The Kensington Grammar School has stood vacant long enough. It is time for the property to be restored as a community landmark. The town has had a dialogue about the property with Metro for many months. Metro has a very successful track record of developing high quality residential projects in Berlin. Other developers have not been able to secure financing to proceed with the project. Given the difficult financial markets and deteriorating building condition this project requires an innovative development solution.

"By combining the historic restoration of the school for affordable senior apartments and market rate transit oriented development apartments, Metro has created a project plan that is financeable and that offers to address multiple community needs and to support the evolving plans for redevelopment of the Berlin Train Station area. This project is complex and will involve many local approvals as well as partial funding support from the State of Connecticut. I look forward to working with Metro Realty Group, Ltd. to engage in the public review and approval process to set the course for a major transformation of the site."

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Robert Mayer Flag as inappropriate

9:34 pm on Wednesday, January 4, 2012

I have some of the best memories of my life from the old drop-in days. Kids today are missing that in this town. It would be great if someone would step up and start the drop-in concept again.

Reply

Cynthia Kobus Flag as inappropriate

6:11 am on Thursday, January 5, 2012

I think our society is way too litigious to ever have that happen.. It is very sad..

Reply

Roberta Wilhide Flag as inappropriate

4:44 pm on Thursday, January 5, 2012

From 1969-1974, I was the School Nurse at KGS. The building was so comfortable during extreme temperatures. When the school closed, I commented that it would make a great apartment building. I hope that the building's ability to maintain a comfortable temperature has not been

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TO:	COMPREHENSIVE PLAN COMMITTEE
FROM:	Kristin Thomas, PLANNER
DATE:	April 30, 2012
RECEIVED BY CCRPA ON:	April 13, 2012
REFERRAL NAME:	Plainville Re-Subdivision Application
INITIATOR:	Bismarck Real Estate Partners, LLC
MUNICIPAL HEARING:	May 8, 2012
REFERRED TO:	CCRPA

DESCRIPTION: Bismarck Real Estate Partners, LLC has submitted a re-subdivision application for a 2 lot re-subdivision for property located at 459 Farmington Avenue in Plainville. This property abuts the Farmington/Plainville Town Line. A map outlining proposed development has been added to the original submittal.

COMMENTS: No comments were received from neighboring municipalities.

STAFF RECOMMENDATION: CCRPA recommends that this proposal be found ***Not in Conflict*** with the Regional Plan of Conservation and Development or any other Agency plan. In particular, this site is in within the Neighborhood Conservation Area, shown on the future land use map in the Regional Plan (page. 6). The neighborhood conservation areas should promote infill development and redevelopment in areas that are at least 80% built up and have existing water, sewer, and transportation infrastructure to support such development.

TOWN OF

PLAINVILLE

ONE CENTRAL SQUARE, PLAINVILLE, CONNECTICUT 06062-1955

PLANNING AND ZONING COMMISSION
(860) 793-0221
Fax (860) 793-2285

RECEIVED
APR 1 2012

CERTIFIED MAIL

April 12, 2012

Central Connecticut Regional Planning Agency
Carl Stephani, Executive Director
225 North Main Street
Bristol, CT 06010

Re: Re-Subdivision Application – Bismarck Real Estate Partners, LLC (Firestone)
459 Farmington Avenue

Dear Mr. Stephani:

In accordance with Section 8-26b of the Connecticut General Statutes, as amended, please be advised that the Plainville Planning and Zoning Commission has received a Re-Subdivision Application from Bismarck Real Estate Partners, LLC, for a 2 lot re-subdivision for property located 459 Farmington Avenue in Plainville. This property abuts the Farmington/Plainville Town Line. This application has been assigned a public hearing date of May 8, 2012. Application materials are attached.

If you have any questions regarding this application, please do not hesitate to contact me at (860) 793-0221, extension 210.

Sincerely,

Mark S. DeVoe, AICP
Director of Planning and Economic Development

Enclosures

TOWN OF PLAINVILLE
LAND USE APPLICATION
PART ONE

Property address or location: 459 Farmington Avenue, Plainville, CT

Map: 07 Block: A Lot(s): 15 Acreage: 6.84 Zone(s): GC Within 500' of a Municipal Boundary? ☒ Yes ☐ No

Present Use: Vacant Land

APPLICANT: Bismarck Real Estate Partners, LLC TELEPHONE: 214-872-4091

Mailing Address: 2600 Network Blvd., Frisco, TX FAX: 214-872-4001

AGENT: Vanasse Hangen Brustlin, Inc. (VHB) TELEPHONE: 860-632-1500

Mailing Address: 54 Tuttle Place, Middletown, CT FAX: 860-632-7879

ENGINNER/SURVEYOR/ARCHITECT/LANDSCAPE ARCHITECT:

Vanasse Hangen Brustlin, Inc. (VHB) TELEPHONE: 860-632-1500

Mailing Address: 54 Tuttle Place, Middletown, CT FAX: 860-632-7879

OWNER: Swanson Granite Company, LLC TELEPHONE: 603-225-4322

Mailing Address: 369 North Main Street, Concord, NH FAX: 603-228-2915

TYPE OF APPLICATION (check one)

- ☒ Subdivision/Resubdivision
- ☐ Site Plan
- ☐ Site Plan Modification
- ☐ Site Plan, Multifamily
- ☐ Special Exception
- ☐ Zone Map Change
- ☐ Zoning Regulation Change
- ☐ Change of Nonconforming Use
- ☐ Quarry Industrial Permit
- ☐ Removal of Topsoil, Sand, or Gravel
- ☐ Approval of Location (DMV)
- ☐ Inland Wetlands Declaratory Ruling*
- ☐ Inland Wetlands Permit, 1-3 Family Residential*
- ☐ Inland Wetlands Permit, Multifamily, Commercial, or Industrial*
- ☐ Inland Wetlands Permit, Residential Additions & Minor Activities*
- ☐ Wetlands Map/Regulation Change*

RECEIVED
MAR 27 2012
Town of Plainville
Land Use Office

*Please note that all Wetlands petitions/applications must consider Sections 7.11, 10.8 & 10.9 concerning legal notification requirements.

PROPOSAL: To construct a +/- 8,300 square foot Firestone Complete Auto Care (motor vehicle service) along with associated parking area, utilities and site improvements on a proposed 1.53 acre lot located at the corner of Farmington Avenue and Northwest Drive

Please note: Pursuant to Public Act 06-53, applicants are required to notify the commissioner of the CT Department of Public Health in addition to affected water companies of any proposed project located within a public water supply aquifer protection area or watershed area. A map identifying such areas is available at the Plainville Department of Technical Services.

The undersigned certify the truth of all statements made in connection with this application and consent to inspection of the subject property by the commission or its staff. All correspondence will be sent to the Applicant's Agent or to the Applicant if no agent is designated.

Applicant's Signature	3-27-12 Date	R Vann Applicant's Printed Name
Owner's Signature	3-27-12 Date	Scott L. Herrick Owner's Printed Name

TOWN OF PLAINVILLE
LAND USE APPLICATION – SUBDIVISION/RESUBDIVISION
PART TWO

Please check one: ☐ Subdivision ☒ Resubdivision

If a subdivision, complete the certificate at the bottom of this page.

If a resubdivision, provide date of approval and recording of prior subdivision or resubdivision:

Approved 8/11/1960 Recorded Volume 118 Page 90

Subdivision Information

Property area (acres or sq. ft.)	6.84 acres total	Easements on property? List below	Yes
Name of access road(s)	Northwest Drive and Farmington Avenue	Area of inland wetlands	+/-1.8 acres
Number of lots	2 proposed lots	Within aquifer protection	
Water supply (wells or public)	Public	area or water co. watershed?	No
Sewage disposal (sewer or on-site)	Sewer	Abuts or crosses munic. boundary?	Yes

Easements – list purpose, party in favor of, and volume/page in which recorded: Drainage and slope limit rights in favor of the State of Connecticut, Volume 207 Page 465. Drainage rights in favor of the State of Connecticut, Volume 145, Page 456.

Waivers requested, if any (check all that apply); public hearing is required:

☐ Right-of-way width, to _____ ft. ☐ Curbing (specify) _____

☐ Pavement width, to _____ ft. ☐ Sidewalks (specify) _____

Note concerning wetlands: pursuant to Section 8-26 of the Connecticut General Statutes, if an application for subdivision or resubdivision involves land regulated as an inland wetland or watercourse under the provisions of Chapter 440, the applicant shall submit an application to the agency responsible for administration of the inland wetland regulations no later than the day the application is filed for the subdivision or resubdivision.

CERTIFICATE

As the current owner of the property, or attorney for the owner, for which subdivision approval is sought, I hereby certify under penalty of perjury that the property for which subdivision approval is requested has existed in its present configuration since December 29, 1953.

_____ Printed Name

_____ Signature

Owner Attorney
(circle one)

Mark Devoe

From: Mark Devoe
Sent: Monday, April 02, 2012 3:43 PM
To: 'Mikrut, Jason'
Cc: John R. Bossi; Michael R. Perry; Aaron Sarra (awsarra@hotmail.com); Bill Davison (wwdavison@aol.com); David Fabry (d.fabry@comcast.net); David Thompson (thompson441 @comcast.net); Glenn Petit (glennfpetit@yahoo.com); Jennifer Bartis-Earley (jabdag@aol.com); Matthew Weimer (weimer19@sbcglobal.net); MICHELLE IBITZ; Pete Saucier (pennys.playground@snet.net); Scott Masteller (Swmasteller@aol.com)
Subject: Firestone Resubdivision - 459 Farmington Avenue

Hi Jason,

1. On the subdivision plan, you show a discreet parcel now, or formerly in the name of the Town of Plainville. Please refer to Volume 493, Page 622 in the Plainville Land Records where that parcel was transferred into the larger remaining parcel. There was a fee for this transaction of $3,000.00.
2. The plan is missing a great deal of information. Please refer to Section III – 2.02 of the subdivision regulations. Typically, the Commission wants to see what is being proposed on the land and likes to make sure that the remaining parcel has development potential – a concept plan with key constraints (wetlands, floodplain) is appropriate.
3. Fee in lieu of open space information for the lot to be purchased should be listed on the plan.
4. The remaining parcel should have a notation that open space is set aside in a specific area as agreed to by the Commission, or an appropriate fee in lieu of open space will have to paid to the Town of Plainville prior to any future transfer of the lot.
5. Fee in lieu of may be determined by the means described in the regulations. In the past, the Commission has allowed the Assessor's data to be used. If you wish to use the Assessor's data, please get me a letter requesting permission to do this and I'll see to it that they receive and consider your request prior to setting the public hearing. You can also ask the Commission yourself if you want to wait until that portion of the meeting on 4/10/12.

Mark

Mark DeVoe, AICP
Director, Planning and Economic Development
Town of Plainville
One Central Square
Plainville, CT 06062
Email: devoe@plainville-ct.gov
Web: http://www.plainvillect.com
(860) 793-0221 ext 210

Saved: Thursday, March 22, 2012 1:42:52 PM TDAWDOWICZ Plotted: Thursday, March 22, 2012 1:42:56 PM Dawdowicz, Todd

General Notes

HORIZONTAL DATUM REFERS TO THE CONNECTICUT STATE PLANE COORDINATE SYSTEM, NAD 83 IN U.S. SURVEY FEET AND WAS ESTABLISHED USING GPS SURVEY PROCEDURES AUGMENTED BY A PRIVATE, REAL-TIME NETWORK PROVIDER REFERENCING THE NATIONAL SPATIAL REFERENCE SYSTEM (NSRS).

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT. ACCORDINGLY, ALL ENCUMBRANCES MAY NOT BE DEPICTED.

Map References

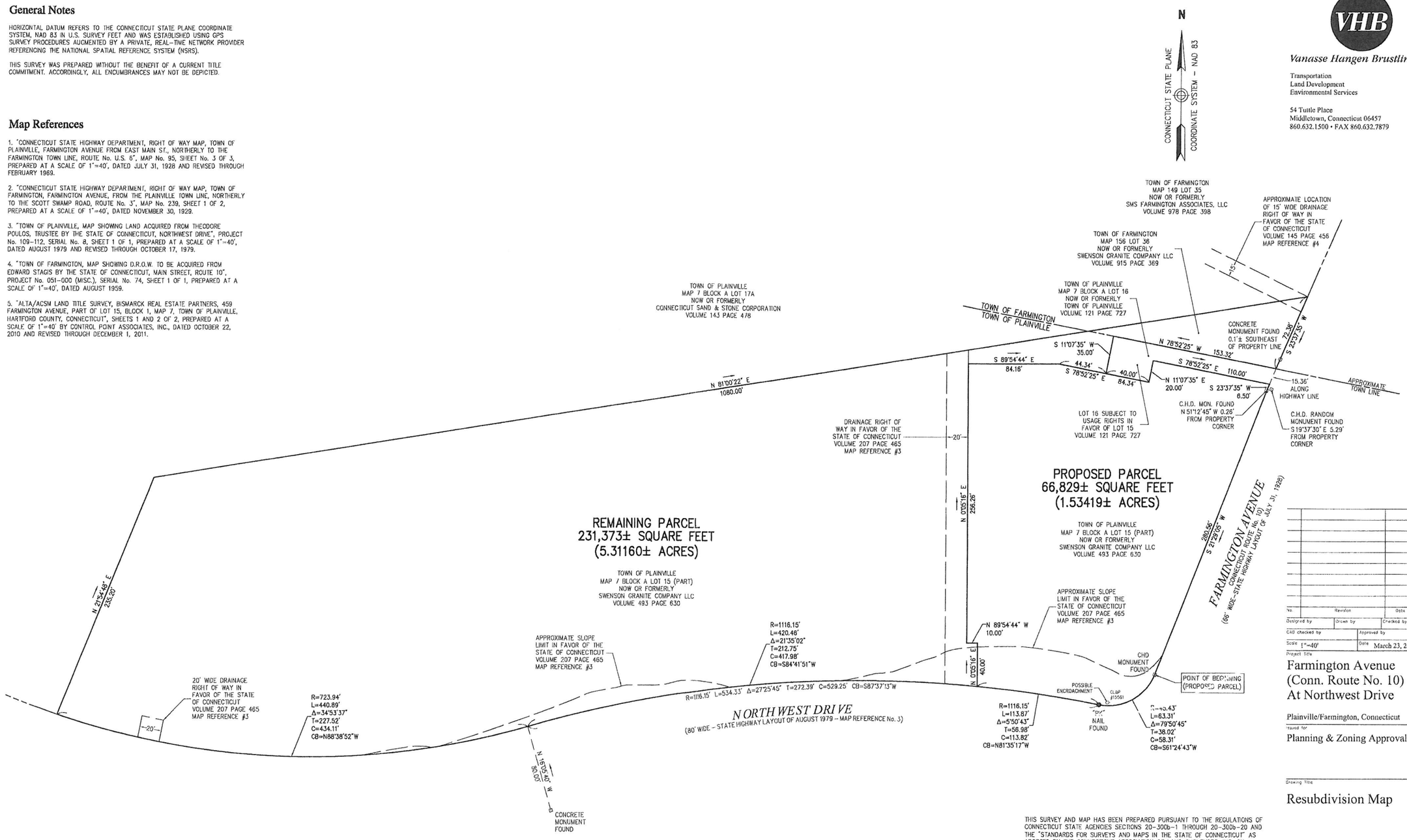
1. "CONNECTICUT STATE HIGHWAY DEPARTMENT, RIGHT OF WAY MAP, TOWN OF PLAINVILLE, FARMINGTON AVENUE FROM EAST MAIN ST., NORTHERLY TO THE FARMINGTON TOWN LINE, ROUTE No. U.S. 6", MAP No. 95, SHEET No. 3 OF 3, PREPARED AT A SCALE OF 1"=40', DATED JULY 31, 1928 AND REVISED THROUGH FEBRUARY 1969.

2. "CONNECTICUT STATE HIGHWAY DEPARTMENT, RIGHT OF WAY MAP, TOWN OF FARMINGTON, FARMINGTON AVENUE, FROM THE PLAINVILLE TOWN LINE, NORTHERLY TO THE SCOTT SWAMP ROAD, ROUTE No. 3", MAP No. 239, SHEET 1 OF 2, PREPARED AT A SCALE OF 1"=40', DATED NOVEMBER 30, 1929.

3. "TOWN OF PLAINVILLE, MAP SHOWING LAND ACQUIRED FROM THEODORE POULOS, TRUSTEE BY THE STATE OF CONNECTICUT, NORTHWEST DRIVE", PROJECT No. 109-112, SERIAL No. 8, SHEET 1 OF 1, PREPARED AT A SCALE OF 1"=40', DATED AUGUST 1979 AND REVISED THROUGH OCTOBER 17, 1979.

4. "TOWN OF FARMINGTON, MAP SHOWING D.R.O.W. TO BE ACQUIRED FROM EDWARD STAGIS BY THE STATE OF CONNECTICUT, MAIN STREET, ROUTE 10", PROJECT No. 051-000 (MISC.), SERIAL No. 74, SHEET 1 OF 1, PREPARED AT A SCALE OF 1"=40', DATED AUGUST 1959.

5. "ALTA/ACSM LAND TITLE SURVEY, BISMARCK REAL ESTATE PARTNERS, 459 FARMINGTON AVENUE, PART OF LOT 15, BLOCK 1, MAP 7, TOWN OF PLAINVILLE, HARTFORD COUNTY, CONNECTICUT", SHEETS 1 AND 2 OF 2, PREPARED AT A SCALE OF 1"=40' BY CONTROL POINT ASSOCIATES, INC., DATED OCTOBER 22, 2010 AND REVISED THROUGH DECEMBER 1, 2011.



Legend

- MONUMENT FOUND
- "PK" NAIL FOUND
- C.H.D. CONNECTICUT HIGHWAY DEPARTMENT (MONUMENT)
- PROPERTY LINE
- EASEMENT LINE
- STATE HIGHWAY LINE
- TOWN STREET LAYOUT LINE
- ASSESSORS PARCEL LINE

THIS SURVEY AND MAP HAS BEEN PREPARED PURSUANT TO THE REGULATIONS OF CONNECTICUT STATE AGENCIES SECTIONS 20-300b-1 THROUGH 20-300b-20 AND THE "STANDARDS FOR SURVEYS AND MAPS IN THE STATE OF CONNECTICUT" AS ADOPTED BY THE CONNECTICUT ASSOCIATION OF LAND SURVEYORS, INC. ON SEPTEMBER 26, 1996.

THIS IS A RESUBDIVISION MAP CONFORMING TO A HORIZONTAL CLASS A-2 ACCURACY. THE BOUNDARY DETERMINATION IS A RESURVEY WITH REGARD TO THE OVERALL PARCEL, AND AN ORIGINAL SURVEY REGARDING THE PROPOSED PARCEL DEPICTED HEREON.

TO MY KNOWLEDGE AND BELIEF THIS MAP IS SUBSTANTIALLY CORRECT AS NOTED HEREON. THIS PLAN IS NOT VALID WITHOUT A LIVE SIGNATURE AND EMBOSSED SEAL.

CHRISTOPHER C. DANFORTH, L.S. #70118 — DATE 3/23/12

VHB
Vanasse Hangen Brustlin, Inc.
Transportation
Land Development
Environmental Services
54 Tuttle Place
Middletown, Connecticut 06457
860.632.1500 • FAX 860.632.7879

No.	Revision	Date	Approd

Designed by | Drawn by | Checked by
CAD checked by | Approved by
Scale 1"=40' | Date March 23, 2012

Project Title
Farmington Avenue (Conn. Route No. 10) At Northwest Drive

Plainville/Farmington, Connecticut

Issued for
Planning & Zoning Approval

Drawing Title
Resubdivision Map

STATE OF CONNECTICUT — CHRISTOPHER C. DANFORTH — No. 70118 — LICENSED — LAND SURVEYOR

Drawing Number
Su-1

Sheet 1 of 1

Project Number
41788.00

41788DEK_NAD83.DWG

Saved Thursday, April 26, 2012 1:37:56 PM JDESTRO Plotted Thursday, April 26, 2012 1:38:16 PM Destro, Joseph

General Notes

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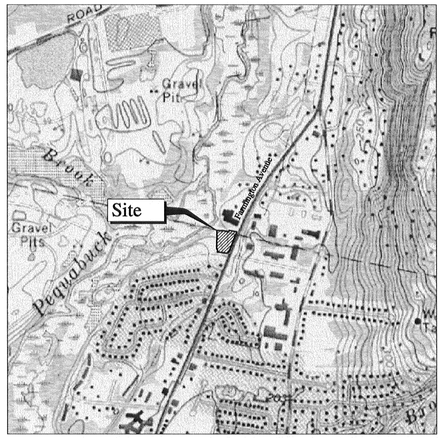
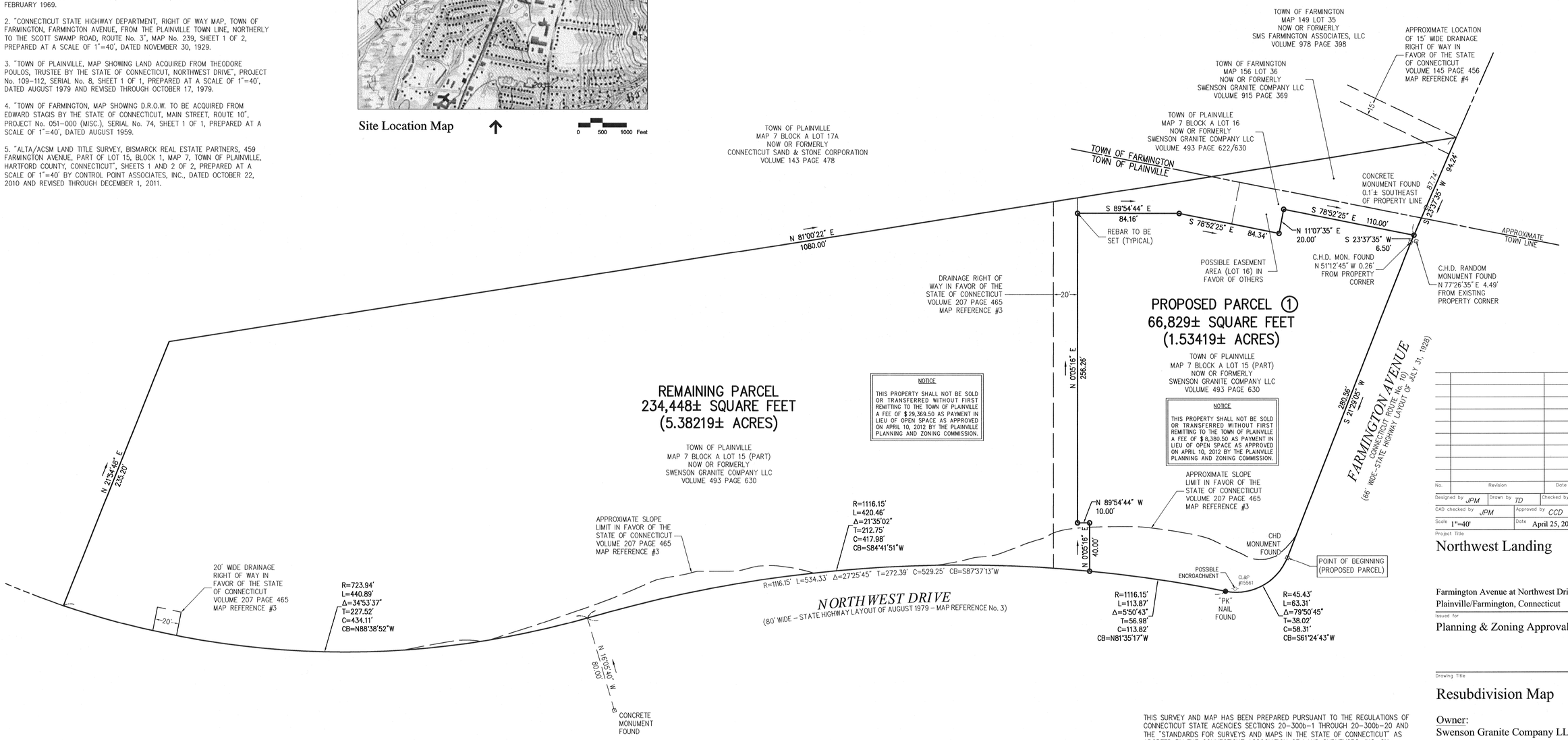


Site Location Map

N

CONNECTICUT STATE PLANE COORDINATE SYSTEM – NAD 83

VHB
Vanasse Hangen Brustlin, Inc.
Transportation
Land Development
Environmental Services
54 Tuttle Place
Middletown, Connecticut 06457
860.632.1500 • FAX 860.632.7879



Legend

- MONUMENT FOUND
- "PK" NAIL FOUND
- REBAR TO BE SET
- C.H.D. CONNECTICUT HIGHWAY DEPARTMENT (MONUMENT)
- PROPERTY LINE
- EASEMENT LINE
- STATE HIGHWAY LINE
- TOWN STREET LAYOUT LINE
- ASSESSORS PARCEL LINE

40 0 40 80
SCALE IN FEET

APPROVED:

TOWN OF PLAINVILLE PLANNING & ZONING COMMISSION CHAIRMAN DATE

THIS SURVEY AND MAP HAS BEEN PREPARED PURSUANT TO THE REGULATIONS OF CONNECTICUT STATE AGENCIES SECTIONS 20-300b-1 THROUGH 20-300b-20 AND THE "STANDARDS FOR SURVEYS AND MAPS IN THE STATE OF CONNECTICUT" AS ADOPTED BY THE CONNECTICUT ASSOCIATION OF LAND SURVEYORS, INC. ON SEPTEMBER 26, 1996.

THIS IS A RESUBDIVISION MAP CONFORMING TO A HORIZONTAL CLASS A-2 ACCURACY. THE BOUNDARY DETERMINATION IS A RESURVEY WITH REGARD TO THE OVERALL PARCEL, AND AN ORIGINAL SURVEY REGARDING THE PROPOSED PARCEL DEPICTED HEREON.

TO MY KNOWLEDGE AND BELIEF THIS MAP IS SUBSTANTIALLY CORRECT AS NOTED HEREON. THIS PLAN IS NOT VALID WITHOUT A LIVE SIGNATURE AND EMBOSSED SEAL.

4/25/12

CHRISTOPHER C. DANFORTH, L.S. #70118 DATE

No.	Revision	Date	Appvd.

Designed by JPM | Drawn by TD | Checked by CCD
CAD checked by JPM | Approved by CCD
Scale 1"=40' | Date April 25, 2012

Project Title
Northwest Landing

Farmington Avenue at Northwest Drive
Plainville/Farmington, Connecticut

Issued for
Planning & Zoning Approval

Drawing Title
Resubdivision Map

Owner:
Swenson Granite Company LLC
Applicant:
Bismarck Real Estate Partners, LLC

STATE OF CONNECTICUT CHRISTOPHER C. DANFORTH LICENSED LAND SURVEYOR

Drawing Number
Su-1

Sheet 1 of 2

Project Number
41788.00

Map References

1. "CONNECTICUT STATE HIGHWAY DEPARTMENT, RIGHT OF WAY MAP, TOWN OF PLAINVILLE, FARMINGTON AVENUE FROM EAST MAIN ST., NORTHERLY TO THE FARMINGTON TOWN LINE, ROUTE No. U.S. 6", MAP No. 95, SHEET No. 3 OF 3, PREPARED AT A SCALE OF 1"=40', DATED JULY 31, 1928 AND REVISED THROUGH FEBRUARY 1969.

2. "CONNECTICUT STATE HIGHWAY DEPARTMENT, RIGHT OF WAY MAP, TOWN OF FARMINGTON, FARMINGTON AVENUE, FROM THE PLAINVILLE TOWN LINE, NORTHERLY TO THE SCOTT SWAMP ROAD, ROUTE No. 3", MAP No. 239, SHEET 1 OF 2, PREPARED AT A SCALE OF 1"=40', DATED NOVEMBER 30, 1929.

3. "TOWN OF PLAINVILLE, MAP SHOWING LAND ACQUIRED FROM THEODORE POULOS, TRUSTEE BY THE STATE OF CONNECTICUT, NORTHWEST DRIVE", PROJECT No. 109-112, SERIAL No. 8, SHEET 1 OF 1, PREPARED AT A SCALE OF 1"=40', DATED AUGUST 1979 AND REVISED THROUGH OCTOBER 17, 1979.

4. "TOWN OF FARMINGTON, MAP SHOWING D.R.O.W. TO BE ACQUIRED FROM EDWARD STAGIS BY THE STATE OF CONNECTICUT, MAIN STREET, ROUTE 10", PROJECT No. 051-000 (MISC.), SERIAL No. 74, SHEET 1 OF 1, PREPARED AT A SCALE OF 1"=40', DATED AUGUST 1959.

5. "ALTA/ACSM LAND TITLE SURVEY, BISMARCK REAL ESTATE PARTNERS, 459 FARMINGTON AVENUE, PART OF LOT 15, BLOCK 1, MAP 7, TOWN OF PLAINVILLE, HARTFORD COUNTY, CONNECTICUT", SHEETS 1 AND 2 OF 2, PREPARED AT A SCALE OF 1"=40' BY CONTROL POINT ASSOCIATES, INC., DATED OCTOBER 22, 2010 AND REVISED THROUGH DECEMBER 1, 2011.

N

CONNECTICUT STATE PLANE COORDINATE SYSTEM – NAD 83

VHB

Vanasse Hangen Brustlin, Inc.

Transportation
Land Development
Environmental Services

54 Tuttle Place
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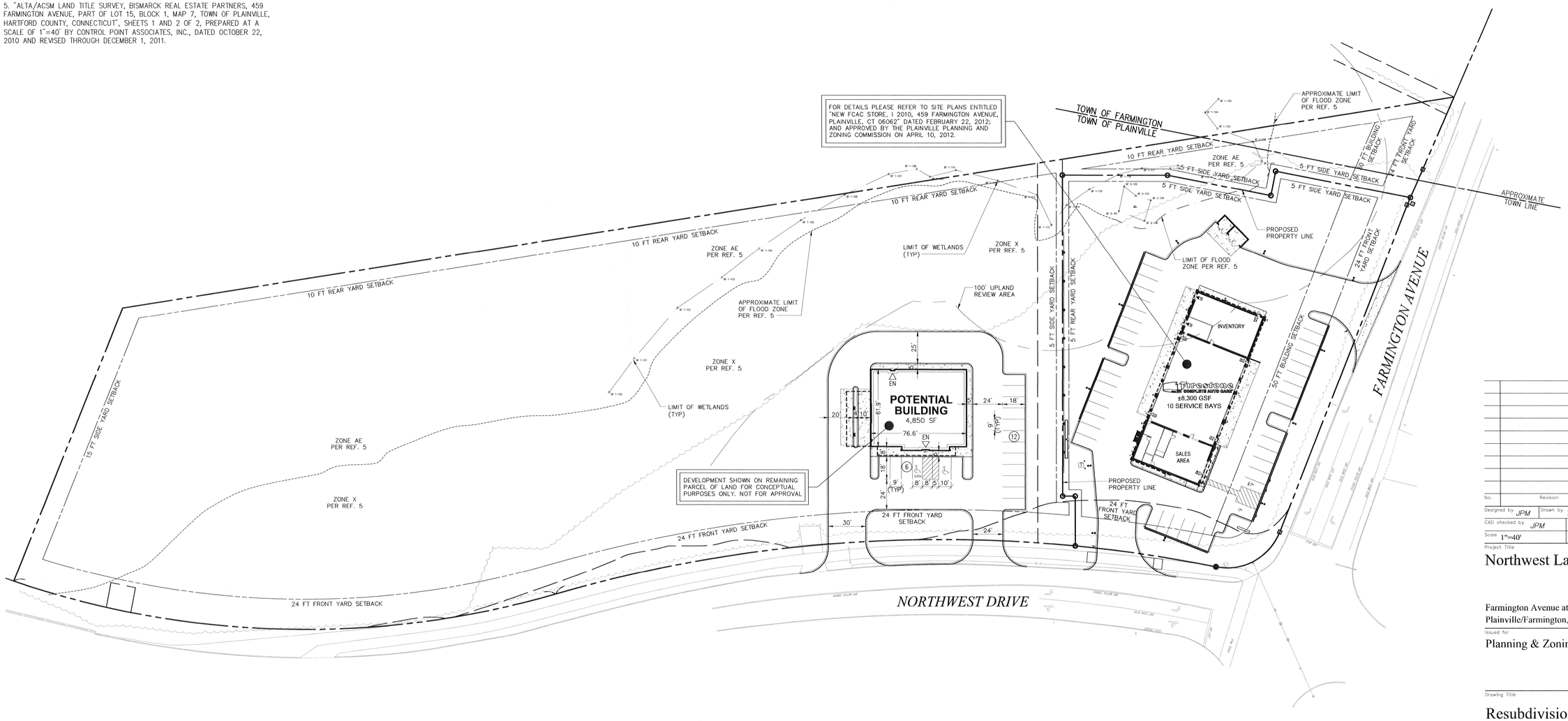
860.632.1500 • FAX 860.632.7879



No.	Revision	Date	Appvd.

Designed by JPM | Drawn by TD | Checked by CCD
CAD checked by JPM | Approved by CCD
Scale 1"=40' | Date April 25, 2012

Project Title

Northwest Landing

Farmington Avenue at Northwest Drive
Plainville/Farmington, Connecticut

Issued for

Planning & Zoning Approval

Drawing Title

Resubdivision Map

Owner:
Swenson Granite Company LLC
Applicant:
Bismarck Real Estate Partners, LLC

Drawing Number

Su-2

Sheet 2 of 2

Project Number
41788.00

40 0 40 80
SCALE IN FEET

APPROVED:

TOWN OF PLAINVILLE PLANNING & ZONING COMMISSION CHAIRMAN DATE

WETLANDS CERTIFICATION

I HAVE DELINEATED STATE OF CONNECTICUT WETLANDS AND WATERCOURSES PRESENT ON THE SUBJECT SITE AND HAVE REVIEWED THIS PLAN AND IT IS MY OPINION THAT THE LIMITS OF THE WETLANDS AND WATERCOURSES DEPICTED HEREON ARE REPRESENTATIVE OF THOSE DELINEATED IN THE FIELD.

4/25/2012

JEFFREY C. PETERSON, CPSS, CPESC
PROFESSIONAL SOIL SCIENTIST
VANASSE HANGEN BRUSTLIN, INC.

DATE:

STATE OF CONNECTICUT
PATRICK O'LEARY
No. 17095
LICENSED
PROFESSIONAL ENGINEER

Saved Thursday, April 26, 2012 1:37:56 PM JDESTRO Plotted Thursday, April 26, 2012 1:38:16 PM Destro, Joseph

General Notes

HORIZONTAL DATUM REFERS TO THE CONNECTICUT STATE PLANE COORDINATE SYSTEM, NAD 83 IN U.S. SURVEY FEET AND WAS ESTABLISHED USING GPS SURVEY PROCEDURES AUGMENTED BY A PRIVATE, REAL-TIME NETWORK PROVIDER REFERENCING THE NATIONAL SPATIAL REFERENCE SYSTEM (NSRS).

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT. ACCORDINGLY, ALL ENCUMBRANCES MAY NOT BE DEPICTED.

Map References

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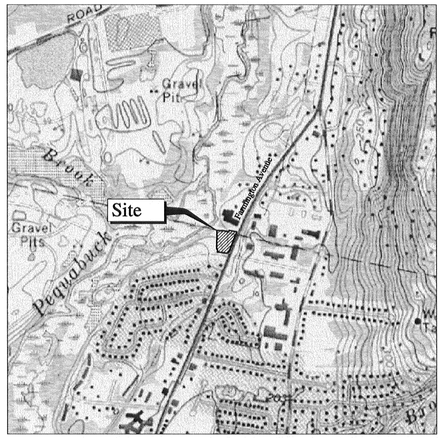

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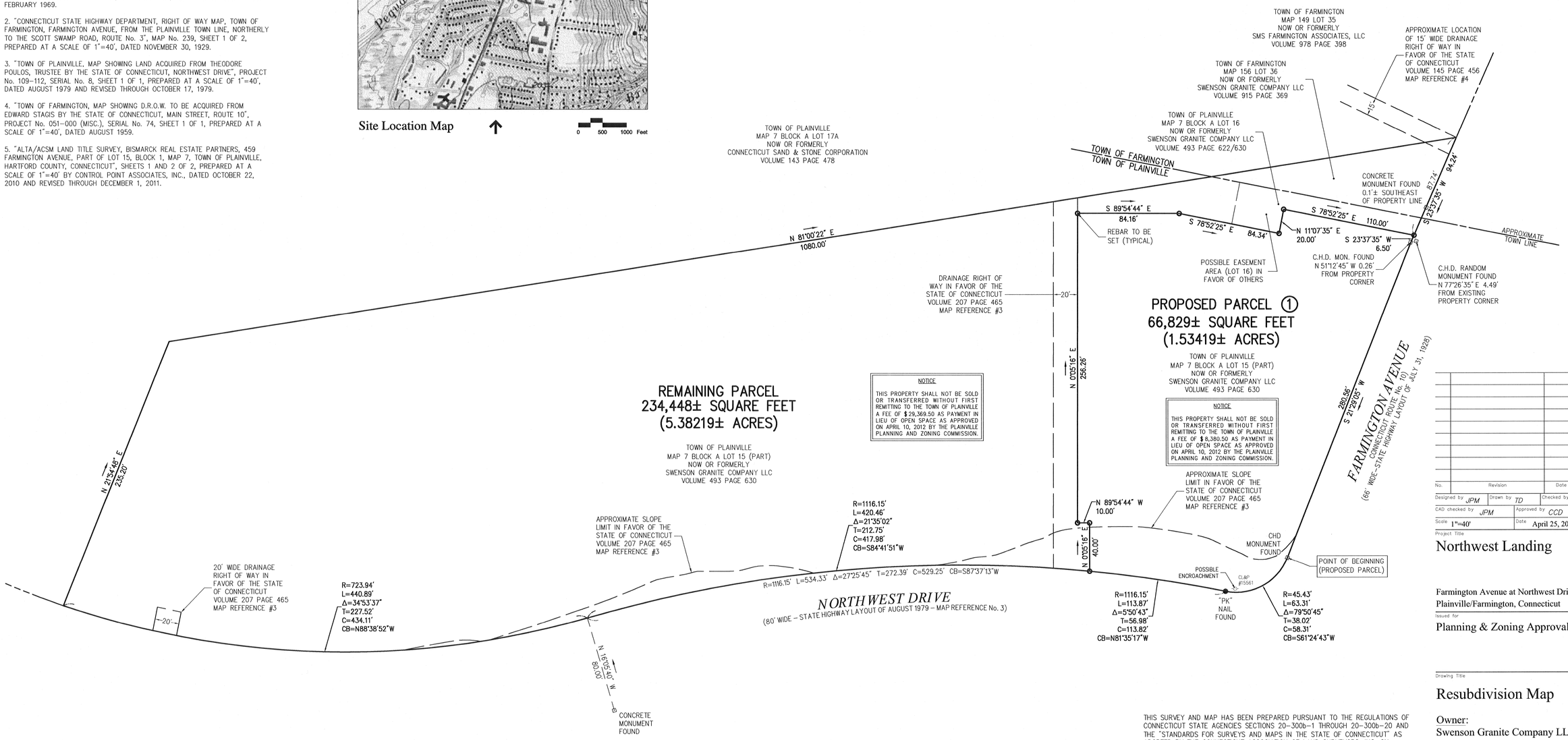

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SCALE IN FEET

APPROVED:

TOWN OF PLAINVILLE PLANNING & ZONING COMMISSION CHAIRMAN DATE

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4/25/12

CHRISTOPHER C. DANFORTH, L.S. #70118 DATE

No.	Revision	Date	Appvd.

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Project Title
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STATE OF CONNECTICUT CHRISTOPHER C. DANFORTH LICENSED LAND SURVEYOR

Drawing Number
Su-1

Sheet 1 of 2

Project Number
41788.00

CENTRAL CONNECTICUT REGIONAL PLANNING AGENCY

Serving Berlin, Bristol, Burlington, New Britain, Plainville, Plymouth, and Southington

225 North Main Street, Suite 304
Bristol, CT 06010-4993

Internet: http://ccrpa.org
Fax/TDD: (860) 589-6950

Tel: (860) 589-7820
or (860) 224-9888

TO:	COMPREHENSIVE PLAN COMMITTEE
FROM:	Kristin Thomas, PLANNER
DATE:	April 26, 2012
RECEIVED BY CCRPA ON:	April 16, 2012
REFERRAL NAME:	Southington Zoning Regulation Amendments
INITIATOR:	Southington Planning and Zoning Commission
MUNICIPAL HEARING:	June 5, 2012
REFERRED TO:	CCRPA
DESCRIPTION:	The Southington Planning and Zoning Commission has proposed a zoning text revision to Section 13-10-4C Electronic Signs. The revision has added the allowance of electronic gasoline signs provided that they adhere to specific design standards. Please see the original submittal for further details on the design standards.
COMMENTS:	No comments were received from neighboring municipalities.
STAFF RECOMMENDATION:	CCRPA recommends that this proposal be found ***Not in Conflict*** with the Regional Plan of Conservation and Development or any other Agency plan.

PLANNING AND ZONING DEPARTMENT

P.O. BOX 610 SOUTHINGTON, CONNECTICUT 06489

Phone: (860)276-6248 / Fax: (860)628-3511

Via email

April 16, 2012

Carl J. Stephani
Exec. Director, CCRPA
225 No Main St, Ste 304
Bristol, CT 06010

RE: Proposed Zoning Regulation Amendment – Section 13-10.4C (ZA #563)

Dear Sir or Madam:

In accordance with the provisions of the Connecticut General Statutes, attached is a copy of a proposed zoning text revision:

- ZA #563 – New text on electronic signs – Section 13-10-4C

The Planning and Zoning Commission anticipates opening the public hearing on this item on June 5, 2012. The complete file is available for review in the Planning Department, the Town Clerk's office and on the web page. If you have any questions regarding this proposal, please feel free to contact me at (860) 276-6248.

Respectfully,

Mary F. Savage-Dunham

Mary F. Savage-Dunham, AICP
Town Planner

enclosures

I:\Planning and Zoning\REFERRALS\ZA #563\referral ltr.doc

13-10 Prohibited Signs

The following signs shall be prohibited for the reasons of,

1. Protecting the public health, safety and welfare;

2. Reducing traffic and pedestrian hazard;

3. Protecting property values by minimizing possible adverse effects and visual blight caused by the signs; and

4. Furthering the objectives of the town's plan of development:

   A. Billboards.

   B. Off premises signs, except directional signs as otherwise provided for in these regulations.

   C. Signs which revolve, rotate, flash, or involve the electronic or automatic switching of lamps or illuminated tubes, except for time and temperature signs, ***and signs advertising the numerical price of gasoline providing said sign does not revolve, rotate or flash, does not change more than twice in a 24 hour time period, and meets the following design standards:***

      Shall be no greater than 10 inches in height and 25 inches in width for each type of fuel and no more than four displays of fuel at any site.

      The total sign area shall be as set forth in Section 13 of the regulations.

      The background for the price display shall be black and the illumination for the numerical display shall be red or green.

      The NIT intensity shall be no greater than 5,000 NITS during daylight hours and 3,000 NITS during the evening hours.

      The numerical display shall not change more than twice in a 24 hour period.

   D. Advertising flags, banners, strings of pennants, festoons of lights, twirlers, propellers, streamers or similar devices of carnival character, unless otherwise permitted.

   E. Signs orientated to a road which does not legally provide access to the property, except within Executive Parks; as specifically approved by the Commission.

F. Portable trailer signs.

G. No sign attached to a structure shall project above the top of the main exterior wall of such structure, except that in an industrial zone, a sign may project up to 10 feet above the top of the exterior wall of such structure provided the sign is not within 500 feet of the boundary of a residential zone or street.

H. Internally illuminated signs are not permitted in the CB zone.

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225 North Main Street, Suite 304 Internet: http://ccrpa.org Tel: (860) 589-7820
Bristol, CT 06010-4993 Fax/TDD: (860) 589-6950 or (860) 224-9888

TO: COMPREHENSIVE PLAN COMMITTEE
FROM: Kristin Thomas, PLANNER
DATE: April 24, 2012

RECEIVED BY CCRPA ON: April 18, 2012
REFERRAL NAME: Thomaston Zoning Regulation Amendments

INITIATOR: Thomaston Planning and Zoning Commission

MUNICIPAL HEARING: May 2 and June 6, 2012
REFERRED TO: CCRPA

DESCRIPTION: The Thomaston Planning and Zoning Commission has initiated zoning text amendments, which include: Article 8 Signs, including detailed size and time limits on different sign types, by zoning district; Article 5 In-Law-Apartments, including a prohibition that an in-law apartment have a separate "utility box" and replaces the word "good" with "active in regards to a five year permit.

COMMENTS: No comments were received from abutting towns.

STAFF RECOMMENDATION: CCRPA recommends that the amendment to Article 5 which proposes to include a prohibition that in-law apartments have separate utility boxes be found ***In Conflict*** with the Regional Plan of Conservation and Development. The Regional Plan outlines affordable housing as a development goal. This change to the regulations adds further difficulty to this type of accessory use. All other parts of this referral are found ***Not in Conflict***.

The existing regulations regarding permit expirations (e.g. at the end of the five year period or the transfer of property ownership) also raised concerns for CCRPA staff, in regards to legality of these regulations. In light of these concerns, we've included some case law that speaks to special permits. Please see the attached PDFs and highlighted text.

Town of Thomaston
Planning and Zoning Commission
158 Main Street
Thomaston, Ct 06787
Telephone: 860-283-8411
Fax: 860-283-2893
Website: www.thomastonct.org

LEGAL NOTICE
TOWN OF THOMASTON
PLANNING AND ZONING COMMISSION
PUBLIC HEARING

The Planning and Zoning Commission, Thomaston, CT will hold a public hearing on Wednesday, May 2, 2012, 7:00 pm, Meeting Room #1, 4th Level, Thomaston Town Hall,158 Main St., Thomaston, CT on the following:

1. Proposed regulation changes to Thomaston Zoning Regulations, Article 8, Signs
2. Proposed regulation changes to Thomaston Zoning Regulations, Article 4, Section 4.5, Schedule A, Part A.5, In-Law Apartments

Applicant: Planning and Zoning Commission
Thomaston, CT

At this hearing interested persons may appear and be heard and written communications will be received. A copy of the proposed regulation changes are on file in the Land Use Office, Thomaston Town Hall, 3rd Level, 158 South Main St., Thomaston, CT Mon.-Wed. 8:00 AM-4:00 PM, Thurs. 8:30 AM-6:00 PM, Fri. 8:30 AM-12 noon.

Dated at Thomaston, CT this 19th and 25th day of April, 2012

William Guerrera, Chairman
Thomaston Planning and Zoning Commission

Article 8 - Signs

8.1 Purpose

The purpose of this article is to promote public safety and welfare by providing adequate standards to control the number, height, size, location, illumination and design of signs. The provisions of this section have been added to preserve the rights of free speech and expression while protecting against traffic distractions and hazards, to provide reasonable standards by which permitted uses within various zones may relate their function to the public and aid in preserving and enhancing the aesthetic and historical values of the community.

8.[1]*2* General Provisions

Except [as may be provided] *in conformance with these regulations*, no signs shall be constructed, enlarged, extended, structurally altered or moved. Zoning permits are required for all signs except for [identification of residential dwelling units] *those specified in Article 8.3 of these regulations.* [Real estate, political, and election signs are deemed as temporary uses and not subject to the permit requirement.] *Signs may not be placed within the right-of-way of any street, or be located in such a way to be hazardous to traffic circulation or pedestrian use, obstruct any window, door, ventilation system, fire escape or exit. Unless specified on a permit, signs shall not be animated, rotating or flashing and may be permitted to be illuminated by incandescent or fluorescent lamps directed so as not to cause glare onto any street or adjacent property. Signs shall not be located on a roof and no sign shall project above the top wall of any structure. Signs attached to a building may project into the setback area provided the sign does not project more than one (1) foot from the building or into or over a street line.*

8.3 Signs Exempt from Zoning Permit Requirements

a) *Real Estate – Any signs pertaining to the sale, lease, or rental of land or buildings. Signs shall not exceed 6 (six) square feet in area and must be removed within 30 (thirty) days of sale, lease or rental.*

b) *Political/Election Signs – Provided they comply with section 8.2 of these regulations.*

c) *Identification of Residential Dwelling Units – Includes name and/or street number. Maximum sign area of 2 (two) square feet allowed.*

d) *Flags – Provided that they do not pose an obstruction as conveyed in Article 8.2. Flags advertising a business must conform to the requirements of section 8.4 of these regulations as a detached sign.*

8.[2]*4* Permit[ted] *Required* Signs, Number, and Size

A. Permanent Signs in Residential Zones (RA-15, RA-40, RA-80, RA-80A)			
Type of Sign	***Maximum Sign Area (square feet)***	***Maximum Number of Signs***	***Special Conditions***
Free Standing/Detached Signs (By P&Z Special Permit Only) for Permitted Home Occupation	*16 Square Feet*	*1 Per Lot*	*Shall not exceed 6 feet in height; shall not be internally or externally lighted*
Attached Signs Related to Permitted Home Occupation	*6 Square Feet*	*1 Per Lot*	*May not be internally lighted; external lighting must be incidental to normal home lighting*
Signs for Civic, Municipal and Non-Profit Organizations on the Premises	*16 Square Feet*	*1 Per Lot*	*Shall not exceed 6 feet in height if detached*

B. Permanent Signs in Commercial/Manufacturing Zones (GC, M1, M2) *All Permanent Signs within the General Commercial Zone must be approved by P&Z special permit*			
Type of Sign	***Maximum Sign Area (square feet)***	***Maximum Number of Signs***	***Special Conditions***
Wall/Entrance Signs	*1 Square Foot per Linear Foot of Building Frontage*	*1 Per Business*	
Free Standing/Detached Signs	*32 Square Feet*	*1 Per Lot*	*Shall not exceed 16 feet in height*
Signs for Civic, Municipal and Non-Profit Organizations on the Premises	*32 Square Feet*	*1 Per Lot*	*Shall not exceed 16 feet in height if detached*

C. Temporary Signs (All Zones)			
Type of Sign	***Maximum Sign Area (square feet)***	***Maximum Number of Signs***	***Duration***
Business Advertisement	*32 s.f.*	*1 Per Lot, Per Business*	*60 Days*
Contractors/Construction	*5 s.f.*	*1 Per Lot for Each Contractor*	*60 Days*
Temporary Sales	*32 s.f.*	*1 Per Lot, Per Business*	*60 Days*
Signs for Civic, Municipal and Non-Profit Organizations and Special Events	*16 s.f. – May be Increased by P&Z Special Permit*	*1 Per Lot – May be Increased by P&Z Special Permit*	*60 Days - May be Increased By P&Z Special Permit, Not to Exceed 180 Days in a Calendar Year*
Garage/Tag Sales	*4 s.f. each*	*2 maximum on the premises and 2 maximum offsite directional signs with property owner permission*	*May be placed up to 48 hours before event; must be removed at the conclusion of the sale. No more than 2 permits per calendar year.*

[Temporary advertisement, sale notification, construction, and rental improvement signs shall not exceed one (1) sign per lot and five (5) square feet in area. Temporary signs shall be removed within sixty (60) days after of issuance of the zoning permit or after the election process is completed. Temporary portable signs shall be locate on the premises and not exceed thirty-two (32) square feet in size.

Identification signs for farms and truck gardens, campgrounds or parks, nurseries, schools, places of worship, cemeteries, charitable institutions, and hospitals shall not exceed two (2) per lot and not be larger than twelve (12) square feet.

Non-residential uses shall be permitted with one (1) detached sign per lot. The sign shall not exceed thirty-two (32) square feet. One (1) additional sign for the entrance wall or front of a building shall be allowed for each occupancy. The entrance sign shall not exceed one (1) square foot for each linear foot of frontage.

Example: A structure with fifty (50) linear feet of frontage can attach a sign to the entrance or front wall which shall not exceed fifty (50) square feet.

Signs shall not be located in such a way to be hazardous to traffic circulation or pedestrian use, obstruct any window or door, ventilation system, fire escape, exit or to

cause hazards to public safety.

Unless specified on the permit, signs shall not be animated, rotating or flashing and may be illuminated by incandescent or fluorescent lamps directed so as not to cause glare onto any street or adjacent property.

Unattached signs shall not be higher than sixteen (16) feet in general commercial and manufacturing zones. In residential zone, free standing signs shall not exceed six (6) feet in height.

Signs shall not be located on a roof and no sign shall project above the top wall of any structure. Signs attached to a building may project into the setback area provided the sign does not project more than one (1) foot from the building or into or over a street line.]

	Residential RA				Comm.	Mfg.	
	***80A**	**80**	**40**	**15**	**GC**	**M1**	**M2**
A.5 In-Law Apartments	P	P	P	P	P	P	P

The apartment shall have the same appearance as the primary unit. It shall be continued within or constructed as an addition to the primary unit. Detached units are not permitted.

Direct interior access, without going outside, shall be provided between the apartment and the primary dwelling unit.

The unit shall contain no more than one (1) bedroom. The unit shall not exceed seven hundred (700) square feet of habitable area. The unit may have a kitchen, bathroom, and a front room.

Access to the unit shall be from the side or rear. Access from the front shall not be permitted except through the main entrance of the primary unit. No additional doors in the front shall be permitted. The unit shall *not* have a separate utility box.

Individuals residing in the apartment shall be related by blood, marriage or adoption. The owner of the primary unit shall reside on site.

The permit shall be [good] *active* for a period of five (5) years. The permit may be renewed by the Zoning Enforcement Officer upon inspection and determining that the conditions of the original approval has not been violated.

All permits shall be recorded in the Thomaston Land Records.

The permit shall be voided upon sale or transfer of ownership or if the principal owner no longer resides on site.

GRISWOLD HILLS OF NEWINGTON LIMITED PARTNERSHIP VS. TOWN PLAN AND ZONING COMMISSION OF THE TOWN OF NEWINGTON, ET AL

NO. CV95-0705701S

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF HARTFORD - NEW BRITAIN, AT HARTFORD

1995 Conn. Super. LEXIS 1767

June 9, 1995, Decided
June 9, 1995, Filed

NOTICE: [*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff, the purchaser at foreclosure of real property, sought a mandamus requiring defendants, the Town Plan and Zoning Commission of the Town of Newington, Connecticut, its chairman, and the Town, to take steps to finalize two land use approvals granted to a partnership that was the purchaser's predecessor in title to the property. The Commission filed a motion to dismiss the action.

OVERVIEW: The Commission issued a site plan approval and special exception approval to a partnership for the construction of a high rise apartment project. The Commission attached several conditions related to engineering and environmental approvals. The partnership never fulfilled any of the conditions of the approval and declared bankruptcy; the property was foreclosed and was eventually sold to the purchaser, which attempted to go forward with the project. The purchaser contended that since it had complied with all the requirements for the approval, the Commission was required to fulfill its obligations. The Commission filed a motion to dismiss the purchaser's suit for mandamus, arguing that the purchaser lacked standing to bring the action. They argue that the purchaser obtained no rights to the conditional approval simply because it is the present owner of the land. The Commission maintained that the conditional approvals were personal property that belonged to the partnership's bankruptcy trustees. The court denied the motion to dismiss. It held that the special permit approval and site plan approval ran with the land and that the new applicant had standing to bring the suit.

OUTCOME: The court denied the motion to dismiss.

CORE TERMS: engineer, site plan, land use, wetlands, zoning, inland, chairman, mylar, subject matter, ownership, site, town planner, partnership, present owner, cause of action, ordinance, variance, special exception, engineering firm, standing to bring, conditional approval, sedimentation, constructed, mandamus, adjacent, certify, profile, signing, map

LexisNexis(R) Headnotes

Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Motions to Dismiss
[HN1] A motion to dismiss properly attacks the jurisdiction of the court, essentially asserting the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.

Administrative Law > Separation of Powers > Jurisdiction

Civil Procedure > Justiciability > Standing > General Overview
Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview
[HN2] Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless one has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause. Because the defendant has brought to the attention of the court the possible absence of subject matter jurisdiction, this must be passed upon before this matter can move one step further; as any movement is necessarily the exercise of jurisdiction.

Real Property Law > Zoning & Land Use > General Overview
[HN3] Zoning is concerned with the use of specific existing buildings and lots and not primarily with their ownership. The issue therefore is not who owns the land but rather how the land will be used. Ownership is incidental.

Environmental Law > Zoning & Land Use > Conditional Use Permits & Variances
Real Property Law > Zoning & Land Use > Judicial Review
Real Property Law > Zoning & Land Use > Special Permits & Variances
[HN4] A variance runs with the land and not with the present owner An inland wetlands permit is concerned solely with the property to be regulated, and a change of ownership does not affect the validity of the permit. There is no real difference, for the purpose of this issue, amongst any of the land use permits, whether it be an inland wetlands permit, a variance, a site plan, special permit or subdivision permit.

Administrative Law > Judicial Review > Reviewability > Questions of Law
Administrative Law > Judicial Review > Standards of Review > Rule Interpretation
Real Property Law > Zoning & Land Use > Ordinances
[HN5] While the a zoning commission's interpretation of its regulations is entitled to some deference, the interpretation of provisions in a zoning ordinance is nevertheless a question of law for the court, and the court is not bound by the legal interpretation of the ordinance by the town.

JUDGES: Berger, J.

OPINION BY: Berger

OPINION

MEMORANDUM OF DECISION ON MOTION TO DISMISS

I.

The plaintiff, Griswold Hills of Newington Limited Partnership (hereinafter "Griswold") has filed the instant action seeking a mandamus requiring the defendants Town Plan and Zoning Commission of the Town of Newington, the Town of Newington, and Joseph Klett, the chairman of the Town Plan and Zoning Commission (hereinafter, collectively referred to as "the Commission") to take certain steps to finalize two land use approvals.

A brief background is essential to the understanding of this action. On or about November 12, 1986, the Commission issued a site plan approval and a special exception approval to the Colonial Griswold Limited Partnership (hereinafter, "Colonial"), a Connecticut limited partnership, for the construction of 285 high rise apartments in Newington. The approvals were modified on August 29, 1990 with a project design amendment reducing the number of units from 285, in three high rise buildings containing five to eight **[*2]** stories, to 226 dwelling units in seven low rise buildings containing two, three, and four stories.

The Commission attached several conditions to the permits, ordering inter alia, that:

> 6) The applicant's engineer shall certify to the Town Engineer the design (plan and profile) for each proposed retaining wall and their construction as approved.
>
> 7) The applicant's engineer shall certify to the Town Engineer that the site's storm water management system has been constructed as approved. Prior to the Chairman signing the plans the catch basin design in Kitts Lane at the site's main entrance shall be submitted to the Town Engineer.

8) During the site preparation the applicant's contractor shall insure that all practical measures to control erosion and sedimentation impacts on adjacent properties are implemented. Temporary sedimentation control ponds shall be constructed as approved by the Town Engineer.

9) The applicant shall submit to the Building Department a copy of the State Traffic Commission certificate, if required, prior to the issuance of building permits.

10) The applicant shall submit evidence that the easements for sanitary sewer and discharge **[*3]** of surface runoff from the State of Connecticut have been secured.

11) The applicant's engineer shall provide addition topographic information, finish floor elevations and grading around building foundations to the Town Engineer, Town Planner and Building Department prior to signing by the Chairman.

12) A plan for dumpster enclosures shall be added to the profile sheet. Sidewalk width adjacent to parking lots shall be a minimum of six (6) feet.

Section 5.28 of the zoning regulations states that a special exception will not become effective until it is certified by the Commission and recorded in the land records. Section 5.27 states that a site plan will not become effective until the site plan is signed by the chairman of the Commission and a mylar map is filed with the town planner. Colonial never fulfilled the requirements of August 29, 1990 approval and ultimately it and the other Colonial enterprises collapsed, ending up in the U.S. Bankruptcy Court. The property was subsequently foreclosed by the Burritt Interfinancial Corporation on August 28, 1991 and after the Burritt became insolvent, the Federal Deposit Insurance Corporation ("FDIC") as a receiver, sold the **[*4]** property to the plaintiff herein on October 18, 1993.

On May 10, 1994, the engineering firm of Close, Jensen and Miller which represented the original applicant, Colonial, and now the new applicant, Griswold, delivered the mylar maps to the defendants. On or about June 7, 1994, the Newington Town Planner Edmund J. Meehan wrote to the engineering firm advising of the need to comply with conditions 7, 10, 11 and 12 of the August 29, 1990 approval letter. Close, Jensen and Miller submitted revised mylars on July 5, 1994 and again on August 18, 1994 after incorporating all the requirements.

The plaintiff is now seeking this mandamus maintaining that having complied with the requirements, the Commission must fulfill its obligations. [1] The defendants have filed a motion to dismiss arguing that the plaintiff lacks standing to bring this action. They argue that the plaintiff obtains no rights to the conditional approval simply because it is the present owner of the land. The Commission maintains that the conditional approvals are personal property which belong to Colonial's bankruptcy trustees. This court is not in agreement.

1 As conceded by the defendants, there is no issue as to the timeliness of the mylar filing.

[*5] II.

A.

[HN1] A motion to dismiss "properly attacks the jurisdiction of the court, essentially asserting the plaintiff *cannot* as a matter of law and fact state a cause of action that should be heard by the court." (Emphasis in original.) (Citations omitted.) *Gurliacci v. Mayer,* 218 Conn. 531, 544, 590 A.2d 914 (1991). [HN2] "Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless [one] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy." *Ardmare Construction Co. v. Freedman,* 191 Conn. 497, 501, 467 A.2d 674 (1983). "If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause." *Tomlinson v. Board of Education,* 226 Conn. 704, 717, 629 A.2d 333 (1993). Because the defendant has brought to the attention of the court the possible absence of subject matter jurisdiction, this must be passed upon "before this matter can move one step further; as any movement is necessarily the exercise of jurisdiction." *Baldwin Piano & Organ* **[*6]** *Co. v. Blake,* 186 Conn. 295, 297, 441 A.2d 183 (1982).

B.

[HN3] "Zoning is concerned with the use of specific existing buildings and lots and not primarily with their ownership." *Petruzzi v. Zoning Board of Appeals,* 176 Conn. 479, 484, 408 A.2d 243 (1979) citing *Abbadessa v. Board of Zoning Appeals,* 134 Conn. 28, 32, 54 A.2d 675 (1947). The issue therefore is not who owns the land but rather how the land will be used. Ownership is incidental. In *Fromer v. Two Hundred Post Associates,* 32 Conn. App. 799, 631 A.2d 347 (1993),

the court reviewed a claim, similar to that made here, that an inland wetlands permit is personal to the applicant and does not attach and follow the title. The initial applicant therein, after getting two extensions, sold the property to a bank which subsequently went into receivership to the FDIC. After reviewing our Supreme Court's decision in *Garibaldi v. Zoning Board of Appeals,* 163 Conn. 235, 239, 303 A.2d 743 (1972), in which the Court held that [HN4] a variance runs with the land and not with the present owner, the Appellate court concluded that "an inland wetlands permit is concerned solely with the property to be regulated, and that the **[*7]** change of ownership does not affect the validity of the permit." *Fromer v. Two Hundred Post Associates,* supra, 805. See, also, T. Tondro, Connecticut Land Use Regulation (2d Ed. 1992), p. 124. There is no real difference, in terms of this discussion, amongst any of the land use permits, whether it be an inland wetlands permit, a variance, a site plan, special permit or subdivision permit. Thus, *Garibaldi* and *Fromer* are controlling; the special permit approval and site plan approval run with the land.

At oral argument, the Commission secondarily maintained that the above rule did not apply if the approval had not yet been perfected. The concept of perfecting a land use approval applies to statutory publication or filing requirements after affirmative agency action. See, generally, Fuller, Land Use Law and Practice, Chapter 24. While there are perfection requirements for the subject approvals, this court does not believe that such actions preclude the approvals from running with the land. The fact that certain final action is required in no way negates the rule set forth in *Garibaldi* and *Fromer.* The terms of the permit do not change because another person or entity **[*8]** steps into the shoes of the initial applicant. *Garibaldi v. Zoning Board of Appeals,* supra, 163 Conn. 239. [HN5] While the Commission's interpretation of its regulations is entitled to some deference, "the interpretation of provisions in the ordinance is nevertheless a question of law for the court," *Coppola v. Zoning Board of Appeals,* 23 Conn. App. 636, 640, 583 A.2d 650 (1990) and "the court is not bound by the legal interpretation of the ordinance by the town." Id. As noted by the *Fromer* court:

> A permit is issued or denied on the basis of conditions relating to the land such as the topography, soil type, and the nature, extent, and effect of the proposed activity on the land. The facts in the statutes that can be considered by the inland wetlands agencies pertain only to the land and not to the applicants or owners.

Fromer v. Two Hundred Post Associates, supra, 804.

III.

The Commission's argument that the unperfected permit is personalty and does not run with the land is contrary to Connecticut law. The plaintiff, as owner **[*9]** of the subject parcel, has standing to bring this case and accordingly, the motion to dismiss is denied.

Berger, J.

Jeffrey S. Beeman et al. v. The Guilford Planning & Zoning Commission et al.

CV 990427275

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF NEW HAVEN, AT NEW HAVEN

2000 Conn. Super. LEXIS 1081

April 26, 2000, Decided
April 27, 2000, Filed

NOTICE: [*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

DISPOSITION: The plaintiffs' appeal must be sustained. The action of the Board in approving, with conditions, the application at issue, is reversed and judgment may enter in favor of the plaintiffs, Jeffrey S. Beeman and Mary E. Beeman.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff appealed the decision of the Guilford Planning and Zoning Commission (Connecticut) granting a special permit to defendant residential mental health organization for a philanthropic and non-profit use of residential property.

OVERVIEW: Plaintiffs appealed the zoning commission's decision to grant a special permit to defendant residential mental health organization for a philanthropic and non-profit use of residential property for its administrative offices. The permit was conditioned on defendant's ownership of the property and if it were transferred, the permit became void. The court sustained the appeal because the commission impermissibly imposed a condition personal to defendant and such condition was invalid. In imposing the condition, the commission acted without authority. Whether a majority would have approved the application without the condition was impossible to determine from the record. Otherwise, the court found that the commission acted properly: notice was proper; the commission did not create an illegal interior lot; the application complied with regulations; and the proceedings were fundamentally fair.

OUTCOME: Appeal sustained and action reversed because zoning commission acted without authority in imposing a condition personal to defendant in approving the **special use permit,** and because such condition was invalid, action was reversed.

CORE TERMS: special permit, public hearing, fundamental fairness, quotation marks omitted, zoning, residential, applicable standards, neighborhood, void, notice, citation omitted, substantial evidence, approving, approve, land use, record to support, integral part, complied, variance, site, voted, administrative capacity, site plan, acted improperly, proposed use, evidence to support, non-residential, invalid, vested, walk

LexisNexis(R) Headnotes

Administrative Law > Judicial Review > Standards of Review > Abuse of Discretion
Environmental Law > Zoning & Land Use > Judicial Review
Real Property Law > Zoning & Land Use > Judicial Review

[HN1] Judicial review of the planning and zoning commission's decision is limited to a determination of whether the decision was arbitrary, illegal or an abuse of discretion.

Real Property Law > Zoning & Land Use > Judicial Review
[HN2] A planning and zoning commission is vested with a large measure of discretion, and the burden of showing the agency has acted improperly rests upon the one who asserts it. Courts allow zoning authorities this discretion in determining the public need and the means of meeting it, because the local authority lives close to the circumstances and conditions which create the problem and shape the solution.

Real Property Law > Zoning & Land Use > Administrative Procedure
Real Property Law > Zoning & Land Use > Judicial Review
[HN3] There is a strong presumption of regularity in the proceedings of an agency such as a planning and zoning commission. Courts must be scrupulous not to hamper the legitimate activities of civic administrative boards by indulging in a microscopic search for technical infirmities in their actions. Such caution is particularly appropriate when reviewing the decision of a local land use commission composed of laypersons whose procedural savoir-faire may not rise to the sophisticated level needed to achieve strict compliance with the statutory directions under which they operate.

Real Property Law > Zoning & Land Use > Judicial Review
Real Property Law > Zoning & Land Use > Ordinances
Real Property Law > Zoning & Land Use > Special Permits & Variances
[HN4] When considering an application for a special permit, a zoning authority acts in an administrative capacity and its function is to determine whether the proposed use is permitted under the regulations and whether the standards set forth in the regulations and statutes are satisfied. It has no discretion to deny a special permit if the regulations and statutes are satisfied. It does have the discretion, however, to determine whether the proposal meets the standards set forth in the regulations.

Real Property Law > Zoning & Land Use
[HN5] Zoning commission members may rely on their personal knowledge of the property concerned and other properties in the area, prior applications, and conditions in the community, in reaching a decision on an application for a special permit.

Environmental Law > Litigation & Administrative Proceedings > Judicial Review
Environmental Law > Natural Resources & Public Lands > Wetlands Management
Real Property Law > Zoning & Land Use > Judicial Review
[HN6] Failure of an agency to make findings, even those required by statute or regulation, does not render its decision null and void; rather, the reviewing court must search the record of the hearing before that commission to determine if there is an adequate basis for its decision.

Environmental Law > Litigation & Administrative Proceedings > Judicial Review
Real Property Law > Zoning & Land Use > Judicial Review
[HN7] The reviewing court must sustain the agency's decision if there is substantial evidence in the record to support that decision.

Real Property Law > Zoning & Land Use > Judicial Review
[HN8] Where the zoning commission does state its reasons for a decision the question for the court to pass on is simply whether the reasons assigned are reasonably supported by the record and whether they are pertinent to the considerations which the commission is required to apply under the zoning regulations.

Civil Procedure > Trials > Judgment as Matter of Law > Directed Verdicts
Real Property Law > Zoning & Land Use > Judicial Review
[HN9] When the zoning commission acts in an administrative capacity, the evidence to support any such reason must be substantial. The "substantial evidence" standard requires enough evidence to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Real Property Law > Zoning & Land Use > Special Permits & Variances
[HN10] A special permit and site plan **run with the land.**

Real Property Law > Zoning & Land Use > Special Permits & Variances
[HN11] The identity of a particular user of the land is irrelevant to zoning.

Real Property Law > Zoning & Land Use > Special Permits & Variances
[HN12] A zoning condition personal to the applicant is invalid.

Environmental Law > Zoning & Land Use > Conditional Use Permits & Variances
Real Property Law > Zoning & Land Use > Special Permits & Variances
Real Property Law > Zoning & Land Use > State & Regional Planning
[HN13] If a zoning condition is imposed by a commission without being warranted by the regulations it is void. The imposition of a void condition, however, does not necessarily render the whole decision illegal and inefficacious. The dispositive consideration is whether the condition was an integral part of the commission's decision to grant the permit. If a zoning board would have refused to grant a variance without a particular condition, the condition is an integral part of the variance. As with a variance, so, too, with a special permit.

JUDGES: Downey, J.

OPINION BY: Downey

OPINION

Memorandum of Decision

I

The plaintiffs, Jeffrey S. and Mary E. Beeman, appeal from the decision of the defendant, the Guilford Planning & Zoning Commission ("the Commission") granting a special permit to the defendant, SARAH Tuxis Residential Services, Inc. ("SARAH Tuxis," or "the applicant") for a philanthropic and non-profit office use at 45 Boston Street, in the Town of Guilford. The property is in an R-3 Zone.

SARAH Tuxis is a non-profit, philanthropic organization dedicated to providing residential and other services to people with mental disabilities. SARAH Tuxis proposes to use the subject property as its administrative offices.

SARAH Tuxis filed its application for special permit on or about March 12, 1999. A public hearing on the application **[*2]** opened on April 7, 1999, was continued to April 21st, and thence to May 5, 1999, at which time the hearing was completed. A site walk was conducted on May 1st. Following the public hearing, on May 5th, the Commission met an voted, 5-2, to approve the subject application, with conditions. This appeal followed.

II

Under the Code of the Town of Guilford, Chapter 273, ("Regulations"), Article X the Planning & Zoning Commission is empowered to grant applications for special permit where said applications meet the standards and requirements specified in the said regulations. The plaintiffs claim the Commission acted illegally, arbitrarily and in abuse of the discretion vested in it in that:

> the notice of public hearing, required by General Statutes, S. 8-3c, was untimely;
>
> the action of the Commission, in approving the application, resulted in the creation of an illegal lot;
>
> the Commission approved said application without reference to, or regard for, the applicable standards;
>
> the entire application procedure, including the conduct of the public hearing, lacked fundamental fairness to those opposing the application.

III

[HN1] Judicial **[*3]** review of the Commission's decision is limited to a determination of whether the decision was arbitrary, illegal or an abuse of discretion, *Whittaker v. Zoning Board of Appeals,* 179 Conn. 650, 654, 427 A.2d 1346. [HN2] The Commission is vested with a large measure of discretion, and the burden of showing the agency has acted improperly rests upon the one who asserts it, *Mario v.* Fairfield, 217 Conn. 164, 169, 585 A.2d 87. Courts allow zoning authorities this discretion in determining the public need and the means of meeting it, because the local authority lives close to the circumstances and conditions which create the problem and shape the solution, *Burnham v. Planning & Zoning Commission,* 189 Conn. 261, 266, 455 A.2d 339 (citation omitted). [HN3] There is a strong presumption of regularity in the proceedings of an agency such as the Commission, *Frito-Lay, Inc. v. Planning & Zoning Commission,* 206 Conn. 554, 573-74, 538 A.2d 1039 (citation, quotation marks omitted). Courts must be scrupulous not to hamper the legitimate activities of civic administrative boards by indulging in a microscopic search for technical infirmities in **[*4]** their actions. Such caution is particularly appropriate when reviewing the decision of a local land use commission composed of laypersons whose procedural savoir-faire may not rise to the sophisticated level needed to achieve strict compliance with the statutory directions under which they operate. *DeBeradinis v. Zoning Commission,* 228 Conn. 187, 198-99, n.7, 635 A.2d 1220 (citation, quotation marks omitted).

[HN4] When considering an application for a special permit, a zoning authority acts in an administrative capacity and its function is to determine whether the proposed use is permitted under the regulations and whether the standards set forth in the regulations and statutes are satisfied. It has no discretion to deny a special permit if the regulations and statutes are satisfied, *Daughters of St. Paul, Inc. v. Zoning Board of Appeals,* 17 Conn. App. 53, 56, 549 A.2d 1076 (citation omitted). It does have the discretion, however, to determine whether the proposal meets the standards set forth in the regulations, *Irwin v. Planning & Zoning Commission,* 244 Conn. 619, 628, 711 A.2d 675. [HN5] Commission members may rely on their personal knowledge of the **[*5]** property concerned and other properties in the area, prior applications, and conditions in the community, in reaching a decision on an application, Fuller, Land Use Law and Practice, Conn. Prac., Vol. 9, Section 21.5; *Holt-Lock, Inc. v. Zoning & Planning Commission,* 161 Conn. 182, 191, 286 A.2d 299.

[HN6] Failure of an agency to make findings, even those required by statute or regulation, does not render its decision null and void; rather, the reviewing court must search the record of the hearing before that commission to determine if there is an adequate basis for its decision, *Samperi v. Inland Wetlands Agency,* 226 Conn. 579, 588-89, 628 A.2d 1286, quoting from *Gagnon v. Inland Wetlands & Watercourses Commission,* 213 Conn. 604, 611, 569 A.2d 1094. [HN7] The reviewing court must sustain the agency's decision if there is substantial evidence in the record to support that decision, *Samperi v. Inland Wetlands Agency*, 226 Conn. at 587-88. [HN8] Where the Commission does state its reasons for a decision the question for the court to pass on is simply whether the reasons assigned are reasonably supported by the record and whether they **[*6]** are pertinent to the considerations which the Commission is required to apply under the zoning regulations, *Irwin v. Planning & Zoning Commission, supra*, at 629 (citation, quotation marks omitted).

[HN9] When, as here, the Commission acts in an administrative capacity, the evidence to support any such reason must be substantial, *Huck v. Inland Wetlands & Watercourses Agency,* 203 Conn. 525, 540, 525 A.2d 940. The "substantial evidence" standard requires enough evidence to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury, *Kaufman v. Zoning Commission,* 232 Conn. 122, 151, 653 A.2d 798. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence, *Samperi v. Inland Wetlands Agency, supra*, at 588 (citations, internal quotation marks omitted).

IV

For reasons stated below, the court will sustain the appeal.

The Court will review the plaintiffs' claims, seriatum:

NOTICE CLAIM: The plaintiffs concede that notice **[*7]** of the public hearing of April 7, 1999 was published in the *Shoreline Times* in March 24th and March 31, 1999. The plaintiffs claim that although the commission states it is continuing the public hearing, both on April 7th and April 21, 1999, "the record is entirely devoid of any indication that the hearing was ever commenced. No correspondence was read, no testimony was taken. The transcripts of the April 7th and April 21, 1999 public hearings were admitted into the record when the Commission's Motion to Supplement the Record was granted. These transcripts show that the said public hearing was properly opened on April 7th, properly continued to April 21st and, on April 21st, properly continued to May 5, 1999. There is no requirement that correspondence be read or

testimony taken before a continuance of public hearing may be voted. The plaintiffs were in no way prejudiced by the said continuances. The Court finds that the notice of public hearing on the subject application was properly and timely published, in compliance with the requirements of statute and that said hearing was properly commenced and continued.

ILLEGAL LOT CLAIM: In offering their property for sale to SARAH **[*8]** Tuxis the owners chose to divide the subject lot into two parts, "Parcel A" and "Parcel B, with SARAH Tuxis purchasing Parcel A only. The subject application relates to Parcel A only. Provision was made for a twenty-foot right of way over the easterly portion of "Parcel A" for access to "Parcel B," but this right of way has been eliminated in the final plans, thus leaving "Parcel B" without access (ROR, # 47), which, plaintiffs claim, results in the creation of an illegal lot, in violation of Regulations, Section 273-25A(2)(a).

The plaintiffs have failed to establish this claim. First, the property owner needed no permission to divide the property. Second, the subject application dealt only with Parcel A. The Commission did not approve a use for Parcel B, nor did it approve the subdivision of the subject property. This is made clear by a note to the approved site plan, which reads, "Proposed Parcel B Is Not An Approved Lot, And Is Not a Part of the Special Permit Application." (ROR # 47, n.5.) Parcel B may be a useless lot at this time but it is not an approved lot. The Court finds that the defendant Commission, by its approval of the subject application did not create an illegal **[*9]** interior lot.

THE CLAIM THAT THE COMMISSION APPROVED THE APPLICATION WITHOUT REFERENCE TO, OR REGARD FOR, THE APPLICABLE STANDARDS: The Commission, in approving the subject application, contented itself with stating that the application conformed with the Code (ROR 44, p. 15). While an articulation by the Commission as to how the application complied with said standards is helpful to the Court, it is not required. Rather, the Court is required to search the record to determine if it contains substantial evidence to support the Commission's action. The Court finds there is substantial evidence in the record to support the conclusion that the subject application complied with the applicable standards of the regulations, including those provisions of Section 273-80 and Section 273-76, pertinent to the subject application. It may be noted that the application was for a change in use and contemplated no new construction or any alteration of the existing structure's exterior, save adding a handicap access ramp, making a bathroom accessible and rebuilding the front porch. There was nothing in the record to suggest that the current access for fire protection purposes would be rendered **[*10]** inadequate by approval of the application nor did anyone involved in the proceedings suggest that was the case. The burden is on the plaintiffs to show the Commission acted improperly, *Adolphson v. Zoning Board of Appeals*, 205 Conn. 703, 707, 535 A.2d 799 (citation omitted). The major issue of concern clearly was the impact the proposed change of use from residential to non-residential would have on the neighborhood and the Town Center District. With regard to the impact on the neighborhood and the conformity of the proposed use to the town's comprehensive plan of development, commission members were entitled to credit the testimony, e.g., of Dr. Macy, to rely on testimony of opponents which acknowledged that the neighborhood was, and long had been, a mix of residential and non-residential uses, to rely on members' knowledge of the neighborhood, and of the Town, including knowledge derived from the site walk. There was substantial evidence in the record to support the Commission's finding that the subject met the applicable standards of the regulations. Opponents commented extensively on this issue, and it was addressed by members in their deliberations on the application. **[*11]** The plaintiffs have failed to show that the Commission approved the subject application without reference to, or regard for the applicable standards.

THE CLAIM THAT THE PROCEEDINGS LACKED FUNDAMENTAL FAIRNESS:

The plaintiffs cite several instances of what they claim constitutes lack of fundamental fairness. Specifically with reference to 23 letters in opposition (ROR # 7-30); there was no requirement that every letter received be "read into the record," the Commission members are obligated to familiarize themselves with the record but are free to rely on record evidence they find persuasive, discarding that which is not. Opponents of the subject proposal were afforded ample notice and opportunity to be heard. This is the essence of fundamental fairness. The plaintiff, Jeffrey Beeman, read excerpts from some of these letters into the record, and a review of said letters reveals no issues that were not otherwise raised in the course of the hearing (ROR # 48, Transcript, pp. 38, ff.) While the Chairman suggested Beeman avoid cumulative comment, Beeman's right to be heard was not improperly restricted. Similarly, the remarks of the Commission chairman regarding lack of "certification" **[*12]** of letters and a petition submitted by opponents (ROR # 48, p. 1) and Commissioner Barry's comments regarding a letter of Betty Augustine (ROR 48, pp. 37, 38) do not establish denial of fundamental fairness by the Commission. The plaintiffs claim that the Town Planner, George Kral, had a personal interest in the application, in that he lived in the neighborhood and served on the board of SARAH, Inc., a sister organization to the applicant. Kral served here as staff to the Commission. The Commission was free to utilize his expertise and accept or discard, in whole or in part, Kral's recommendations. Kral properly and timely placed on the record the facts of his residence and his affiliation with SARAH, Inc. Neither fact required that Kral be disqualified from participation in this application process, although the Commission was free to disqualify Kral if it chose. No one asked that Kral be disqual-

ified and no prejudice stemming from Kral's participation has been shown by the plaintiffs. The Court finds that the Town Planner's participation in the application process did not deny the plaintiffs fundamental fairness.

The plaintiffs claim that the subject application was defective **[*13]** in that it was incomplete, in violation of fundamental fairness. What is required is not perfection but substantial compliance with filing requirements. None of the defects alleged by the plaintiffs, including the filing of a revised site development plan as late as May 5th, resulted in a denial to the plaintiffs of fundamental fairness. The Court finds that the application, as amended, substantially complied with filing requirements.

V

THE CLAIM THAT THE COMMISSION'S APPROVAL WAS PERSONAL TO THE APPLICANT.

Finally, the plaintiffs claim that the special permit at issue is not sought or granted for charitable facilities in general but rather for SARAH Tuxis specifically. The plaintiffs point to a condition of approval imposed by the Commission as evidence that the approval was based on the reputation of the applicant, not on the merits of the application. That condition, 1.b., reads, in pertinent part: "That a deed restriction or other legal instrument be submitted to the Commission [prior to filing the Special Permit] noting that this Special Permit will become void if and when this property is transferred from SARAH Tuxis Residential Services, Inc. This instrument is to further **[*14]** note that the use of the property will then become residential."

Although couched in terms of a denial to the plaintiffs of fundamental fairness, dubious assertion, the plaintiffs have stated a bona fide claim; that is, a Commission cannot impose a condition which is beyond its authority to impose. Such is the case here.

[HN10] A special permit and site plan **run with the land,** Fuller, Land Use Law and Practice, Conn. Prac., Vol. 9A, S.53.8, p. 582; See *Griswold Hills of Newington Limited Partnership v. Town Planning and Zoning Commission of Newington,* 1995 Conn. Super. LEXIS 1767, 14 CONN. L. RPTR. 405, 407, 1995 WL 360786 (1995).

[HN11] The identity of a particular user of the land is irrelevant to zoning (quotation marks, citation omitted), *Reid v. Zoning Board of Appeals,* 235 Conn. 850, 857, 670 A.2d 1271. [HN12] A condition personal to the applicant is invalid, *id.* at 858. The Court finds that the defendant Commission impermissibly imposed a condition personal to the applicant and such condition is invalid. [HN13] If a condition is imposed by a commission without being warranted by the regulations it is void, *Hochberg v. Zoning Commission,* 24 Conn. App. 526, 529, 589 A.2d 889 **[*15]** (citation, quotation marks omitted). The imposition of a void condition, however, does not necessarily render the whole decision illegal and inefficacious, *Vaszauskas v. Zoning Board of Appeals,* 215 Conn. 58, 66, 574 A.2d 212 (citation, quotation marks omitted). The dispositive consideration is whether the condition was an integral part of the commission's decision to grant the permit, *id*. (quotation marks omitted), *Branhaven Plaza LLC. v. Inland Wetlands Commission,* 251 Conn. 269, 285, 740 A.2d 847. If a zoning board would have refused to grant a variance without a particular condition, the condition is an integral part of the variance, *Reid v. Zoning Board of Appeals, supra*, at 858. As with a variance, so, too, with a special permit.

The plaintiffs have established, by a fair preponderance of the evidence, that the Commission, in imposing condition 1.b as a condition of its approval acted without authority, and that said condition is void. Whether a majority of Commission members would have voted to approve the application, absent the said condition, is impossible to determine from the record and the said condition must **[*16]** be deemed an integral part of the Commission's decision to grant said approval.

The court finds that the defendant Commission, in approving SARAH Tuxis' application with condition 1.b, acted illegally, arbitrarily and in abuse of its discretion.

Accordingly, the plaintiffs' appeal must be sustained.

The action of the Board in approving, with conditions, the application at issue, is reversed and judgment may enter in favor of the plaintiffs, Jeffrey S. Beeman and Mary E. Beeman.

By the court,

Downey, J.